

PART C – Decision under Appeal

In a Reconsideration Decision dated June 5, 2012 the Ministry of Social Development (Ministry) required the appellant to repay the amount of income assistance received equal to the undeclared income received during the period March 2011 through April 2012 pursuant to section 27 of the EAA. The ministry determined that the small business exemptions under Schedule B, section 4 of the EAR do not apply to the appellant as she was not participating in a self-employment program and that all of her employment earnings must be deducted from her income assistance. The effect of including these exemptions into the calculation of the appellant's net income under section 28 of the EAR resulted in an overpayment of income assistance of \$2140.25 based on all her employment income.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), sections 11(1), 27 and 28
Employment and Assistance Regulation (EAR), section 1, 28, 33 and Schedule B, section 1,2,3 and 4

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration was:

- January 19, 2012 the ministry received the appellant's February income declaration stub which declared income minus 35% expenses. The ministry advised the appellant she was eligible to have her expenses exempted from her income.
- February 20, 2012 the ministry received documents that outlined the appellant's expenses and left a voicemail explaining it required information regarding her income.
- March 8, 2012 the appellant advised the ministry she was no longer in need of assistance. She explained she was applying for funding through an assistance program and had some additional employment and requested a reconsideration of the decision to not exempt her expenses from income.
- March 21, 2012 the ministry advised the appellant that she had not fully declared all of her income and would be required to repay the assistance for which she was not eligible to receive. The appellant stated she no longer wanted a reconsideration of the decision to not exempt her expenses from her income, but that she might request a reconsideration of the decision that she was required to repay assistance.
- May 23, 2012 the appellant submitted a request for reconsideration. Included with this request were:

-internet derived or the ordinary meaning definitions for "Net Income" and "Operating Expenses".

-hand written ledgers for January, February, March, July, August and September 2011 including a revised ledger for October 2011-January 2012 regarding expenses.

-May 4, 2012 a letter from local foods store that confirms the appellant is not an employee and that it does not supply her with any goods to make the product it purchases from her at wholesale.

-May 16, 2012 a letter from the appellant as a single mother with one child that explains the circumstances and reasons for pursuing her line of business. The appellant reports that she assumed she was allowed to pursue her hobbies while on welfare. She indicates that in June 2011 she thought of making a profit from her business which is the time she started to claim social assistance. The appellant reports that it was not until December 2011 that the ministry advised her that she could not claim her expenses. She indicates she had no idea what she was doing was against the legislation as she was not hiding the money she made, but using it for supplies to make and produce her product. In February 2012 she reports she received her last social assistance cheque as she felt she could provide enough income for herself and her child together with her child care subsidy.

-May 14, 2012 a submission from the appellant's advocate that included legal arguments and excerpts. It cites *Abrahams v. Canada (1983, 142 D.L.R.(3d)1)* of the Supreme Court of Canada that found where social benefits are concerned, ambiguities arising from difficulties with the legislative language should be resolved in favor of the claimant. It further cites *Hudson v. Employment and Assistance Appeal tribunal, (2009 BCSC 1461, para.62)* that found the employment and assistance legislation must be interpreted with a benevolent purpose in mind. Finally it cites the *Interpretation Act [RSBC] chapter 238* which states "every enactment must be construed as being remedial, and

must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its object". The submission argues the appellant began reporting her income as soon as she discerned a net profit from her business and was receiving actual income from it. It notes that the appellant has no accounting background and when she began her business in January 2011 she did her best to keep track of the relationship between income received and required expenses, but that income from her product would not often be received until a month or more after she billed for it; therefore the exact income from the business was unclear. By June 2011 because she had enough of a regular flow of income and expenses as well as experience calculating it, the appellant was able to discern a profit and a net income which she declared on her July reporting stub. It argues that while there may have been an overpayment, the ministry calculated the alleged amount based on the appellant's gross income. It contends Section 28 of the EAR states income assistance recipients are eligible to the amount of income assistance determined under Schedule A minus "the family unit's net income determined under Schedule B." It further contends according to the principles of statutory interpretation "net income" is not defined for the purposes of Section 28 of the EAR and because "earned income" is explicitly defined, "net income" must be taken to mean something else. It states interpreting 'net income' as meaning gross income from a small business creates an absurdity as it would mean that regardless of what was expended to make a product any amount gained from selling it qualifies as income.

At the hearing, the advocate presented an updated submission dated July 5, 2012 which referred to the same excerpts from the case law and legal arguments contained in the its May 14, 2012 submission. In this regard, it refers to the ministry's definition of net income, calculated on a monthly basis and argues the overpayment should be less than that calculated by the ministry. It contends that the ministry in its reconsideration decision refers to its "opinion that 'net income' is simply money received in exchange for work or the provision of a service, minus expenses". Therefore, while in agreement with this definition it contends the ministry use and interpretation of "net income" as meaning gross income is incorrect and resulted in a calculation error. As a result, it argues, in the appellant's case that her net income should be calculated as excluding legitimate business expenses. It further argues that if there is any ambiguity or doubt on how net income should be calculated or in the definition of "net income", it should be resolved with a liberal interpretation in mind and in favour of the appellant.

At the hearing, the appellant's advocate presented the Ministry's Overpayment Chart that it used to calculate the appellant's overpayment of income assistance as of March 2011 through to April 2012 in the amount of \$2140.25. This chart was referred to in the ministry's reconsideration decision, but was absent in the record. It also presented its own calculation to show that while there was an overpayment to the appellant using the ordinary definition of "net income" this would have amounted to \$ 326.80. The panel finds this aspect of the submission provided new information in the form of an Overpayment Chart referred to, but absent from the appeal record and a calculation in support of the original information that was before the ministry at the time of reconsideration. As such, the panel admits this new information into evidence under Section 22(4) of the Employment and Assistance Act.

At the hearing, the ministry stood by the record. The ministry noted that Section 28 of the EAR refers to net income and that this is determined under Schedule B of the EAR. It referred to Schedule B section 1 that outlines the deductions and exemption rules when calculating net income and Schedule B, sections 2 and 3 which respectively list the deductions and exemptions from earned

income for which the appellant is not eligible. It also noted that the small business exemptions and expenses under Schedule B, section 4 apply only to a person under a self-employment program in which a person is participating. The ministry also confirmed the correctness of the Overpayment Chart conducted by it on the appellant which was submitted by the appellant at the hearing, but was unable to accept the appellant's calculation of the overpayment.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry decision to require the appellant to repay the amount of income assistance received equal to the undeclared income received during the period March 2011 through April 2012 pursuant to section 27 of the EAA. The ministry determined that the small business exemptions under Schedule B, section 4 of the EAR did not apply to the appellant as she was not participating in a self-employment program and that all of her employment earnings must be deducted from her income assistance. The effect of including these exemptions into the calculation of the appellant's net income under section 28 of the EAR resulted in an overpayment of income assistance of \$2140.25 based on all her employment income.

The relevant legislation applicable to this appeal is as follows:

Employment and Assistance Act

Reporting obligations

11 (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

Overpayments

27 (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [*reconsideration and appeal rights*].

Liability for and recovery of debts under Act

28 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the income assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Employment and Assistance Regulation

Definitions-Section 1

"**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;

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

Monthly reporting requirement

33 (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of each calendar month, and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:

- (i) whether the family unit requires further assistance;
- (ii) changes in the family unit's assets;
- (iii) all income received by the family unit and the source of that income;
- (iv) the employment and educational circumstances of recipients in the family unit;
- (v) changes in family unit membership or the marital status of a recipient.

Schedule B-Net Income Calculation

Section 1 Deduction and exemption rules.

When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);

- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
- (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
- (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
- (xxi) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [agreement with child's kin and others];
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family

Development's At Home Program;

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;

(xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child to a person other than a parent of that child;

(xxv) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxvii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;

(xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxix) a refund provided by the Fair PharmaCare program of the Ministry of Health Services;

(xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiii) money withdrawn from a registered disability savings plan;

(xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]

(xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxvii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age,

(xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry,

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Section 2-Deductions from earned income

The only deductions permitted from earned income are the 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- Exemptions earned income

(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.

Section 4 -Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
 - (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;

(m) office expenses;

(n) equipment purchases or rentals.

(2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if

(a) the recipient is participating in a self-employment program, and

(b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and

(i) is used for permitted operating expenses of the small business, or

(ii) is deposited in a separate account, established by the recipient in a savings institution, which account

(A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and

(B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or

(iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation

The Ministry's position is that the appellant received \$2,140.25 of income assistance from March 2011 to April 2012 for which the appellant was not eligible under the Employment and Assistance Act and Regulations as noted above. The Ministry arrived at this amount by using Section 28 of the EAR that requires income assistance to a family unit to be based on a person's net income calculated under Schedule B of the EAR to be deducted from their income assistance calculated under Schedule A of the EAR. It contends that Section 28 refers to net income under Schedule B and that Schedule B Sections 1 through 4 considers the deduction and exemption categories. It also contends that while Schedule B, Section 4 addresses small business exemptions this only applies to those recipients participating under a self-employment program. It finally argues that the net income in the circumstances of the appellant meets its definition of "earned income".

The appellant acknowledges there was an overpayment of income assistance, but it is a lesser amount than that calculated by the ministry which based its calculation using the appellant's gross income rather than net income. The appellant further acknowledges pursuant to section 27(2) of the EAA that the minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [*reconsideration and appeal rights*]. However, the appellant considers the ministry's miscalculation a precedent in view of its argument concerning the ordinary meaning and application of "net income". The appellant argues that the actual overpayment using the ordinary meaning of "net income" is the appellant's business profit after taking into consideration all other expenses and income and taxes. The appellant further contends 'net income' is equal to the

income, minus the expenses of the business.

The panel finds that while the legislation does not provide a definition of "net income", section 28 of the EAR is clear and unequivocal that the amount of income assistance provided to or for a family unit, for a calendar month, cannot be more than the amount determined under Schedule A of the EAR minus the family unit's net income determined under Schedule B of the EAR. In this respect, Schedule B of the EAR provides for a Net Income Calculation and provides the ministry with allowable exemptions and deduction categories in section 1-4 that can be applied where appropriate. It finds none of these categories apply in the appellant's circumstances, particularly the small business exemptions under section 4 as the appellant was not participating in a self-employment program. The panel further finds that the purpose of Schedule B of the EAR defines and guides the ministry's calculation of "net income" and that, in the circumstances of the appellant, does have the meaning that the ministry has ascribed to it in determining the appellant's amount of overpayment of \$2,140.25.

The panel, therefore, determines that the ministry's reconsideration decision to apply an overpayment is a reasonable application, in the circumstances of the appellant, of the EAPWDR, and is reasonably supported by the evidence and confirms the Ministry's decision.