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## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 25, 2013 which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Regulation (EAR) for the month of March 2013 as the net monthly income of his family unit exceeded the amount of assistance payable, as a result of a student loan received in January 2013.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 1, 10, 29, 33 and Schedule B, Section 8

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## PART E – Summary of Facts

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

1) Print out of the ministry policy for Students' Assistance: April 2, 2012, which provides for Canada Study Grants as follows- Exemptions may be applied to the sum of the student's education costs and daycare costs for the semester for: dependent children; clients with Persons With Disabilities (PWD) designation and their dependents; and clients who are temporarily excused from expectation to seek work (such as single parents with a child under 3 years) in part-time studies;
2) Print out of Student Detail Schedule for the appellant dated January 21, 2013 indicating total credit hours of 3;
3) Letter dated January 31, 2013 from the National Student Loans Service Centre to the appellant stating in part that the funding approved for his new study period includes grants from the Canada Student Grant Program for part-time studies from January to April 2013, that $684.00 was sent to him and $347.00 was sent to his school, for a total grant of $1,031.00; and,
4) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

The appellant advised that the advocate who had assisted him with the appeal would not be attending the hearing and that he was prepared to proceed and to represent himself.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's decision because the legislation was interpreted too narrowly. In his Request for Reconsideration, the appellant wrote that he is currently on income assistance and, on December 14, 2012, he successfully registered as a part-time student at a college. On January 31, 2013, the appellant received confirmation that he had received a Canada Student Grant for part-time studies of $1,031, with $684 sent to the appellant and $347 sent directly to the college. The ministry determined that the grant was unearned income and deducted it dollar-for-dollar from the appellant's March income assistance amount, which is $610, and the entire amount was denied. The appellant wrote that he suffers from severe medical conditions, including chronic migraines, that prevents him from being able to seek work, and this is reflected in his Employment Plan (EP). The appellant wrote that his EP is a medical EP called an "Activities Towards Independence Plan," under which there is no expectation or obligation for a client to seek work. Rather, the EP specifies that a client is to seek out work, training and volunteer opportunities to the best of their abilities.

At the hearing, the appellant stated that he has a medical condition which results in chronic migraine attacks and he cannot work. This condition includes photophobia, or an extreme sensitivity to light, and he has been treated by his family doctor since August 2010 and been prescribed anti-depressants. The appellant stated that he has been referred to a neurologist and they have not found any treatments to be effective. He takes Tylenol #3 and muscle relaxants but a side effect is that it makes him very sleepy and not effective for work. The appellant stated that he was working full-time at an electronics store but he began missing so much work as a result of his condition that he was told to go on short-term disability or they would have to let him go. The appellant stated that he was on short-term disability until that ran out and he was rejected for long-term disability on the basis that he had a pre-existing condition. The appellant stated that when he entered into the EP with the ministry, he was told that he had no obligations to work because of his illness. He had a medical confirmation form completed by his family doctor and it was accepted by the ministry. The appellant stated that he understood that he had an obligation to seek independent behaviours and he thought going to school was included. The appellant stated that he would not have gone to school if he knew this was going to be an issue. He is only going to classes 6 hours per week.

The ministry relied on its reconsideration decision. At the hearing, the ministry did not have an explanation for the apparent discrepancy between the requirements in Section 8 of Schedule B of the EAR and the requirements in the ministry policy regarding eligibility for the exemption of a student's education and day care costs. The ministry stated that the legislative requirements take precedence over the policy.

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## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Regulation (EAR) for the month of March 2013 as the net monthly income of his family unit exceeded the amount of assistance payable, as a result of a student loan received in January 2013, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the EAR provides:

**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.

Section 1 of the EAR provides in part:

**Definitions**

"funded program of studies" means a program of studies for which student financial assistance may be provided to a student enrolled in it;

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

...

(q) education or training allowances, grants, loans, bursaries or scholarships . . .

Schedule B of the EAR, Section 1 provides in part:

**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, . . .

(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.

Schedule B of the EAR, Section 8 provides:

**Minister's discretion to exempt education related unearned income**

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit, for a semester.

"education costs" means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of

(a) a training allowance,

(b) student financial assistance, and

(c) student grants, bursaries, scholarships or disbursements from a registered education savings plan received for the semester.

(3) An exemption under subsection (2) may be authorized in respect of a student who is

(a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,

(b) an applicant or a recipient enrolled

(i) as a part-time student in an unfunded program of studies, or
(ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
(c) a person in a category listed in section 29 (4) [consequences of failing to meet employment-related obligations] of this regulation enrolled as a part-time student in a funded program of studies.

Section 29(4) of the EAR provides:
(4) Section 13 [consequences of not meeting employment-related obligations] of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:
(a) Repealed. [B.C. Reg. 116/2003, Sch. 1, s. 2 (a).]
(b) sole applicants or sole recipients who have at least one dependent child who
(i) has not reached 3 years of age, or
(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
(c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
(d) sole applicants or sole recipients who have a foster child who
(i) has not reached 3 years of age, or
(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
(e) persons who receive accommodation and care in a special care facility or private hospital;
(f) applicants or recipients admitted to hospital because they require extended care;
(g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
(h) applicants or recipients in a family unit that includes only applicants or recipients who are
(i) Repealed. [B.C. Reg. 160/2004, s. 2.]
(ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,
(iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
(iv) persons not described in section 7 (2) [citizenship requirements];
(v) persons who have persistent multiple barriers to employment; or
(vi) persons who have reached 65 years of age;
(i) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
(j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [agreements with child's kin and others] of the Child, Family and Community Service Act for a child who
(i) has not reached 3 years of age, or
(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
(k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [other powers and duties of directors] of the Child, Family and Community Service Act for a child who
(i) has not reached 3 years of age, or
(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment.

The ministry's position is that the appellant was in receipt of student loan funding in the amount of $1,031 in January 2013, which is "unearned income" according to the definition in Section 1 of the EAR. The ministry argued that, under Schedule B of the EAR, all unearned income must be included in the calculation of net income, except for the deductions and exemptions permitted under Sections 1, 6, 7 and 8 of Schedule B. The ministry argued that the only exemption that applies to student funding is in Schedule B, Section 8 which allows the ministry to exempt up to the sum of the education and day care costs if one of the criteria in Section

8(3) is met. The ministry argued that the requirements for an exemption as set out in the legislation take precedence over the ministry policy and must be applied to the appellant's situation. The ministry argued that the appellant is not a dependent child and is not enrolled in an unfunded program of studies and, therefore, sub-sections 8(3)(a) and (b) of Schedule B do not apply. The ministry argued that although the appellant is enrolled as a part-time student in a funded program, he is not a person listed in Section 29(4) of the EAR. The ministry acknowledged that the appellant is temporarily medically excused from seeking employment, but argued that this is not a category in Section 29(4) and, therefore, the exemption provided in Section 8(2) does not apply. The ministry argued that as the appellant's net income for January 2013 ($1,031) exceeds the amount of income assistance for which he would be eligible under Schedule A ($610), he is not eligible for March 2013 income assistance pursuant to Section 10 of the EAR.

The appellant does not dispute that he received student loan funding in January 2013 in the amount of $1,031, but argued that he has been excused by the ministry from an expectation to seek work due to a severe medical condition. The appellant argued that he was told by the ministry that he had an obligation to seek independent behaviours and he thought going to school was included. The appellant argued that the ministry's policy for an exemption to be applied to the sum of the student's education and daycare costs for the semester specifically provides for clients who are temporarily excused from the expectation to seek work (such as single parents with a child under 3 years) in part-time studies. The appellant argued that the type of EP entered into with the ministry constitutes a temporary excusal from the expectation to seek work for medical reasons, and the confirmation of enrolment from the college and the student funding program letter both confirm that the appellant is a part-time student. The appellant argued that since he meets the test under the ministry policy, the amount of $1,031 should be considered exempt from his income and the totality of his March 2013 income assistance should be restored and any subsequent deductions in income assistance amounts arising from this particular situation should also be restored.

The panel finds that it is not disputed that the appellant was in receipt of student loan funding for $1,031 in January 2013; however, the appellant argued that this amount is exempt from a calculation of his net income since he meets the requirements of the ministry policy for exemptions for Canada Study Grants. The panel finds that there is a discrepancy between the legislative requirements for an exemption and those set out in the ministry policy and the panel is limited by Section 24(1) of the *Employment and Assistance Act* to considering whether the ministry reasonable applied the applicable enactment in the appellant's circumstances. The definition of "unearned income" as set out in Section 1(q) of the EAR specifically includes education allowances, grants, loans, bursaries, and scholarships and Section 1 of Schedule B of the EAR stipulates that all unearned income must be included in calculating the net income of a family unit for the purposes of Section 28(b), except for income exempted under section 8. Section 8 of Schedule B of the EAR allows the ministry to exempt up to the sum of the education and day care costs from the total amount of student financial assistance received for the semester for a student described in sub-section 8(3). The panel finds that there is no dispute that the appellant is not a dependent child, that he is enrolled in a funded program of studies and that he is not a person listed in Section 29(4) of the EAR. Therefore, the panel finds that the ministry reasonably concluded that the appellant is not a student described in sub-section 8(3) of Schedule B and the amount of his student funding is not exempt from the calculation of the appellant's net income pursuant to Section 8 of Schedule B of the EAR.

Section 10 of the EAR stipulates that a person 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. The panel finds that the ministry reasonably concluded that the net income of the family unit ($1,031) for January 2013 exceeded the amount of income assistance determined under Schedule A of the EAR for a family unit matching the appellant's family unit ($610) and, therefore, no income assistance is payable for the month of March 2013 pursuant to Section10(2) of the EAR.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.