

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated June 19, 2012, which confirmed the ministry's previous decision that determined that 75% of the amount of \$375 the appellant receives from her adult son as rent must be deducted from her income assistance. The ministry stated that under Employment and Assistance Regulation (EAR), Sections 1 and 28, and Sections 1, 2 and 3 of Schedule B of the EAR, the rental income must be considered as earned income and therefore deducted when calculating the amount of the appellant's income assistance.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) - Section 1  
Employment and Assistance Regulation (EAR) - Section 28  
Employment Assistance Regulation (EAR) - Schedule B, Sections 1, 2 and 3

## PART E – Summary of Facts

Although notified in the prescribed manner on July 17, 2012 of the place, date and time of the hearing, the appellant was not present at the hearing, nor was anyone on her behalf. Therefore, as allowed by Section 86 (b) of the Employment and Assistance Regulation, the panel proceeded with the hearing in the absence of the appellant.

The evidence before the panel was provided in part in the appeal record and in part through oral evidence submitted at the hearing by the ministry, which was admitted under Section 22 (4) of the Employment and Assistance Act. In the appeal record, as part of the evidence, were copies of the following documents:

- 1) The appellant's Request for Reconsideration dated June 12, 2012, with a written statement she provided in which she states that her status is NEO (not expected to work) due to her son's high level of disability, as he is completely dependent in all aspects of basic care such as toileting, feeding, bathing and dressing; she stated that her son's level of functioning is that of a 2-year-old child. With her reasons the appellant provided a list of her monthly shelter expenses (rent, home utilities and taxes).
- 2) Copy of a physician note dated June 06, 2012 stating that the appellant's son is permanently disabled and in need of 24-hour care.
- 3) Copy of a Notice of Rent Increase – Manufactured Home Site, dated December 06, 2011, notifying the appellant that from April 01, 2012 her rent would be \$323 monthly.
- 4) Copy of an invoice from BChydro dated May 13, 2012 in the name of the appellant.
- 5) Copy of an invoice from District of Hope – UB Account Transactions dated May 29, 2012, specifying the appellant's municipal utility expenses.
- 6) Copy of the Notice of Current Real Property Tax levies – 2012, District of Hope, in the appellant's name.
- 7) The appellant's Notice of Appeal, dated June 28, 2012, with a statement she provided informing the ministry that she had been told by an officer in the Chilliwack Social Assistance Office that correctly calculating shelter expenses involves considering all the costs relating to her shelter; that there are two different ways of calculating the shelter costs and the one the ministry is using is not in the best interests of the family unit; that "it was basically a mistake what had occurred" and that she should be able to get back around \$300 that had been deducted from her cheque. The appellant stated that to stay in her home she is in need of the use of propane as well as the electric heaters "as we have been freezing in winter without". The appellant stated that she had not realized that she was allowed to include the costs of home insurance as part of her monthly shelter. Finally, the appellant presented a list of her monthly expenses with home utilities, telephone, home insurance and home maintenance expenses.

With the Reasons for Appeal, as new evidence, the appellant provided copies of three receipts dated June 19, June 28 and June 29, 2012 concerning payments she made to repair a shower at her house. The ministry made no objection to the new evidence. The panel reviewed the submitted documents and held that those documents are in support of the information and records that were before the ministry when the reconsideration decision was made. As a result, and in accordance with the Employment and Assistance Act, section 22(4), the panel admitted the appellant's new evidence.

The ministry restated the position as it is set out in the reconsideration decision, reaffirming that the appellant has been receiving monthly rent payments from her adult son, who receives disability income, in the amount of \$375/month; that under the pertinent legislation money received from renting must be considered earned income. The ministry submitted that the amounts received by the appellant from her son as rent was not properly deducted from her income assistance until May/2012; that she was advised that 75% of the amount she receives from her son would be deducted from her monthly income assistance, since it was considered earned income. Finally, that the ministry decision was supported by the legislation and that there is no discretion in the legislation allowing the ministry to decide differently in this matter.

## PART F – Reasons for Panel Decision

The issue on appeal is whether or not the ministry reasonably determined that 75% of the amount the appellant receives monthly from her adult son as rent must be deducted from her income assistance. The ministry stated that the amount of \$375 of rental income the appellant receives from her son must be considered as earned income and, therefore, deducted from her monthly shelter/support allowances under Section 1 and 28 of the Employment and Assistance regulation (EAR) and Sections 1, 2 and 3 of Schedule B of the EAR.

Employment and Assistance Regulation, in Part 1, Section 1, says that:

### **Definitions**

*(1) In this regulation:*

**"earned income"** means

- (a) any money or value received in exchange for work or the provision of a service,*
- (b) tax refunds,*
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,*
- (d) money or value received from providing room and board at a person's place of residence, or*
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;*

Employment and Assistance Regulation, in Part 3, Section 28, provides that:

### **Amount of income assistance**

**28** *Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than*

- (a) the amount determined under Schedule A, minus*
- (b) the family unit's net income determined under Schedule B.*

Employment and Assistance Regulation, Schedule B, outlines how the ministry is to calculate the level of benefits.

Section (1) of Schedule B offers a lengthy list of income sources that are exempt from the calculation of benefits and the amount received as rent is not listed as exempted from this calculation.

Section (2) of Schedule B lists the only deductions from earned income as following:

- (a) any amount deducted at source for*
  - (i) income tax,*

- (ii) employment insurance,
- (iii) medical insurance,
- (iv) Canada Pension Plan,
- (v) superannuation,
- (vi) company pension plan, and
- (vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Section (3) of Schedule B lists the exemptions from earned income as following:

(1) The amount of earned income calculated under subsection (2) is exempt for a family unit if

(a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed

- (i) income assistance under the Act,
- (ii) disability assistance under the Employment and Assistance for Persons with Disabilities Act,
- (iii) income assistance or a youth allowance under a former Act,
- (iv) a disability allowance under the Disability Benefits Program Act, or
- (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv),

(b) each person in the family unit is under 65 years of age, and

(c) either

(i) any person in the family unit is a person who has persistent multiple barriers to employment, or

(ii) the family unit is composed of a sole recipient who

(A) has a dependent child, or

(B) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (p).]

(C) has in his or her care a foster child, and the child has a physical or mental condition that, in the minister's opinion, precludes the sole recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week.

(2) The exempt amount for a family unit that qualifies under subsection (1) is calculated as the lesser of the family unit's total earned income in the calendar month of calculation, and

*(a) \$300 in the case of a family unit that is composed of a sole recipient described in subsection (1) (c) (ii), or*

*(b) \$500 in the case of a family unit described in subsection (1) (c) (i).*

*(3) A transient is not entitled to an exemption under this section.*

The ministry's position is that the appellant, as a single parent with one dependent child, is in receipt of income assistance; that her adult son, who is disabled and for whom the appellant provides care, also lives with her. The ministry submitted that since June 2010 the appellant began receiving rent payment from her adult son in the amount of \$375/monthly; that the applicable legislation provides that rental income must be considered as earned income and, therefore, deducted from the appellant's monthly shelter/support allowances. The ministry stated that some of this income was inconsistently and sporadically deducted from the appellant's income assistance from June/2010 until May/2012; that on May 28, 2012 the appellant was advised that 75% of the rental income she receives from her adult son would be deducted from her income assistance, under the applicable legislation.

The appellant stated that she cannot work due to her son's high level of disability as he is completely dependent on her for all aspects of basic care and that his level of functioning is that of a 2-year old child. The appellant submitted that according to an officer in the Chilliwack Social Assistance Office, the ministry should consider all the costs with utilities and home maintenance in order to correctly calculate the cost of shelter; that there are two different ways of calculating shelter costs and the one the ministry is using is not in the best interests of the family unit; finally, that she should be able to get back around \$300 that had been deducted from her cheque.

The panel understands that the legislation provides two different ways to calculate the deductions permitted from earned income (not 'shelter costs' as cited by the appellant) – Employment and Assistance Regulation, Schedule B, Section 2, (b) *if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board; or (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received the rental of the rooms.* Based on the evidence in the file, the panel finds that the appellant has not provided sufficient information to allow the panel to reach any finding except that the payments received by the appellant from her adult son are 'rent' and therefore, the correct legislation to apply in this case is subsection (c) of the Section 2, Schedule B, of EAR.

Based on the evidence provided, the panel accepts as a fact that the appellant is in receipt of income assistance as a single parent with a dependent child; that she also has another adult disabled child who lives with her; and that the appellant receives rental income from her adult child since June/2010 in the monthly amount of \$375.

The panel also understands that the prescribed legislation clearly defines money or value received from renting rooms that are common to and part of a person's place of residence as earned income (EAR, Section 1); that rental income is not considered revenue that is exempt from the income calculation (EAR, Schedule B, Section 1); also, that in the appellant's situation – renting a room that is common to and part of the appellant's place of residence - the legislation allows 25% of the gross rent received from the rental of the room to be permitted as a deduction from earned income (EAR, Schedule B, Section 2).

With regard to Section 3, Schedule B, of EAR, the panel finds that the evidence demonstrates that the appellant does not qualify for the exemption described in the cited legislation because she does not meet the requirements provided in subsection (c)(ii)(A) of Section 3.

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Therefore, the panel finds that the ministry's decision to deduct 75% of the appellant's rental income from her income assistance was a reasonable application of the applicable enactment in the circumstances of the Appellant and, therefore, confirms the decision of the Ministry under Section 24 (2)(a) of the EAA.