

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated April 28, 2014 which held that the Appellant was not eligible for April 2014 income assistance in accordance with section 10 and 28 of the Employment and Assistance Regulation (the “EAR”).

The Ministry determined that maintenance income received by the Appellant in the month of February 2014 exceeds the Ministry’s rate of income assistance for the Appellant’s family sized unit and there were no allowable deductions or exemptions to allow for the additional income.

### PART D – Relevant Legislation

The Ministry relied on the following legislation:

Employment and Assistance Act (the “EAA”)  
sections 1, 2 and 4

Employment and Assistance Regulation (the “EAR”)  
sections 1(1), 10(2), and 28  
schedule “A” sections 1, 2, and 4  
schedule “B” sections 1, 6, 7 and 8

## PART E – Summary of Facts

The Appellant was not in attendance at the hearing. After confirming that she was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration included the following:

Employment and Assistance Request for Reconsideration dated March 27, 2014 with the following attached documents:

1. The Appellant stated in her request for reconsideration the following:
  - a. The Appellant was not informed when she received her family maintenance cheque in March that she was not going to receive a cheque for the month of April;
  - b. The Appellant used her maintenance to pay for hydro and cable;
  - c. The Appellant has not paid her rent at that date and she has an eviction notice to move today; and that
  - d. The Appellant would have saved for rent and now she has to move and she has no money.
2. Notice to End Tenancy for Unpaid Rent or Utilities date illegible signed by the landlord or agent giving the Appellant ten days notice to move out of the rental unit.
3. Cheque History Query in the name of the Appellant for the benefit month of April 2014 showing the payment amount of \$1,195.65.
4. Family Maintenance Payment Summary in the name of the Appellant for the benefit month of April 2014 showing the payment amount of \$1,576.91.
5. FB/NCB Information Query in the name of the Appellant for the benefit month of April 2014 showing the Schedule amount of \$971.75.

The Ministry did not submit additional evidence on appeal and relied exclusively on the Reconsideration Decision.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's determination that the Appellant was not eligible for income assistance for April 2014 was a reasonable application of the legislation in the circumstances of the Appellant or is reasonably supported by the evidence.

In making their determination that the Appellant was not eligible for April 2014 income assistance, the Ministry relied on sections 1(1), 10(2), 28 and Schedule "A" sections 1, 2 and 4 and "B" sections 1, 6, 7, and 8 of the EAR.

Sections 1(1), 10(2) and 28 of the EAR are reproduced below:

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)
- (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;

### **(A) Limits on income**

10 (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.

### **(A) 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.

Schedule "A" sections 1, 2 and 4 of the EAR are reproduced:

### **(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

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(3) If

(a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,

(b) the family unit is found eligible for income assistance, and

(c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*,

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

#### **(B) 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.

(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	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

(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.

**(A) 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	Family Unit Size	Maximum Monthly Shelter
7	7 persons	\$820

Schedule “B” sections 1, 6, 7 and 8 are reproduced below:

(A) 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. 195/2007)

(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)

(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.C. Reg. 31/2014)

(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.

(B) 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.

(C) 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.

(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;

(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.

(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)

(D) 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.

### ***The Ministry's Submissions***

The Ministry submitted that the Appellant was ineligible for April 2014 income assistance in the amount of \$1,195.58 as she received a maintenance payment in the month of February 2014 for \$1,576.91 which the Ministry determined put the Appellant over the Ministry's rate of monthly allowable income assistance for her family unit size.

The Ministry held that the Appellant's monthly income received in the month of February 2014 to be reported in March 2014 exceeded the amount she was entitled to receive and the maintenance payment had to be deducted from her April 2014 income assistance.

As there were no exemptions that would otherwise allow the Appellant to receive both her income assistance and the maintenance payment, the Ministry found the Appellant to be ineligible for one month income assistance in April 2014.

### ***The Appellant's Submissions***

The Appellant argued that she was not informed when she received her family maintenance cheque in February 2014 that she was not going to receive a cheque for the month of April 2014 and that she used her maintenance income to pay for hydro and cable. The Appellant submitted that had she been informed she would become ineligible for one month income assistance, she would have saved the money to pay her rent and now she has been issued an eviction notice to move from her current residence.

### ***Panel Decision***

Section 10(2) of the EAR is clear that a family unit is not eligible for income assistance if the net income of the family unit determined by the EAR equals or exceeds the amount of income assistance determined under the EAR. Schedule "A" specifies the maximum allowable rate of support and shelter for the family.

If a recipient receives additional income that exceeds the recipient's allowable net income as determined by the EAR Schedule "A" the additional income must be deducted from the Ministry's rate of monthly income assistance pursuant to section 28 of the EAR.

The Ministry is, however, given authority under the EAR to exempt certain incomes for the purposes of calculating net income providing the source of income falls within one of the acceptable categories listed in the Schedule "B" of the EAR.

The Appellant being a sole recipient with six dependants under Schedule "A" is entitled to receive a monthly income assistance of \$1,195.58. The Appellant received maintenance income in the month of February 2014 in the amount of \$1,576.91 as evidenced by the Family Maintenance Payment Summary in the name of the Appellant for the benefit month of April 2014 submitted by the Ministry.

Section 10(2) of the EAR again states that a recipient is not eligible for income assistance if the monthly net income exceeds the Ministry's rate of monthly income assistance for her family size. Schedule "B" does allow for certain deductions and exemptions from unearned income for the purpose of calculating net income and states that all unearned income must be included except the deductions permitted under section 6 and any income exempt under sections 7 and 8.

Schedule "B" specifically addresses "unearned income." Maintenance income or "maintenance under a court order" has been defined in section 1 of the EAR as "unearned income." Schedule "B," however, does not include "maintenance income" in the category of unearned income which is deducted or exempt.

The Panel therefore finds the Ministry's determination that the Appellant was ineligible for income assistance for the month of April 2014 was reasonably supported by the evidence and confirms the decision.