



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated November 6, 2013 reducing the appellant's income assistance for the month of November by deducting \$482.00 in non-exempt unearned income (student aid) that exceeded the income assistance rate for her family size. The ministry determined that:

- (a) it made an "administrative error" leading the appellant to believe her student aid was exempt, and it has no authority to grant an exemption on the basis of the error;
- (b) student aid is unearned income which must be deducted from the family's income assistance rate pursuant to section 28 of the Employment and Assistance Regulation (EAR);
- (c) the appellant did not meet the education-related exemption criteria set out in section 8 of Schedule B of the EAR; and
- (d) the appellant was not eligible for any other deductions or exemptions from unearned income pursuant to Schedule B.

PART D – Relevant Legislation

Employment and Assistance Regulation sections 1, 10, 28, and 33
Employment and Assistance Regulation Schedule A, sections 1, 2 and 4; and Schedule B, sections 1, 6, 7 and 8.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

- 1) The appellant's Request for Reconsideration dated October 22, 2013 which states that:
 - In May 2013, the appellant submitted all documents to the ministry indicating she planned to take a course and was going to receive student aid;
 - she received no response from the ministry office and proceeded to enroll and begin her studies;
 - in September, she again submitted documents to the ministry office based on an apparent "green light" from both the ministry and the Financial Aid advisor (advisor) at the post-secondary school (the school). The advisor indicated that since these monies were for tuition, textbooks, compulsory fees, and childcare and not for shelter or related living expenses, they were exempt from being considered as income; the advisor assured her "it would not be a problem";
 - if the appellant had known back in May that the student aid monies would result in the ministry (reducing) her assistance, she would not have continued studying in September;
 - the social worker at the ministry office admitted the ministry had made a mistake; and due to the ministry not responding to the information the appellant gave them in May and waiting five months to (reduce) her income assistance, the appellant has been put in a "terrible position" and does not know how she can come up with the money to pay her rent;
 - she would not have studied if the ministry had told her right away that she would not be eligible for her (full rate of) assistance; and
 - she is requesting the minister's discretion to exempt the student aid income for her Fall 2013 studies.
- 2) Notice of Assessment from the Ministry of Advanced Education dated August 14, 2013, regarding Financial Aid for Part-time Studies and indicating that the appellant is eligible for \$1,920 in funding. Her assessed need for tuition, fees, books, transportation, miscellaneous, and childcare is \$3,152 and funding in the form of student grants is \$1,920. The funding will be disbursed through two Certificates of Eligibility, with \$960 scheduled for August 17, 2013 and \$960 scheduled for October 15th.
- 3) Appellant's bank account statements for the period of September 1-30, 2013 indicating that \$482 was deposited to the appellant's bank account on September 23, 2013 and \$478 was paid "direct to school".
- 4) Appellant's course schedule for the week of September 16, 2013 indicating enrollment in two courses.
- 5) Undated note from the appellant stating that she is "taking two courses this semester and I'm still looking for a part-time job with my Job developer." She states that if she finds a part-time job that requires more working time, she can withdraw from one of her courses and study only one course. She adds that she has dropped off her monthly stub and some documents from the student aid office, and she did not receive her funding "till today."

6) Letter from the advisor dated October 17, 2013 and addressed to the ministry, confirming that the appellant has applied for part-time studies funding for the period September 3 – December 31, 2013. The amount of funding for the Fall semester is \$1,920 and it only covers school-related expenses and costs including tuition, compulsory fees, textbooks, and childcare. Part-time studies funding does not cover shelter and/or related living expenses.

The hearing proceeded by way of written submissions. The appellant's Notice of Appeal dated November 15, 2013 consisted of her submission, while the ministry relied on its reconsideration decision summary for this written hearing.

Appellant's Submission

In her written submission dated November 15, 2013, the appellant states that regarding the "overpayment" (student aid) she received in September 2013, she is asking for a "compassion exemption based on humanitarian grounds" and requesting the "Minister's discretion to exempt my education related (un)earned income for the September semester." In order to find work and not have to rely on income assistance, she consulted with the school counsellor about her career path and the counsellor informed her that student aid was available. The counsellor reaffirmed that other students in a similar situation were able to "receive the funding with no problems since these monies were just for tuition, textbooks, compulsory fees, and childcare and not for shelter and/or other related living expenses." The counsellor assured her that student aid "would not be considered 'income.'"

The appellant brought a different friend to each of her two meetings with the counsellor, and they witnessed that the counsellor encouraged her to take the program and reassured her that she could receive student aid while on income assistance. The appellant still "did everything possible to verify whether I could receive Student Aid from your office." In May 2013, she submitted documents to the ministry that indicated she was planning to take a program at the school and would receive student aid. At that time, and for the next four months, no one told her that she didn't qualify for the school program. She proceeded with enrolling and began her studies.

In September, the appellant again submitted documents to the ministry "based on the apparent green-light from Income Assistance." She states that she made it clear from the beginning that she planned to attend the school, and that she was not going to lie and cheat the government. She states that the ministry clearly made a mistake by not telling her that student aid was not exempt until after she had completed one course in May and was part way through two more courses in September. It was not until October 16th, four months later, that the ministry informed her that the student aid money (would be deducted from her assistance).

The appellant states that two ministry workers told her that the ministry had made an error, and that if she had known back in May that she would not be eligible for (her full rate of) assistance, she would not have studied in May and she certainly would not have continued to study in September. The appellant adds that she has been put in a "terrible position" and "desperate situation" that the ministry caused by not responding to the information she gave them in May. She cannot recoup the student aid money because she used it for her studies. She made a thorough effort to check the situation before studying and states that if the ministry reduces her November assistance payment to \$463.58 she will not be able to pay her rent.

[REDACTED]

She states that she is extremely upset with the ministry's reconsideration decision to (reduce) her income assistance (by) \$482. She adds that it is not good enough for the ministry to simply apologize for their mistake, and the ministry "should compensate and/or fix its own mistake." The appellant adds that she is under a lot of stress and financial hardship and she is "daily counting money by the pennies to make ends meet."

The appellant adds that she understands that a policy exemption is given to students who are taking an unfunded program, but the reason she is taking this program is to build her career path, and the program she chose suits her ability and passion and will help her provide for her family. As well, there are no free or unfunded programs in her field.

She states that she also understands that the ministry has policies and rules and she would have willingly abided by them had they been communicated to her at the start. She has already cancelled the second portion of the student aid funding for the September term and believes that the ministry should make an exemption to correct its mistake. She states that the ministry's policy allows for an exception to be made and it would only take a small amount of money for the ministry to right the situation, but the amount is "astronomical" when (deducted from) her cheque.

The appellant states that she plans to obtain a "support and explanation letter" from her MLA and that she has the right under the *Employment and Assistance Act (EAA)* to ask the "Minister himself" to reconsider the decision and grant her a "compassion exemption" on the basis of humanitarian grounds. She would also like the tribunal to grant her a compassion exemption as the situation has taken a toll and she and her child are barely surviving.

In a second submission dated November 29, 2013 the appellant adds that the ministry notified her in October that the student grant that covered her courses in September, was (non-exempt) even though she had checked with the ministry in advance and believed that they had given her permission to receive student aid and take two more courses in September. The ministry admitted that it made a mistake in waiting five months to inform the appellant that her student aid was "(un)earned income". The appellant states that she used the student aid money to pay for courses; the money did not go into her pocket; and the ministry is being "unreasonable and heartless" in (deducting) \$482 for her September courses. The appellant states that she has done everything above board but the ministry has not taken responsibility for its mistake.

The appellant also provided submissions from two friends who accompanied the appellant to meetings with school officials when the appellant was exploring the possibility of taking courses. In a letter dated November 28, 2013, one of the friends (Friend A) states that she accompanied the appellant to a meeting with the advisor in March 2013. The appellant was up front about being on income assistance and was worried that student aid might impact her assistance.

The advisor told them that student aid was not considered to be "earned income" for income assistance purposes because the grant covered only school related expenses and not food or shelter. The advisor assured them that she could write a letter to the ministry to attest to what the grant would be used for, and she encouraged the appellant to go ahead and apply. The appellant was still concerned and discussed getting the ministry's permission before it was too late to drop a course without penalty.

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Friend A adds that she has known the appellant for 3.5 years and the appellant is very conscientious and is in no way trying to deceive or manipulate the ministry. The appellant's finances are extraordinarily tight and she works hard to provide for her child, and plan a career to get off of assistance. The appellant has been "devastated by the Ministry's mistake" and the government should take responsibility for righting its mistakes.

The appellant's other friend (Friend B), states in a letter dated November 28, 2013, that she has known the appellant for 3.5 years and the appellant has high standards and integrity and is making a conscious effort to get off of assistance by getting more education and improving her qualifications. The appellant considered furthering her education because she is a single mom and was having a hard time finding work.

Friend B accompanied the appellant to a meeting with the advisor on March 26, 2013 and the advisor encouraged the appellant to begin her studies. The advisor told the appellant about the financial aid program to assist with tuition, books and administrative fees. The advisor explained that the financial aid covers only program-related expenses such as tuition and books, and because it does not cover food, shelter and clothing, it is not considered to be "(un)earned income" for income assistance purposes. Other students had been able to take advantage of financial aid while on assistance, and the advisor could write a letter to the ministry if there was any problem.

Friend B states that the appellant was still concerned about the effect of student aid on the appellant's income assistance, so she asked the advisor when the last date for course withdrawal would be. The appellant "wants to do everything properly and not get into trouble", so she provided the ministry with all the documents before the start of the May term to inform them of her decision to study and apply for student aid.

Friend B states that the appellant did not hear from the ministry until late October when she was almost half way through the second term, and she has been "extremely discouraged and devastated" by the ministry's mistake of not telling her earlier that the student aid would be considered (un)earned income.; the ministry acknowledged its mistake on October 18th but should have caught it a lot sooner. Friend B states that it is only fair that the government take full responsibility by giving the appellant an exemption for the (September) student aid.

As the two submissions from the appellant, and the submissions of Friend A and Friend B relate to the appellant's enrollment at the school, the information she provided to the ministry regarding her courses and student aid; and the effect of the ministry's mistake on her well-being, the panel admits them as argument that is in support of the records that were before the ministry at the time the reconsideration decision was made pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

Ministry's Submission

In its reconsideration decision dated November 6, 2013 the ministry found that the appellant is not eligible for her full assistance rate of \$945.58 for November 2013 because \$482 student aid must be deducted as non-exempt unearned income. On October 16th, the appellant reported receiving \$960 student aid in September 2013. She submitted a bank statement showing a deposit of \$482, and she indicated that the balance (\$478) was paid directly to the school.

On October 18, 2013 the appellant told the ministry that the advisor said that the student aid would not be deducted from income assistance. The ministry advised the appellant that she did not meet any of the legislated criteria for exemption of education-related income. The ministry informed the appellant that she was denied the full rate of November assistance due to income in excess of the amount she would otherwise be eligible to receive.

The ministry acknowledges that its worker gave the appellant incorrect information, leading the appellant to believe that her student aid would be treated as exempt income; however, there are no provisions in the EAR that allow the ministry to apply an exemption due to an administrative error. The ministry states that "unearned income" as defined in section 1 of the EAR, includes education or training allowances, grants, loans, bursaries or scholarships and that the appellant received \$482 "student aid" via direct deposit on September 23, 2013, and \$478 of the \$960 (total student aid) was paid directly to the school. The ministry states that in accordance with the definition of unearned income, the \$482 paid directly to the appellant is the appellant's unearned income.

The ministry states that section 28 of the EAR requires the ministry to deduct a client's "net income" from their income assistance allowance. Net income is calculated under Schedule B of the regulation and the client's income assistance rate is set out in Schedule A; Schedule B specifies that net income includes both earned and unearned income, with the exception of allowable deductions and exemptions as specified in that Schedule.

The ministry further states that it may exempt a student's education and daycare costs pursuant to section 8 of Schedule B where the student recipient is enrolled part-time in an unfunded program of studies, or enrolled part-time in a funded program and also exempt from employment-related obligations under section 29(4) of the EAR, Schedule B. The ministry states that the appellant does not meet any exemption criteria under section 8 because she is enrolled in a funded program of studies and she is not exempt from employment-related obligations. As well, the appellant is not eligible for any other deductions or exemptions from unearned income under Schedule B, and her net income for September 2013 was the \$482 unearned income from student aid.

The ministry adds that income assistance recipients are required to report all income received during the previous month by the 5th day of the current month, which in turn affects the next month's income assistance. Therefore, the appellant's net September income of \$482 must be deducted from her assistance rate of \$945.58, leaving her eligible for November assistance of \$463.58.

The panel makes the following findings of fact:

1. The appellant is an employable income assistance recipient with one dependent child and her monthly assistance rate is \$945.58 based on her family unit size.
2. The appellant was enrolled at the school for the May and September 2013 terms and this appeal relates to the student aid that she received in September 2013 and reported on her October stub for continuing assistance.
3. The appellant is eligible for \$1,920 in student aid funding in the form of student grants. The funding is disbursed through two Certificates of Eligibility, with \$960 scheduled for August 17, 2013 and \$960 scheduled for October 15th.

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4. The appellant received student aid in the amount of \$960, and \$482 was deposited to her bank account on September 23, 2013 while \$478 was paid directly to the school for school-related expenses including tuition and fees.
 5. The ministry made an error in exempting unearned income for student aid, related to the November 2013 assistance month.
 6. The appellant received \$482 as unearned income from student aid.



PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that \$482 student aid is the appellant's unearned income for November 2013 and is not exempt from being deducted from the appellant's November assistance. The ministry found that:

- (a) it made an "administrative error" leading the appellant to believe her student aid was exempt, but it has no authority to grant an exemption on the basis of the error;
- (b) student aid is unearned income which must be deducted from the appellant's income assistance rate pursuant to section 28 of the EAR;
- (c) the appellant did not meet the education-related exemption criteria set out in section 8 of Schedule B of the EAR; and
- (d) the appellant was not eligible for any other deductions or exemptions from unearned income pursuant to Schedule B.

The relevant sections of the EAR are as follows:

Employment and Assistance Regulation

Definitions

1.(1) In this regulation:

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

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

"unfunded program of studies" means a program of studies for which a student enrolled in it is not eligible for student financial assistance.

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.

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.

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
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$375.58



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
2	2 persons	\$570

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)

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

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

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Deductions from unearned income

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

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

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

Exemptions - unearned income

7 (0.1) In this section:

"disability-related costs", means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [assets held in trust for person receiving special care] of this regulation;

"disability-related cost to promote independence", means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust" in relation to a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation, means an asset, received by the person, to which the exemption under that section applies;"structured settlement annuity

payment", means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection. (B.C. Reg. 197/2012)

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

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

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

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

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

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

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

(2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

(i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section

13 (2) (a) of this regulation, or

(iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

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

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

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

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

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

(f) a tax refund. (B.C. Reg. 197/2012)

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012)

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,



(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

(B.C. Reg. 83/2012)

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence. (B.C. Reg. 197/2012)

(3) Repealed (B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

Minister's discretion to exempt education related unearned income

8 (1) In this section:

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

"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.

(2) The minister may authorize an exemption for a student described in subsection (3) 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.

Appellant's position

The appellant's position is that the ministry should grant her a "compassion exemption based on humanitarian grounds" and not (deduct) \$482 student aid from her income assistance. The ministry made a mistake which led the appellant to believe she could receive student aid without it affecting her income assistance and that her education grants for school-related expenses would not be treated as unearned income. As an honest and conscientious individual who is taking steps to achieve a career path and get off of assistance, the appellant was very careful about checking with the ministry to ensure that her student aid would not affect her assistance. If she had known that her assistance would be reduced, she would not have enrolled in courses.

The appellant's position is that the ministry should take responsibility for its error and exempt the appellant's student aid as it did not inform her of the error until she was already enrolled in a second semester of courses, and she had already spent the funds on school and cannot get her money back. The ministry's mistake has caused a "desperate situation" for the appellant and her child, and if her November assistance is reduced she cannot pay her rent.

The appellant's further position is that the ministry's policies allow for a compassion exemption; that she has the right to ask the "Minister of Social Development himself" for a compassion exemption; and that the ministry could have made an exception under the Act's policies (Part 3: Appeals) but did not. She understands that the exemption is given to students who are taking an unfunded program; however, there are no free or unfunded programs in her field.

Ministry's position

The ministry's position is that \$482 out of the \$960 student aid that the appellant received in September 2013 is unearned income that comprises the appellant's net income pursuant to Schedule B of the EAR. As such, it must be deducted from the appellant's income assistance pursuant to section 28 of the EAR because the appellant does not meet the exemptions set out in section 8 of Schedule B and she is not exempt from employment-related obligations under section 29(4) of the EAR. Further, the appellant is not eligible for any other deductions or exemptions from unearned income under Schedule B. Though the ministry acknowledges that it made a mistake and provided the appellant with incorrect information, there are no provisions in the legislation that allow the ministry to apply an income exemption due to an administrative error.

Decision

1. Administrative Error/ Compassion Exemption

The ministry acknowledges that it gave the appellant incorrect information which led her to believe that the student aid would be treated as exempt income. However, the ministry argues that there are no provisions in the legislation that would allow it to apply an exemption because an "administrative error" had occurred. The appellant, Friend A and Friend B argue that the ministry should grant the appellant a "compassion exemption" to take responsibility for its mistakes; the appellant further argues that the ministry has the discretion to do so.

While the panel acknowledges the appellant's argument that the ministry should exercise its discretion due to its error in initially exempting her student aid income, the panel's jurisdiction is limited to looking at the reasonableness of the ministry's decision to not apply an exemption on the basis of administrative error. The ministry in turn, is limited to applying its legislation, and it found that there is no such exemption in the EAR. The panel also notes that the ministry does not have discretion to apply an administrative error exemption under the EAR, and thus finds that the ministry was reasonable in determining that it could not grant an exemption despite having made an error.

With regard to the appellant's request for the panel to grant her a "compassion exemption" or forward the ministry's decision to "the Minister himself" for reconsideration on humanitarian grounds, the panel notes that pursuant to the *EAA* section 19(1), the tribunal has jurisdiction to determine the reasonableness of the ministry's reconsideration decision to reduce a recipient's assistance. There is nothing in the *EAA* that authorizes the tribunal (or its panel) to grant its own exemption on the basis of compassion, or refer the decision to "the Minister himself" for his personal reconsideration.

2. Unearned Income: Student Aid

Unearned income as defined in section 1 of the EAR includes "education or training allowances, grants, loans, bursaries or scholarships". Both the ministry and the appellant agree in their submissions that the appellant received \$960 in student aid in September 2013 and that \$482 went directly to the appellant via direct deposit. The parties further agree that the \$482 is the appellant's unearned income for September 2013. The panel finds that the ministry reasonably determined that \$482 student aid is unearned income pursuant to the EAR, section 1.

Under Schedule B of the EAR, unearned income is to be included in the calculation of net income pursuant to section 1(d) of this Schedule. As well, non-exempt net income must be deducted from income assistance pursuant to section 28 of the (*EAA*). The appellant does not dispute these interpretations and the panel finds that the ministry reasonably determined that the appellant has net income of \$482 that must be deducted from her November assistance payment. This leaves her with 463.58 in assistance for November 2013.

3. Exemptions from Unearned Income – EAR section 8 of Schedule B

The ministry argues that the appellant is not eligible for any of the exemptions under section 8 of Schedule B of the regulation which allows the ministry to exempt a student's "education and daycare costs if the student is a dependent child, (is) a recipient enrolled part-time in an unfunded program of studies, or (is) a recipient who is enrolled part-time in a (funded) program and who is exempt from employment related obligations under section 29(4) of the EAR."

Section 8 of Schedule B provides the ministry with "discretion to exempt education related unearned income" including amounts required by a student for tuition, books, student fees, transportation costs, and day care. Section 8(3)(b) states that the exemption may be authorized in respect of a part-time student who is enrolled in an unfunded program of studies. Both the ministry and the appellant agree that the appellant's program is funded, by available student aid. The panel finds that the ministry reasonably determined that as this exemption applies only to a part-time student in an "unfunded program of studies", the appellant's student aid cannot be exempted under section 8(3)(b) of Schedule B of the EAR.

Section 8(3)(c) provides an exemption to part-time students who are enrolled in a funded program of studies and who are, at the same time, exempt from employment related obligations under section 29(4) of the EAR. Section 29(4) lists categories of recipients who are exempt from employment related obligations and the ministry found that the appellant's circumstances do not fulfill any of the exempt categories; the appellant does not dispute this finding. The panel finds that the ministry reasonably determined that because the appellant has employment related obligations while attending school, her student aid cannot be exempted under section 8(3)(c) of Schedule B.

4. Other Exemptions from Unearned Income – Schedule B

The ministry argues that the appellant is not eligible for any of the other exemptions under Schedule B, and the appellant does not claim to be eligible for any exemptions under the Schedule. Sections 1, 6, and 7, allow deductions or exemptions for items that include benefits and tax credits for dependent children; payments from government legal settlements; income tax deducted from Employment Insurance benefits; operating costs for rental suites; disability-related costs; and legal settlements for personal injury. As student aid is not among the items listed in these sections, the panel finds that the ministry reasonably determined that the other exemptions and deductions under Schedule B cannot be applied to the appellant's unearned income.

Conclusion

Accordingly, the panel finds that the ministry reasonably determined that the appellant was eligible for \$463.58 income assistance for November 2013 rather than her regular rate of \$945.58 because she had non-exempt student aid income of \$482. The panel finds that the ministry was reasonable in deducting the non-exempt income and confirms the ministry's reconsideration decision as being reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant.