

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 24, 2014 wherein the ministry determined that under section 10 Employment and Assistance Regulation (EAR) the appellant is ineligible for income assistance because his net income as calculated under Schedule B, EAR exceeds his assistance rate as set out in Schedule A, EAR. The ministry determined the appellant’s unearned income (rental) of \$950 per month (less utilities) exceeds his maximum assistance rate of \$610 per month.

PART D – Relevant Legislation

EAR – section 1, 10 and 33; Schedule A sections 1, 2 and 4; Schedule B sections 1, 6, 7 and 8.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Utility gas bills for months of December 2013 - \$157.10; January 2014 - \$154.50; February 2014 - \$172.08; March 2014 - \$143.71; April 2104 - \$122.85; and May 2014 - \$95.05;
- Utility hydro bill for months of December 2013 - \$ \$269.54; January 2014 - \$270.99; March 2014 - \$232.31; April - \$83.50; May 2014 - \$125.36;
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities signed by appellant, as landlord, dated January 3th, 2014 for unpaid rent of \$950 for the month of January 2014 for a suite in appellant's residence;
- Shelter Information date stamped by the ministry on June 24th, 2013 indicating the named person (renter #1) is sharing the rent of a basement suite in the appellant's residence for \$950 per month;
- BC Assessment Roll report dated January 15th, 2014 for the appellant's residence indicates the "actual use" of the residence where the appellant lives is a single family home;
- Letter from appellant's solicitor to ministry dated May 28th, 2014 stating that he is representing the appellant with respect to a matrimonial action and that the residence where the appellant resides is jointly owned by the appellant and his estranged wife; that the appellant requires shelter support from the ministry of \$375 to assist him to make his mortgage payments; that the home is being listed for sale;
- For Sale realty listing dated June 5th, 2014 for the property jointly owned by appellant and his wife;
- Receipt dated May 29th, 2014 issued to appellant in amount of \$290 for dental work;
- Request for Reconsideration dated June 4th, 2014;
- Attached to the appellant's Request for Reconsideration was a letter dated June 20th, 2014 prepared by his advocate which states:
 - that the appellant requests that the ministry calculate the appellant's income in accordance with section 28(b) EAR. Specifically that the deduction of essential operating costs from the appellant's monthly rental income under section 6(b) of Schedule B, EAR;
 - that the rental income falls under the definition of unearned income under section 1(1) EAR;
 - that this is the appellant's only income;
 - that deductions permitted from his monthly rental income for essential operating costs of renting a self-contained suite is 50% of your monthly gas and hydro and his portion of the mortgage as summarized on the table below;
 - that he has been paying his wife \$150 per month since January 2014;
 - that he did not receive rental income for the month of January 2014 but did receive rent for February to June 2014;
 - that he uses the remaining funds, as detailed on the table below under "income after deductions" to pay for food, property's cable bill, the dentist bill in May 2014, and miscellaneous other expenses;
 - that he lives alone, the property is listed for sale and the proceeds of the sale will be held "in trust" until the matter is settled with his estranged wife;
- attached to the advocate's letter was the following Table:

Summary of Income and claimed deductions:

Month	Rental Income	50% Natural Gas utility	50% Hydro (Electricity)	A portion of the mortgage	Total deductions claimed	Income after deductions
January 2014	0	\$98.56	0	\$150.00	0	0
February 2014	\$950.00	0	0	\$150.00	\$150.00	\$800.00
March 2014	\$950.00	\$100.00	0	\$150.00	\$250.00	\$700.00

April 2014	\$950.00	\$100.00	\$82.00	\$150.00	\$232.00	\$718.00
May 2014	\$950.00	\$100.00	\$221.65	\$150.00	\$471.65	\$478.35
June 2014	\$950.00	\$129.83	\$62.58	\$100.00	\$292.51	\$657.49

The decision to be reconsidered section of the Request for Reconsideration states that the appellant had applied for income assistance in January 2014 and at the time of his application he indicated that the home where he lives is co-owned with his estranged wife which has a self-contained suite in the basement which he rents out for \$950.00 per month. The appellant indicated he also co-owns a second home with his estranged wife which is occupied by her and the children. The appellant's eligibility for income assistance was determined on January 31st, 2014 and on that date the Employment and Assistance worker (EAW) addressed rental income with the appellant; that he has potential rental income of \$950.00 per month and rental income must be reported monthly because it is considered unearned income which is deducted dollar for dollar from the applicable income assistance rate. In the advocate's letter of May 28th 2014, the appellant acknowledged that he did not receive any rental income for January 2014 but did receive rental income for the months of February 2014 to June 2014 inclusive; that he should be permitted to deduct the essential operating costs (EOC) for his rental property which includes half of the utility costs. In 2013 the appellant completed a Shelter Information form showing that the utilities were included in the rental of the suite.

In the Reconsideration Decision of June 24th, 2014 the ministry agreed that half of the utilities (gas and hydro) are EOC of the rental suite and are permissible deductions from the rental income. The ministry determined, however, that a mortgage payment is not an EOC to rent the self-contained suite and cannot be deducted from his rental income.

In the Reconsideration Decision the ministry determined there was a discrepancy in the utility costs as shown on the Table provided by the advocate and the utility bills that were submitted in support of these expenses. The appellant's Table indicated that ½ of his monthly gas costs are \$100 but none of the utility bills support this figure – the gas bill dated March 18, 2014 lists \$143.71; for April 17, 2014 lists \$122.85 and for May 21, 2014 lists \$95.05. In addition, the appellant states that ½ of his hydro costs in April 2014 are \$82.00 but the ministry notes the appellant's hydro bills do not reflect this: the hydro bill dated March 24, 2014 lists \$232.21; April 24, 2014 lists \$83.50 and May 23, 2014 lists \$125.36.

The ministry determined that, as set out in Schedule A, EAR, the maximum rate of income assistance that the appellant would be eligible to receive, as a single recipient, is \$610.00 per month.

An applicant's income is to be reported by the 5th day of the month following the month the income is received. The income is then calculated for the following month of assistance. Therefore, the appellant's rental income less half his hydro and natural gas bill received in March 2014 was to be reported by April 5th, 2014 and is applied towards his May assistance; his rental income less half the hydro and gas bill received April 2014 was to be reported by May 5th, 2014 and is applied towards his June 2014 income assistance. The hydro and gas bills received in March, April and May 2014 show a total cost of \$187.96, \$103.75 and \$220.41, respectively, for half the gas and hydro utilities. This results in \$762.04 (\$950-\$187.96), \$846.25 (\$950-\$103.75) and \$729.59 (\$950-\$220.41) net incomes which exceed his May, June and July 2014 \$610 income assistance rate.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of June 24, 2014 wherein the ministry determined that under section 10, EAR the appellant is ineligible for income assistance because his net income, as calculated under Schedule B, EAR, exceeds his maximum assistance rate as set out in Schedule A, EAR.

The legislation considered: EAR

Definitions

Section 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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*; (B.C. Reg. 518/2004)
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances; (B.C. Reg. 363/2012)
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;**
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property; (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;
- (w) tax refunds; (B.C. Reg.197/2012)

Limits on income

Section 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.

Monthly reporting requirement

Section 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,
 - (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**

Section 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.C. Reg. 197/2012)

Monthly support allowance

Section 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
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

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

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

(5) If a family unit includes a person who

(a) immediately before reaching 19 years of age was a dependent child in the family unit, and

(b) reached that age while attending secondary school,

the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

(c) the end of the school year in which the person reaches the age of 19 years, and

(d) the date the person stops attending secondary school.

Monthly shelter allowance

Section 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
1	1 person	\$375

Schedule B - Net Income Calculation [section 28 (b)]

Deduction and exemption rules

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.

Deductions from unearned income

Section 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

Section 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

Section 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 argued that the appellant is not eligible for income assistance if his net income determined under Schedule B, EAR equals or exceeds the amount of income assistance determined under Schedule A, EAR. The ministry also argued that an applicant's income is to be reported by the 5th day of the month following the month the income is received as set out in section 33 EAR. The ministry added that the appellant's net income less his essential operating costs to rent the suite is then calculated for the following month of assistance to determine his eligibility for income assistance.

The ministry argued the appellant has a self-contained suite in his home and that he received rental income of \$950 per month from this unit from February 2014 to June 2014 which was not reported. The ministry argued that on his tenant's Shelter Application form he indicated the utilities (natural gas and electricity) are included with the rental of the suite so the ministry considers them as essential operating costs (ESO). The ministry stated the hydro and gas bills submitted by the appellant for March, April and May 2014 show that one-half the cost of the utilities would be \$187.36, \$10.375 and \$220.41, respectively. The ministry argued that the appellant's rental income less half his hydro and natural gas expenses (essential operating costs) for March 2014, which was to be reported by April 5th, 2014, is then applied towards his May income assistance and the same procedures would apply for to determine his eligibility for income assistance for June and July of 2014. The ministry stated that it does not consider a mortgage payment as an essential operating cost and so is not deducted as an expense from his rental income. The ministry argued that when the appellant's essential operating costs were deducted from his rental income his income for May, June and July 2014 would be \$762.04 (\$950-\$187.96), \$846.25 (\$950-\$103.75) and \$729.59 (\$950-220.41) which exceeds his income assistance rate of \$610.00 for the same applicable periods.

The appellant argued that the rental income is his only income and his only means of support and that he needs the rental income to cover his monthly costs in operating the home, purchasing food and paying for any other expenses that may arise.

In the reconsideration decision the ministry agreed that the appellant is permitted to deduct one-half of the EOC(utilities) to off-set his rental income as stated in Schedule B, section 6(b) EAR. The panel finds the ministry's decision not to included mortgage payments as an EOC was reasonable.

The panel finds the evidence supports the ministry's position. The evidence is that the appellant had rental income from February 2014 to June 2014 of \$950.00 and that the appellant did not report this income to the ministry which is unearned income and must be considered when determining the appellant's net income under Schedule B, EAR. The evidence is that one-half of the EOC costs of renting the suite, as calculated from the utility statements provided by the appellant, were \$187.96, \$103.75 and \$220.41, respectively, for months of March, April and May 2014.

The panel finds the appellant's net income, as calculated under Schedule B, EAR for May, June and July of 2014 would be \$762.04 (\$950-\$187.96), \$846.25 (\$950-\$103.75) and \$729.59 (\$950-220.41) respectively, which exceeds his income assistance rate of \$610.00, set out in Schedule A, EAR for the same applicable periods.

The panel finds the ministry's decision to determine the appellant was ineligible for income assistance because his net income as calculated under Schedule B, EAR exceeded his income assistance rate as set out in Schedule A, EAR was reasonable.

Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act.