

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of July 18th, 2012 wherein the ministry determined that under section 10 Employment and Assistance Regulation (EAR) the appellant was not eligible for income assistance because the appellant's net income calculated under Schedule B EAR exceeded the income assistance rate determined under Schedule A EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 1 – Definitions "unearned income"; 10; Schedule A sections 1, 2(1), 3 and 4(2); and Schedule B sections 1, 6 and 7.

PART E – Summary of Facts

The facts before the ministry at the time of reconsideration:

- Request for reconsideration dated July 9th, 2012

The appellant is not currently in receipt of income assistance. The appellant declared to the ministry that she receives \$641.33 from Canada Pension Plan (CPP) and \$325.53 from a disability pension. Under the EAR as a single recipient the appellant would be eligible to receive \$235 in support allowance and \$375 in shelter allowance totaling \$610 a month. The appellant plans to apply for Persons with Disabilities (PWD) designation.

At the hearing the appellant testified that what she really wanted was the PWD designation but understands that to be eligible for PWD benefits she needs to qualify for income assistance. The appellant agreed in her testimony that she does receive \$966 monthly in pensions.

No additional evidence was provided by the ministry on appeal.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision of July 18th, 2012 that the appellant was not eligible for income assistance because the appellant's net income calculated under Schedule B EAR exceeded the income assistance rate determined under Schedule A EAR.

Legislation considered: Employment and Assistance Regulation

Definitions

Section (1) In this regulation:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;**
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;**
- (k) widows' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property; (B.C. Reg. 344/2004)
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;

Limits on income

Section 10

- (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Schedule A - Income Assistance Rates

(section 28 (a))

Maximum amount of income assistance before deduction of net income

Section 1

Subject to section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [amount of income assistance] of this regulation is the sum of (B.C. Reg. 48/2010)

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

Section 2

(0.1) For the purposes of this section, "warrant" has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act. (B.C. Reg. 73/2010)

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

TABLE

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

Prorating of support allowance

Section 3

In the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission. (B.C. Reg. 304/2005)

Monthly shelter allowance

Section 4

(1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

(2) The monthly shelter allowance for a family unit to which section 15 (2) of the Act does not apply is the smaller of (B.C. Reg. 73/2010)

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

Employment and Assistance Regulation, Schedule B

Net Income Calculation (section 28 (b))

Deduction and exemption rules

Section 1 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)
- (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); (B.C. Reg. 180/2010)
- (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; (B.C. Reg. 276/2004)
- (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) Repealed (B.C. Reg. 85/2012)
- (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. (B.C. Reg. 115/2003)
- (xxiii) Repealed (B.C. Reg. 85/2012) (BC Reg. 209/2003)
- (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. (BC Reg. 209/2003)
- (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.

(B.C. Reg. 462/2003)

(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, (B.C. Reg. 22/2005)

(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. (B.C. Reg. 91/2005)

(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. (B.C. Reg. 90/2005)

(xxix) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95; (B.C. Reg. 292/2005) (B.C. Reg. 32/2012)

(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. (B.C. Reg. 192/2006)

(xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada). (B.C. Reg. 250/2006)

(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. (B.C. Reg. 165/2007)

(xxxiii) money withdrawn from a registered disability savings plan, (B.C. Reg. 362/2007)

(xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada), (B.C. Reg. 48/2008)

(xxxv) Repealed (B.C. Reg. 180/2010)

(xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*, (B.C. Reg. 94/2008)

(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, (B.C. Reg. 87/2008)

(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.C. Reg. 242/2010)

(xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program; (B.C. Reg. 85/2012)

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program; (B.C. Reg. 85/2012)

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program. (B.C. Reg. 85/2012)

(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.

Deductions from unearned income

Section 6- The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

Exemptions – unearned income

Section 7 (1) The following unearned income is exempt: (B.C. Reg. 83/2012)

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [asset limits] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5484.

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484; and

(B.C. Reg. 83/2012)

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A - B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of the Act; or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*. (B.C. Reg. 57/2003)

The ministry argued that the appellant receives two pensions monthly (CPP and disability) which total \$966.86 and these pensions are considered unearned income and must be included in calculating the appellant's net income. The ministry argued the appellant, who would be a single recipient of income assistance, would be eligible to receive \$610 in benefits - \$235 for support and \$375 for shelter – and therefore since her net income exceeds the amount of assistance she would be eligible to receive; she is not eligible for income assistance as stated in section 10(2) EAR.

The appellant argued that she needs the additional income to provide her with some quality of life; that it is unreasonable for the province to think that someone can live on only \$966 a month let alone \$610 a month. The appellant argued in the reconsideration that she has a number of medical issues and therefore she should receive assistance at the disability rate which is higher than the regular assistance rates. The appellant told the panel what she really wanted was the PWD designation but understands that to apply/be eligible she needs to qualify for income assistance. The appellant agreed in her testimony that she does receive \$966 in pensions.

The panel heard the appellant wishes to have a Person With Disabilities (PWD) designation, however, the panel has no jurisdiction to consider that matter as it was not an issue in the reconsideration for this appeal.

The panel finds that the appellant is a single applicant for income assistance and maximum amount of income assistance (shelter and support) she would be eligible to receive under Schedule A is \$610. The appellant receives two monthly pensions – CPP and disability pension – which total \$966.86 and these pensions are defined as “unearned income” under section 1 EAR. In compliance with section 28(b) EAR the pension income must be included in the calculation of the appellant’s net income. Schedule C, Section 6 EAR does not permit a CPP pension or a disability pension from being deducted from the “unearned” income nor are these pensions exempt from being considered as “unearned” income when calculating the “net” income.

Section 10 EAR states that a family unit is not eligible for income assistance if the net income as determined under Schedule B EAR equals or exceeds the amount of assistance determined under Schedule A EAR matching that family unit.

The panel finds that based upon the evidence the ministry reasonably determined the appellant is not eligible for income assistance and its decision to deny the appellant income assistance was reasonable.

Therefore, the Panel confirms the ministry’s decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act.