

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 04 October 2013 that denied the appellant's request for income assistance for the month of October 2013 because the family unit received income in excess of the legislated limit. Section 28 of the Employment and Assistance Regulation (EAR) stipulates that the family unit's net income must be deducted from the family unit's income assistance minus applicable exemptions under Schedule B sections 1,2,3 and 4.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 1
Employment and Assistance Regulation (EAR), section 1, section 10, section 28, section 33,
Schedule A sections 1,2,3, and 4, Schedule B sections 1,2,3, and 4

PART E – Summary of Facts

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

- The appellant's Request for Reconsideration dated 27 October 2013.
- A copy of a letter, dated 23 September 2013 from the dependent child's school, with background information on the academic status of the child which had been affected by the loss of her father during her final school year.
- A copy of a pay stub in the appellant's daughter's name for the period 07/21/2013 to 08/03/2013, net pay \$801.22.
- A copy of a pay stub in the appellant's daughter's name for the period 04/08/2013 to 17/08/2013, net pay \$801.22.

In her Request for Reconsideration the appellant writes that she is appealing the deduction of her "minor" child's income from her summer job from the family entitlement. She writes that her child had a student job which lasted for two months but she is now unemployed. She is trying to upgrade her academics to enroll in a university programme and trying to make a better life for herself by acquiring skills and knowledge to have better employment opportunities.

In addition, the panel received document copies from the appellant:

- A receipt from the university for \$26.00 dated 11 October, 2013.
- A receipt from the university for \$300.51 dated 15 October, 2013.
- A transcript of the dependent child's Graduation Program dated 19 July, 2013.
- An acceptance letter from the university dated 18 October, 2013.
- A letter from the appellant to the Employment and Assistance Appeal Tribunal dated 15 November 2013, explaining that at the time of Reconsideration, her child was in the process of registering for the university and that she was completing her academic qualifications to qualify for admittance to the university.

The panel determined that the additional documentary evidence was admissible under section 22(4) of the EAA as it was in support of the records before the minister at the time of reconsideration.

In her Notice of Appeal dated 24 October 2013, the appellant writes that her daughter is a student. She is registered but it is all going through a process. She was not registered at the time of reconsideration.

The ministry relied on the reconsideration decision of 4 October, 2013 which states that the appellant's daughter is a dependent child who received \$1602.44 of employment income in August 2013 while she was not a full time student attending school. The legislation allows for \$200.00 as an exemption from earned income in the case of the appellant, which leaves earned income of the dependent child at \$1402.44, an amount in excess of the assistance rate for the family unit which was paid in August and declared in September, so the ministry's position is that the family unit is therefore ineligible for October assistance.

The panel makes the following findings of fact.

- The dependent child was a full time student at a school until the end of June, 2013 and will start university in January 2014.
- The dependent child had an earned income of \$1602.44 for the month of August.
- The dependent child was not attending a full time course of studies at a school during the month of August.
- The family unit assistance rate was \$1199.24 in August, 2013.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the family unit is ineligible for October 2013 assistance because the family unit received income in excess of the legislated limit was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the appellant under section 28 of the EAR minus applicable exemptions under Schedule B sections 1,2,3 and 4.

The relevant legislation is set out in EAA and EAR:

EAA

Interpretation

1 (1) In this Act:

"**dependant**", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

"**dependent child**", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

EAR

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, Sch. 1, s. 1 (a).]
- (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.

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Monthly reporting requirement

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

- (a) the report must be submitted by the 5th day of each calendar month, and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:
 - (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.

Schedule A

Maximum amount of income assistance before deduction of net income

- 1 (1)** Subject to this section and sections 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
- (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.

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);

(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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$375.5

(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.

(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.

(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).

(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.

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.

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

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

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
3	3 persons	\$660

(3) For a family unit of more than 10 persons, the maximum monthly shelter allowance is calculated by adding an extra \$35 for each person by which the family unit size exceeds 10.

(4) Repealed. [B.C. Reg. 62/2010, s. (a).]

(5) Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage

payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless

- (a) the remortgaging was necessary because of the expiry of the mortgage term, and
- (b) the amount borrowed under the mortgage is not increased.

(6) Despite subsection (2) or (2.1), the maximum monthly shelter allowance for a person who

- (a) is a sole recipient without dependants, and
- (b) provides confirmation of pregnancy from a medical practitioner, nurse practitioner or a registrant of the College of Midwives of British Columbia

is increased by up to \$195 per month for the duration of the pregnancy.

Schedule 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, Sch. 1, s. 1 (b).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;

- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 22 (a).]
- (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, Sch. 1, s. 5.]
- (xxi) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (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;
- (xxv) a loan that is
- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
- (xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
- (A) Autism Funding: Under Age 6 Program, or
 - (B) Autism Funding: Ages 6 — 18 Program;
- (xxvii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
- (xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxix) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;
- (xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiii) money withdrawn from a registered disability savings plan;

- (xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada);
 - (xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
 - (xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;
 - (xxxvii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
 - (xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
 - (xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
 - (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
 - (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,
- (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.

Small business exemption

4 (1) In this section and section 5,

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

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;

- (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.

- (2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if
- (a) the recipient is participating in a self-employment program, and
 - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

The appellant's position in the request for reconsideration, is that her dependent child is a student. She had a summer job which lasted for two months, but is currently unemployed. She is in the process of working with her secondary school to bring up her marks to be able to enroll in a university. In the notice of appeal, the appellant noted that the dependent child is a student. She is registered and it is all going through a process. She was not registered at the time of reconsideration.

The ministry's position is that Schedule B section 1(c) of the EAR stipulates that the family unit's net income

includes the income of everyone in the family unit. Schedule B, section (a)(i) allows any income earned by a dependent child to be exempt from calculating the net income of the family unit so long as the dependent child is attending school on a full time basis. The dependent child graduated in the spring of 2013 according to a letter submitted by the child's principal so the full time student exemption does not apply. There is an exemption allowance under Schedule B section 3 (6)(a) which allows for a \$200.00 earned exemption for the entire family unit. The dependent child had a summer job in which she made \$1602.44 during the month of August after deductions. The ministry found that the family unit's net income for August 2013, reported in September, was \$1402.44 (\$1602.44 - \$200.00). As the August net income exceeds the assistance rate of \$1192.24, the family unit is ineligible for October assistance. When a family unit's net income exceeds their assistance rate under Schedule A, the family unit is ineligible for assistance as per section 10 of the EAR.

Based on the evidence, the panel finds that the ministry's decision to find the family unit ineligible for October 2013 income assistance because the family unit received income in excess of the legislated limit is reasonably supported by the evidence. The panel therefore confirms the ministry's decision