



**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry's) reconsideration decision dated July 11, 2013 denying the appellant income assistance because the appellant has income in excess of the income assistance rate for her family size and is ineligible for income assistance in accordance with sections 10(2) and 28 of the Employment and Assistance Regulation (EAR). The ministry determined that the appellant's net employment income for the months of December 2012 and January 2013 was earned income pursuant to section 1 of the EAR; that no exemptions applied under Schedule B of the EAR, and that the amount of her employment income exceeded the total amount of monthly support that the appellant is eligible to receive under sections 2 and 4 of Schedule A of the EAR.

**PART D – Relevant Legislation**

Employment and Assistance Regulation sections 1, 10, and 28  
Employment and Assistance Regulation Schedule A, sections 1, 2, 4, and 5 and Schedule B, sections 1, 2, 3, and 4

## PART E – Summary of Facts

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

1) The appellant's Request for Reconsideration dated June 25, 2013 with attached letter to the ministry from a Public Guardian and Trustee of BC case manager (PGT) which states that:

- the appellant has a severe, lifelong disability and would like to have Persons With Disabilities (PWD) designation to access assistance and programs;
- in January 2013, the PGT applied for income assistance on the appellant's behalf as Committee of Estate, with the expressed intention to apply for PWD: the appellant was given a PWD application, her doctor completed the form, and the application was forwarded to the Health Assistance Branch;
- the PGT contacted the Ministry of Social Development in June 2013 and was informed that the appellant's PWD application file had been closed in March 2013, without any notice or reason provided to the client;
- the appellant is employed in a program specifically tailored to persons with disabilities and it is unlikely that she would be capable of working in a standard work environment;
- the appellant is hard-working and dedicated but finds her position stressful and often takes time off work due to her health conditions, and worries about not being able to financially support herself;
- the appellant earns a net income of approximately \$1,300 per month but is living in poverty due to her disability and limited ability to earn income;
- if she had applied for PWD before she was employed, or quit her job due to her medical conditions, she would then be able to apply for PWD and could access assistance and programs under the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*. The appellant's colleague works in the same position as the appellant but does receive PWD benefits; and
- the *EAPWDA* has provisions for assets in excess, but does not extend comparable provisions for those with profound disabilities who are working and earning a small income.

2) Pay Inquiry printouts from the appellant's employer dated December 7, 2012, December 21, 2012, and January 4, 2013 indicating that the appellant's net pay for these three dates respectively, was \$600.28, \$580.54, and \$624.32.

The appellant did not attend the hearing as she was having surgery; however, a Public Guardian and Trustee case manager appeared on behalf of the appellant. The case manager provided the panel with documentation verifying that the appellant was certified as incapable of managing her financial and legal affairs and that the Public Guardian and Trustee had been appointed Committee of the Estate in 2010 pursuant to section 6(3) of the *Patients Property Act*. The panel accepted the documentation as authority for the PGT to appear on behalf of the appellant.

### Appellant's Submission

In her Notice of Appeal the appellant states that the ministry's decision discriminates against adults with lifelong disabilities that are working despite limitations, and because of this discrimination the appellant is living in poverty and she is unable to access other benefits that other disabled adults in BC are able to access.

[REDACTED]

At the hearing the PGT stated that they were appealing the ministry's denial of the appellant's PWD application. They initially applied for income assistance on behalf of the appellant and the ministry put the application on hold as the appellant's net income was above the \$610 per month income assistance rate; however, the ministry allowed them to apply for PWD. The PGT, along with the appellant's support worker and doctor, filled out the PWD application and the PGT forwarded it to the ministry's Health Assistance Branch. The PGT called the ministry in early June to follow up on the application and was told that the file had been closed in March and that the appellant was not entitled to apply for PWD due to income in excess of assistance rates.

At the hearing the PGT further stated that the ministry asked whether the appellant's employment was steady and they told the ministry that the appellant had had periods of short-term disability benefits for medical absences. The PGT stated that the ministry's decision to close the PWD application file was unjust, and arbitrary, and discriminated against people with disabilities who are working; and that if the appellant reduced her hours or quit her job for medical reasons and earned less than \$900 per month, the ministry would accept her PWD application.

The PGT added that the appellant works 40 hours per week but only makes \$1,300 per month and once she pays her rent and other expenses she only has \$125 left to pay for groceries and other needs and therefore lives in poverty and has to re-use tea bags because she can't afford to buy new ones. The PGT stated that work is really important to the appellant who has medical conditions that include developmental delay, heart issues, severe anxiety, and mild, ongoing depression. The appellant's work is structured for her and her disability, and there is little chance that she could work in a regular work place. The PGT further stated that the appellant has co-workers who are getting PWD benefits and some get a top up of \$400 from the ministry and they can access support programs such as bus passes and extra health benefits, and it is not fair that the appellant cannot have these same benefits.

In response to questions from the ministry, the PGT stated that:

- the appellant is expected to be off work for approximately 3 weeks due to her current surgery and she will get 75% of her salary through her employer's short term disability plan which is not enough of a salary reduction to bring her below the income assistance rate of \$610 per month;
- the appellant has had her current employment for over 5 years;
- the PGT was not involved until 2010, and prior to the PGT's involvement, the appellant had a support worker but no application for PWD was made because the system was difficult to navigate; and
- the appellant had been on both short-term disability (at 75 % of her salary) and long-term disability (at 50% of her salary) prior to the PGT's involvement.

The PGT explained that a PWD application must be requested from the ministry and the ministry does an initial screening to see if they should send out the application. The PGT stated that when they followed up with the ministry regarding the status of the PWD application the ministry felt that the appellant should not have been given a PWD application in the first place due to employment earnings that were higher than income assistance rates.

[REDACTED]

In response to questions from the panel, the PGT stated that the appellant's disability is relatively stationary and her anxiety and depression are up and down. The PGT stated that the appellant works as a receptionist and that if the appellant were getting PWD there would be a \$500 earning exemption that has now been increased to \$800, and the appellant could get an extra \$300-400 per month above the PWD rate as \$800 of employment income would not be deducted. However, the \$800 exemption does not apply for the first month after the application is approved, but as soon as PWD was approved the appellant would be eligible for a bus pass and additional health benefits. The PGT further stated that they provided information to the ministry regarding a change in the appellant's circumstances by advising the ministry that the appellant had reduced work hours.

The PGT concluded their presentation by stating that they want the appellant's PWD application reviewed by the Health Assistance Branch, and if the application is approved they want the payments backdated to June 2013, and June should be the only month to which the earning exemption does not apply.

#### Ministry's Submission

The position of the ministry, as set out in the reconsideration decision is that the appellant is not eligible for income assistance because her net income exceeds the income assistance rates for her family unit size. The ministry states that in December 2012 the PGT applied for income assistance on the appellant's behalf and indicated that the appellant wanted to apply for PWD; had rent of \$499 per month, and made approximately \$1,300 per month in earnings. Based on pay stubs submitted for the appellant, the ministry determined that the appellant's net income for December was \$1,180.52 and the appellant's monthly earnings average approximately \$1,300 per month. The rate of income assistance per Schedule A of the EAR is \$610 per month, yet the appellant had an earned income of \$1,180.52. The ministry determined that earned income must be deducted from the assistance rate of \$610 per section 28 of the EAR. Therefore, the ministry's position is that the appellant is not eligible for income assistance pursuant to section 10(2) of the EAR because the appellant's income of \$1,180.52 exceeds the \$610 income assistance rate that was determined for the appellant's family size, and none of the deductions or exemptions listed in Schedule B of the EAR apply to the appellant.

In the appellant's Request for Reconsideration, under Section 2 Decision to be Reconsidered, the ministry states that the appellant's application for disability assistance was denied as her net income was in excess of PWD rates as outlined in section 9.2 of the Employment and Assistance for Persons with Disabilities Regulation: \$906.42 per month for the appellant's family unit size. The ministry determined from the appellant's pay stubs that the appellant's income for December 2012 was \$1,080.80, and \$624.32 for January 4, 2013.

At the hearing the ministry summarized its reconsideration decision, stating that the appellant is not eligible for income assistance due to earned income in excess of \$610 per month, and that employment pay is considered to be earned income. The ministry stated that because the appellant does not have PWD designation she does not qualify for additional deductions or exemptions on her wages. The ministry stated that based on the appellant's pay stubs and tax information that was provided, the appellant's employment income of \$1,300 per month was consistent and there was no indication that her employment was an on again off again situation. The ministry added that earned income must be deducted per Schedule A of the EAR and the ministry has no leeway around this,

and that excess income is treated differently than excess assets.

Regarding the PWD application, the ministry explained that a disability application will be provided where there is an indication that the client would be out of work for any period of time, or have an income of less than \$610 per month. The ministry stated that the PWD application may have been provided to the appellant in error; however, if there had been any indication that the appellant's income would fluctuate within 6 months from the application date or that her employment would be ending, then the PWD application would have been adjudicated even where reported income was above the \$610 assistance rate.

The ministry explained that the appellant's PWD application file was "auto-closed" in March 2013 due to the appellant having earnings in excess of disability assistance rates, and that the Health Assistance Branch could not adjudicate the application because there was no open file. The ministry stated that it was not that the appellant was denied PWD; it was that her application was never adjudicated to reach a decision, and that adjudication is not done on closed files.

The ministry concluded their presentation by stating that the medical report from the appellant's doctor said that the appellant was not employable but there was no information regarding pending surgery or other factors to indicate that the appellant was unable to work at her current position, or had reduced hours of work.

The panel makes the following findings of fact:

1. The appellant has severe, long-standing disabilities which limit her employment opportunities.
2. The appellant has employment earnings of approximately \$1,300 per month.
3. Except for temporary periods of sick leave, the appellant's employment has been consistent since at least 2010 when the PGT became involved.
4. The appellant applied for income assistance with the intention of pursuing a PWD designation in order to access benefits and programs.
5. The appellant submitted a PWD application that was never adjudicated. Instead, the PWD application file was closed based on the appellant's financial records that indicated income in excess of the disability assistance rates.
6. At the time of the PWD application the appellant was working on a consistent basis except for temporary medical absences for which she received disability benefits through her employer.



## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for income assistance because she received employment income in excess of the monthly income assistance rate that applies to her family unit size per sections 10(2) and 28 and Schedule A of the EAR, and did not qualify for any deductions or exemptions under Schedule B of the EAR.

The relevant sections of the legislation are as follows:

### **Employment and Assistance Regulation**

#### **Definitions**

1.(1) In this regulation:

"**earned income**" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed (B.C. Reg.197/2012)
- (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;

#### **Limits on Income**

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.

(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.

#### **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.

## **Schedule A Income Assistance Rates – (section 28 (a) )**

### **Maximum amount of income assistance before deduction of net income**

**1** (1) Subject to this section and 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) (B.C. Reg. 197/2012)

(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.

(2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(3) If

(a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,

(b) the family unit is found eligible for income assistance, and

(c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*,

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

(B.C. Reg. 197/2012)

### **Monthly support allowance**

**2** (0.1) For the purposes of this section:

**"deemed dependent children"**, in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

**"maximum adjustment"**, in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

(a) the family unit were entitled to receive the national child benefit supplement for the calendar month,



(b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and  
 (c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act* (Canada);

"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) (B.C. Reg. 197/2012)

(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 (4) for each dependent child in the family unit. (B.C. Reg. 197/2012)

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

**Monthly shelter allowance**

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;

"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)

(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





**How actual shelter costs are calculated**

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) rental of one basic residential single-line telephone.

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

- (a) rent for the family unit's place of residence;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged over the periods

- (a) beginning on October 1 and ending on March 31, and
- (b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by
  - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
  - (ii) multiplying the result by the number of persons in that one family unit, and
- (b) the amount declared by the family unit as the shelter costs for that family unit.

## Schedule B Net Income Calculation – (section 28 (b) )

### Deduction and Exemption Rules

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) Repealed (B.C. Reg. 197/2012)

(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. (BC Reg. 209/2003) (B.C. Reg. 197/2012)

(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)

(xi) 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)

(xii) 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 earned income

### 2 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.

### Exemption - earned income

3 (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

(2) If an application for income assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance under the *Employment and Assistance for Persons with Disabilities Act* for the calendar month immediately preceding that first calendar month.

(3) Unless otherwise provided under subsection (4) or (5), the amount of earned income calculated under subsection (6) (a) is exempt for a family unit that qualifies under this section.

(4) The amount of earned income calculated under subsection (6) (b) is exempt for the family unit if

(a) the family unit includes a sole recipient who

- (i) has a dependent child, or
- (ii) has in his or her care a foster child, and

(b) 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.

(5) The amount of earned income calculated under subsection (6) (c) is exempt for the family unit if any person in the family unit is a person who has persistent multiple barriers to employment.

(6) The exempt amount for a family unit that qualifies under this section is calculated as follows:

(a) In the case of a family unit to which subsection (3) applies, the exempt amount is calculated as the lesser of

(i) \$200, and

(ii) the family unit's total earned income in the calendar month of calculation;

(b) In the case of a family unit to which subsection (4) applies, the exempt amount is calculated as the lesser of

(i) \$300, and

(ii) the family unit's total earned income in the calendar month of calculation;

(c) in the case of a family unit to which subsection (5) applies, the exempt amount is calculated as the lesser of

(i) \$500, and

(ii) the family unit's total earned income in the calendar month of calculation;

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

(B.C. Reg. 87/2005) (B.C. Reg. 43/2006) (B.C. Reg. 57/2007) (B.C. Reg. 48/2010) (B.C. Reg. 197/2012)

#### **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; (B.C. Reg. 462/2003)

(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;
- (l) 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) or (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 argues that the appellant does not qualify for income assistance under sections 10(2) and 28 and Schedule A of the EAR because she has employment income in excess of income assistance rates for her family unit size. Section 10(2) states that a family unit is not eligible for income assistance where their net income as determined under Schedule B exceeds the income assistance rates determined under Schedule A in accordance with the family unit size. Schedule B, section 1 sets out the net income calculation taking into account deductions and exemptions from earned income that are allowed under Schedule B sections 2 to 4. Earned income includes employment wages pursuant to section 1(1) of the EAR. Section 28 of the EAR provides that a family unit may receive income assistance for a calendar month in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under Schedule B.

In their Notice of Appeal and oral submission, the PGT does not dispute the ministry's calculations or determination that the appellant is not eligible for any of the deductions, but argues that the ministry's decision discriminates against adults with lifelong disabilities who are working; that the appellant is living in poverty because of this discrimination; that the ministry's decision to close the PWD application file was arbitrary and unfair, and that they are appealing the ministry's denial of the PWD application.

Based on the submitted pay stubs, the ministry calculated the appellant's net income to an average of \$1,300 per month. The ministry determined that this net income is earned income because it is pay from employment. The ministry also determined that the income assistance rate for the appellant's single person family size is \$610 per month. The panel finds that the ministry calculated these amounts correctly, and reasonably determined from the legislative provisions that the appellant's net pay is earned income that exceeds the income assistance rate for her family size.

The ministry further determined that the appellant did not qualify for any of the deductions or exemptions on earned income under Schedule B sections 1 to 4 of the EAR:

- Section 1 lists deductions for dependents as well as deductions for individuals under various programs and legal settlements. The ministry found that none of these deductions apply to the appellant. The panel finds that the ministry reasonably determined that none of these deductions apply because there is no evidence that the appellant has dependents or participated in any of the programs or legal settlements listed;
- Section 2 deductions are limited to at source deductions such as income tax. The ministry found that these deductions do not apply to the appellant. The panel finds that the ministry reasonably determined that these deductions do not apply because the appellant's pay stubs show that income tax, union dues, etc. were already deducted by the employer;
- Section 3 deductions are limited to persons who receive PWD assistance payments. The ministry stated in the appellant's Request for Reconsideration that they denied the appellant's PWD application on the basis that the appellant had income in excess of disability rates. The panel finds that the ministry reasonably determined that these deductions do not apply because there is no evidence to indicate that the appellant was designated as PWD or received PWD payments; and



- Section 4 deductions apply to small businesses and the ministry determined that these deductions do not apply as the appellant was not participating in a self-employment program. The panel finds that the ministry reasonably determined that small business deductions do not apply because there is no evidence that the appellant had any business endeavors.

The ministry stated in the appellant's Request for Reconsideration that the application for disability assistance was denied because the appellant's income exceeds disability rates. In their oral testimony, the ministry argued that the appellant's PWD application was never adjudicated because the file was automatically closed on the basis of the income calculation which indicated that the appellant had employment income in excess of PWD rates. The ministry argued that there was no information to indicate that the appellant's income would fluctuate or that her employment would end, and that if such information was provided they would have adjudicated the PWD application. The PGT argued that they told the ministry that the appellant had reduced work hours, and that the appellant had had sick leave absences that caused her income to be reduced to either 75% or 50% of her salary depending on the length of her absence.

Regarding the oral testimony, the panel finds that the ministry reasonably determined that the appellant's income was above the income assistance rate of \$610 per month and there was no information to indicate that the appellant's income would fluctuate or that her employment would end and bring her below income assistance rates to qualify her for income assistance. The appellant's pay stubs indicate an average income of \$1,300 per month and although the PGT stated that they told the ministry that the appellant had periods of sick leave and had reduced work hours, the PGT also reported that the appellant was paid either 75% or 50% of her regular wages for sick leave absences and had been consistently working for the same employer for 5 years except for temporary medical absences. The ministry's evidence that the appellant's doctor did not indicate that the appellant was unable to work at her current position or that her position was ending or that she had reduced hours of work, further supports the ministry's finding that the appellant would not qualify for income assistance.

Accordingly, the panel finds that the ministry's decision denying the appellant income assistance under the EAR was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision.