

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("ministry"), reconsideration decision dated September 25, 2013 wherein the ministry determined that the appellant was not eligible for income assistance for the month of September 2013 because the appellant had an earned (employment) income of \$1042.74 and a resulting net income of \$842.74 for the month of July 2013 (after applicable exemptions and deductions), which is in excess of the legislated limit. In particular, the ministry determined that the appellant's net income of \$842.74 in July 2013 was in excess of \$610.00 (\$235.00 for support and \$375.00 for shelter) prescribed under Schedule A of the Employment Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR)

– section 1, Section 10, Section 33, Schedule A (1), (2) and (4) and Schedule B (1), (2) and (3)

PART E – Summary of Facts

The relevant evidence before the ministry at the time of the reconsideration decision included the following:

- A statement of the appellant's bank account, which amongst other matters, indicate a deposit of \$1042.74 on July 5, 2013; and
- A Request for Reconsideration from the appellant dated September 13, 2013, which states that the appellant believes: (a) that he is eligible for benefits for September 2013; and (b) his income should not have affected his September Cheque.

Subsequent to the reconsideration decision, in a Notice of Appeal dated October 2, 2013 filed by the appellant, among other matters, he state that: (a) he was employed during the month of June; (b) he did not receive his last cheque for the month of June until July 5, 2013. The panel admitted these statements as additional information and evidence as they are in support of information and records that were before the minister at the time of reconsideration.

There were two representatives of the ministry at the hearing. One was the official representative of the ministry for the appeal and the other was an observer. The appellant did not object to the presence of the ministry's observer at the meeting and the observer did not make any representations at the hearing of the appeal.

At the beginning of the appeal hearing, the appellant stated that he did not have his copy of the record of appeal, which was with his advocate and that his advocate was unavailable to participate at the hearing of the appeal. The appellant also stated that he was familiar with the contents of the record of appeal and was ready and willing to proceed with the hearing of the appeal without his advocate. Nonetheless, the panel made a copy of the record of appeal available to the appellant and adjourned the hearing for a period of time to enable the appellant to refresh his memory about the contents of the appeal. A copy of the record of hearing remained with the appellant throughout the hearing of the appeal. The ministry did not object to the short adjournment of the hearing for the said purpose. The hearing of the appeal continued after the appellant had a reasonable period of time to refresh his memory about the contents of the record of appeal.

At the adjourned hearing, the appellant argued that he disagreed with the reconsideration decision of the ministry. He contended that he was confused about the applicable law, was not treated with respect by the ministry, and such treatment had continued over the past 18 months. The appellant, however, confirmed that: (a) he had been employed during the month of June 2013 (from 3rd of June 2013) and has received the first bi-weekly salary for the month of June amounting to \$1042.74, which he had deposited in to his bank account on June 21, 2013; and (b) his employment was terminated before the end of same month and, on July 5, 2013 he received his second bi-weekly salary for the month of June amounting to \$1042.74, which was deposited in the bank account on the same day.

The appellant contended that the amount of \$1042.74 received by him on July 5, 2013 was in respect of his employment in June 2013. His employer did not pay his June salary until July 5th and, had he received his salary on time i.e. before the end of June, he would not have been in receipt of any employment income in July 2013. As he did not have any employment income in July 2013, he had no income to report to the ministry in August 2013 that would have affected his eligibility for income assistance for the month of September.

At the hearing the ministry relied upon the reconsideration decision and submitted that appellant was not eligible for income assistance for the month of September 2013 as he had received a net income in July 2013, which was in excess of the legislated limit of up to \$610.00 prescribed for a single recipient under Schedule B of the EAR. In particular, the ministry contended that the appellant had informed the ministry on August 20, 2012 that he had received employment income in July. Of this amount, the appellant was eligible for an exemption/deduction of \$200.00 under Schedule B of the EAR, which resulted in a net income for the appellant of \$842.74 for the month of July 2013. The said amount should have been reported in August 2013 and affected the appellant's eligibility of income assistance in September amounting to \$610.00 (\$235.00 support and \$375.00 for shelter) prescribed under Schedule B of the EAR.

Based on the foregoing, the panel makes the following findings of fact:

1. The appellant is a single recipient eligible for up to \$610.00 of income assistance made up of \$235.00 for support and \$375.00 for shelter;
2. The appellant was employed during the month of June 2013 and his earned income (employment income) for the first two weeks of that month was \$1042.74, which was received and deposited by the appellant into his bank account on June 21, 2013;
3. The appellant was employed during the month of June 2013 and his earned income (employment income) for the last two weeks of that month was \$1042.74, which was received and deposited by the appellant into his bank account on July 5, 2013;
4. The appellant is entitled to an exemption/deduction of \$200.00 against his earned income pursuant to the provisions of Schedule B of the EAR; and
5. The appellant's net income for July 2013 is \$842.74 (\$1042.74 minus exemption of \$200.00).

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision dated September 13, 2013, which determined that the appellant was not eligible for income assistance for the month of August 2013 because he had an earned (employment) income of \$1042.74 and a resulting net income of \$842.74 for the month of June 2013 (after applicable exemptions and deductions), which is in excess of the legislated limit. In particular, the ministry determined that the appellant's net income of \$842.74 in June 2013 was in excess of \$610.00 (\$235.00 for support and \$375.00 for shelter) prescribed under Schedule A of the Employment Assistance Regulation.

The relevant applicable legislation is as follows:

Employment Assistance Regulation

Part 1 - Interpretation

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,

Section 10-Limits on income

- (b) 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.
- (c) (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.

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, (BC Reg. 334/2007)

(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.

(vi) any warrants as described in section 15.2 (1) of the Act. (B.C. Reg. 85/2012)

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

(B.C. Reg. 57/2007) (B.C. Reg. 73/2010)

(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

- (a) the maximum adjustment, minus
- (b) the sum of
 - (i) the family bonus, if any, paid to the family unit for the preceding calendar month, and
 - (ii) the amount of the supplement, if any, provided to or for the family unit under section 61 [supplement for delayed, suspended or cancelled family bonus] of this regulation for the current calendar month.

(B.C. Reg. 286/2003) (B.C. Reg. 197/2012)

(3) In calculating the adjustment under subsection (2), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus must be treated as if it were paid to a person in the family unit. (B.C. Reg. 197/2012)

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

- (a) apply for the family bonus for the preceding calendar month, or
- (b) accept the family bonus for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada). (B.C. Reg. 197/2012)

(5) If a family unit includes a person who

- (a) immediately before reaching 19 years of age was a dependent child in the family unit, and
 - (b) reached that age while attending secondary school,
- the person is deemed to be a dependent child, for the purposes of this section, until the earlier of
- (c) the end of the school year in which the person reaches the age of 19 years, and
 - (d) the date the person stops attending secondary school.

(B.C. Reg. 286/2003) (B.C. Reg. 197/2012)

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

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,

- (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

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;

The appellant's position is that he was employed only for the month of June 2013. His first bi-weekly salary for that month was received and deposited by him in to his bank account on June 21, 2013. However, he did not receive his second bi-weekly salary, which was due before the end of June, until July 5, 2013. Therefore, he was not able to deposit it in to his bank account until that day. The appellant contended that he was not employed during the month of July 2013 and the amount of \$1042.74 received by him on July 5, 2013 was in respect of his employment in June 2013. Had he received his June salary on time i.e. before the end of June, he would not have been in receipt of any employment income in July 2013. As he had no employment income in July, he had no income to report in August and was therefore eligible for income assistance for the month of September.

The ministry's position is that the net income received by the appellant in July 2013 was \$842.74 (the amount of \$1042.74 deposited in the appellant's bank account on July 5, 2013 minus the eligible deduction of \$200.00). This amount had to be reported in August 2013 (which the appellant did on August 20, 2013) and it affects the appellant's assistance rate of \$610.00 (\$235.00 support and \$375.00 for shelter) prescribed under Schedule B of the EAR for the month of September. As the net income of the appellant in July 2013 (\$842.74) exceeds his assistance rate (\$610.00) for September, the appellant is not eligible for income assistance for the month of September 2013.

The panel notes that:

- (a) section 33 of the EAR requires all recipients of income assistance to report income by the 5th day of each calendar month to enable the ministry to determine whether the recipient requires or is eligible for further assistance.
- (b) section 28 of the EAR further provides that the amount of the income assistance cannot be more than the amount determined under Schedule A of the EAR minus the recipient's net income determined under Schedule B of the EAR.
- (c) section 1 of the EAR defines "earned income" as any money or value received in exchange for work or the provision of service. In this context, the panel finds that employment income is "earned income";
- (d) section 1 (c) of Schedule B provides in calculating the net income of an income recipient, all "earned income" must be included except for deductions and exemptions expressly permitted under the law;

(e) sections (3) and (6) of Schedule B provide that a sum of \$200.00 is exempt from calculation of net income.

Based on the foregoing analysis the panel finds that:

- (1) the appellant had received earned income of \$1042.74 during the month of July 2013;
- (2) the appellant is entitled to a deduction of \$200.00 against the said amount;
- (3) after the relevant deduction, the appellant's net income for the month of July is \$842.74;
- (4) the said net income of July 2013 should have been reported in August 2013 (which the appellant did on August 20, 2013) and it affects the appellant's eligibility for income for the month of September 2013; and
- (5) the said net income of the appellant is in excess of the appellant's income assistance rate of up to \$610.00 (comprising of \$235.00 for support and \$375.00 for shelter) for the month of September.

Based on the foregoing findings, the panel concludes that the ministry's reconsideration decision that the appellant is not eligible for income assistance for the month of September 2013 was reasonably supported by evidence and a reasonable application of the relevant enactment in the circumstances of the appellant, and confirms the reconsideration decision of the ministry.