

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated March 6, 2014 which denied the appellant's request for income assistance pursuant to section 10(2) of the Employment and Assistance Regulation (EAR). The ministry held that the appellant was not eligible for income assistance because his net income is in excess of the income assistance rates for the size of his family unit.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 1, 10, 28 and 77.1
EAR Schedule A sections 1, 2, 4 and 5
EAR Schedule B sections 1, 2 and 3

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

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

1. Pay stubs from a company for November 22, 2013, January 17, 2014, January 31, 2013 and February 14, 2014. These pay stubs identify the appellant as recipient and the amounts paid are as follows:
 - November 22, 2013 - \$1500.58
 - January 17, 2013 - \$1088.60
 - January 31, 2013 - \$1100
 - February 14, 2014 - \$880.30
2. Two receipts dated January 31, 2013 and one dated February 14, 2014. One of the January 31, 2014 receipts confirms that Person A received a payment of \$400 from the appellant, and the other receipt of the same date confirms that Person B received a payment of \$400 from the appellant. The receipt dated February 14, 2014 confirms that Person A received a payment of \$500 from the appellant.
3. A hand-written letter dated February 28, 2014. The letter states the following:
"I, (appellant's name) paid (Person B) \$400 as well as (Person A) \$400 for the pay period January 18-31, 2014. I also paid (Person A) \$500 for the pay period February 1-14, 2014 as (Person B) no longer works for me."
The letter was signed by the appellant, Person A and Person B. The panel noted that this document, together with several other documents in the appeal record were date-stamped by the ministry as "Feb 28, 2013" which clearly indicates the incorrect year.
4. A *Request for Reconsideration* dated February 28, 2014 and signed by the appellant's spouse. In it, she explains that she and the appellant are trying all avenues to be able to pay their rent and they are not managing to do so. She explains the amounts of gross pay received by the appellant and the amounts that he had to pay his co-workers. Specifically, she indicates that the gross paycheque for January 31, 2014 was \$1100, but the appellant had to pay \$400 to each of his co-workers leaving him with only \$300; for the February 14, 2014 paycheque the appellant paid his co-worker \$500, leaving the appellant with only \$380 remaining. She and the appellant had to get a payday loan to get food and have money for gas. They also had to pay for car insurance so that the appellant had a vehicle to get to work. She states that they have almost no money and their gas, hydro and phone service are being disconnected. In addition, they have received an eviction notice. She keeps telling the landlord that they will be homeless and she just had a baby.
5. A *Request for Reconsideration* dated March 6, 2014 and signed by the appellant. His reasons for requesting reconsideration repeat many of the same statements made by his spouse in her statement of February 28, 2014 but he adds that he has not worked for 2.5 weeks and has no income coming in.
6. A *Notice of Appeal* dated March 18, 2014 and signed by the appellant in which he provides the

reasons for his appeal. This statement is included in Part F.

The *Reconsideration Decision* noted that the appellant is an employable applicant with a dependent spouse and one dependent child. It also noted that the appellant had applied for income assistance on February 14, 2014.

At the hearing, the ministry stated that the appellant had been given hardship assistance for March, 2014 and a "top-up" income assistance payment for April. The ministry also indicated that the appellant was not eligible for further income assistance funding because his spouse was now receiving Employment Insurance (EI) benefits. This information provides additional detail with respect to issues addressed in the reconsideration decision. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAR.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for income assistance based upon EAR section 10(2) because his net income was in excess of the income assistance rates for the size of his family unit. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the 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,

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.

Eligibility for self-employment program

77.1 To be eligible to participate in a self-employment program established or funded by the minister under section 7 of the Act, a recipient must qualify under section 2 of this regulation as a person with persistent multiple barriers to employment.

Schedule A

Income Assistance Rates

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.

Monthly support allowance

The table in section 2 of Schedule A shows that for a "Family unit composition" of *Two applicants/recipients and one or more dependent children* where the "Age or status of the applicant or recipient" is *Both applicants/recipients are under 65 years of age* the "Amount of support" is \$401.06.

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	Column 2
	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

Schedule B

Net Income Calculation

Deduction and exemption rules

Section 1 specifies types of income which are exempted when net income is calculated. None of the items applied to the appellant.

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.

In his *Notice of Appeal*, the appellant stated that he strongly disagrees with the ministry's (reconsideration) decision. He has had no income and no work since February 14. He and his family are a month and a half behind in their rent and their hydro and cell phones are in danger of being shut off. He asks how is he supposed to go back to work if he has no contact number. He has a one month old child and no money coming in. He and his family are getting further and further behind and have tried all avenues for food, etc.

The appellant explained in his request for reconsideration that he has employment as a contractor and he was paid \$1100 on January 31, 2014 and \$880 on February 14, 2014. But he had to pay his co-workers out of those payments. He argued that after paying his co-workers he was left with only \$300 from the January 31 payment and \$380 from the February 14 payment. The appellant submitted payroll stubs confirming that he had received the payments he specified. In addition, the appellant submitted receipts from his co-workers confirming that they had been paid the amounts specified by the appellant. The ministry did not dispute this information.

As noted previously, the ministry explained that the appellant had received hardship assistance for the month of March and a "top-up" payment for income assistance for the month of April, but the ministry relied upon the reconsideration decision to explain why the appellant had been denied income assistance prior to the month of April, 2014.

The reconsideration decision noted that the appellant had received gross pay of \$2188 for the month of January, 2014. Although the appellant stated that he had paid some of his earnings to co-workers who work for him, the ministry determined that the appellant was not eligible for an earnings exemption under Schedule B of the EAR and consequently, found that the appellant's gross earnings were considered to be his net earnings. The ministry explained that under Schedule A of the EAR, the maximum rate of assistance for a family of three is \$401.06 support and \$660 shelter for a total of \$1061.06. Accordingly, the ministry determined that the appellant was not eligible for income assistance because his net income exceeded the amount of income assistance determined to be appropriate for his family unit size under Schedule A.

In response to a question from the panel, the ministry explained that the appellant was not eligible to participate in the self-employment program. As outlined in section 77.1 of the EAR, eligibility for the self-employment program requires that the recipient must qualify as a person with multiple barriers to employment. The appellant does not qualify for this status.

The panel reviewed the deduction and exemption rules for determining net income in sections 1 and 2 of Schedule B of the EAR, and concluded that the ministry had reasonably determined that the appellant's net income in January was higher than the maximum rate of assistance for a family of 3. Accordingly, the panel concluded that the ministry had reasonably determined that the appellant was not eligible for income assistance.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for income assistance was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.