

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of April 23, 2014 wherein the ministry determined that in accordance with Sections 10 and 28 of the Employment and Assistance Regulation the appellant was ineligible for income assistance for the month of April 2014 because his employment earnings for February 2014 exceeded the income assistance rates for his family unit size.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), sections 1, 2, 4
Employment and Assistance Regulation (EAR), sections 1, 10, 28
Employment and Assistance Regulation, (EAR) schedule A sections 1, 2, 4, 5
Employment and Assistance Regulation, (EAR) schedule B sections 1, 2, 3, 4

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A paystub from the appellant's employer dated Feb 14, 2014 for \$280.00 net pay
- A paystub from the appellant's employer dated Feb 7, 2014 for \$520.80 in net pay
- A letter to the ministry from the appellant's employer dated April 9, 2014 stating that the appellant had earned \$2222.47 year to date. The letter reads that the appellant has not worked a full week since March 7, 2014 and that there is no work available for him at the present time.
- The Request for Reconsideration dated April 11, 2014 where the appellant writes that he did made a bit of money at the beginning on March but after bills, food, clothes, etc, he is concerned that he won't have any money left for April.

At the hearing the appellant explained to the panel that he told the ministry in January that he had found a job. He reported his income to the ministry as required. He explained that he worked regular hours in February but after that his work became more sporadic and his hours were reduced. He told the panel that when the ministry found him ineligible for April benefits he requested two reconsideration decisions from the ministry for having his income assistance affected in both April and May. He told the panel that he is aware that his earnings in February were in excess of his benefit amount but he thinks his income was within the allowable amount in March. He added that because of the slowdown at his employer after February he won't be able to support himself through April and May without his regular assistance.

The ministry told the panel that based on the information they received from the appellant's employer; the appellant had a net income in February 2014 of \$1001.56. The EAR schedule A allows for \$235 in assistance and \$375 for shelter allowance for the appellant under his circumstances. The appellant's allowable exemption is \$200 per month, therefore the difference, \$801.56, was applied to his rate of assistance of \$610 per month as mandated in the EAR schedule A. Since the appellant's earnings were in excess of his rate of assistance, he became ineligible for benefits in April. The ministry explained that the appellant's earnings for February are reported to the ministry by March 5th and his eligibility is calculated for April based on the February earnings.

The Panel finds as facts:

- The appellant earned \$1001.56 from his employer in February 2014.
- The appellant is eligible for \$610 income assistance per month based on the EAR schedule A.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant ineligible for April's assistance based on his employment income from February.

The relevant legislation is as follows:

Employment and Assistance Act (EAA), section 2

Eligibility of family unit

- 2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
 - (b) the family unit has not been declared ineligible for the Income assistance, hardship assistance or supplement under this Act.

Employment and Assistance Act (EAA), sections 4

Income assistance and supplements

- 4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance Regulation (EAR), sections 1

"**earned income**" means (a) any money or value received in exchange for work or the provision of a service,

Employment and Assistance Regulation (EAR), sections 10, 28

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.
- 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.

Employment and Assistance Regulation, (EAR) schedule A sections 1, 2, 4, 5

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:

"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);

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:

	Column 1	Column 2
	Family Unit Size	Maximum Monthly Shelter
	1 person	\$375

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) rental of one basic residential single-line telephone.

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

- (a) rent for the family unit's place of residence;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged over the periods

- (a) beginning on October 1 and ending on March 31, and
- (b) beginning on April 1 and ending on September 30.

Employment and Assistance Regulation, (EAR) schedule B sections 1, 2, 3

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;
- (xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry,
- (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.
 - (7) A transient is not entitled to an exemption under this section.

The argument of the appellant is that although he knows his February employment earnings exceeded the assistance rates set out in the regulations, he argues that if he is found ineligible for assistance in April he will not have enough money to support himself in April and May since he is not working for his employer anymore.

The argument of the ministry is that the appellant earned \$1001.56 in February 2014, which exceeds the assistance rate for his family unit of \$610 therefore; he is ineligible for assistance in April 2014.

In coming to its decision the panel considered the appellant's argument that if he is denied benefits for April, due to his February employment earnings, he will not have enough money to support himself in April and May. While the panel accepts that the appellant may be challenged budgeting himself through April, the panel finds that the ministry was reasonable to base its calculations and the appellant's eligibility on requirements of the EAR schedules A and B. The panel considered that the amount of the appellant's February 2014 earnings were not in dispute between the parties nor was the appellant's assistance rate as set out in the EAR schedule A. The panel finds that the ministry was reasonable to apply the appellant's employment earnings after exemption (\$801.56) to the assistance rate for the appellant (\$610) and to find the appellant ineligible for April assistance as required in the EAR schedule A. Regarding the appellant's concern that his assistance for May could possibly be affected, the panel is limited to looking at the month of April because April is the only month that is being reviewed in the Ministry's Reconsideration Decision.

The panel finds that the ministry's decision was a reasonable application of the legislation and therefore confirms the ministry's decision.