

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated November 5, 2014 which held that the appellant was not eligible for November 2014 income assistance because the ministry determined that the appellant did not meet the eligibility requirements set out in section 10 of the Employment and Assistance Regulation. Specifically, the ministry held that the appellant’s earned income was in excess of the rate for which she was eligible.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 1, 10, and 28
Employment and Assistance Regulation (EAR) Schedules A and B

PART E – Summary of Facts

The documentary evidence before the ministry at reconsideration included the following:

1. A *Medical Report – Persons with Persistent Multiple Barriers* dated July 18, 2014 that lists the appellant's primary medical condition as Fibromyalgia (onset February 1, 2007) and secondary medical condition as General Anxiety Disorder (onset February 1, 2007).
2. A handwritten page dated August 17, 2014 containing quotes/estimates for the cost of the appellant to move from one community to another community.
3. A letter dated September 12, 2014 from a natural gas supplier to the appellant confirming a payment arrangement made by the appellant to pay her owing balance. The schedule called for payments of \$100 on each of September 15 and 16, 2014, and a final payment of \$175.99 on October 1, 2014.
4. A bank statement dated September 12, 2014 showing a payment of \$100 to a natural gas supplier.
5. A bank statement dated September 16, 2014 showing a payment of \$100 to a natural gas supplier.
6. An earnings report from (Employer 1) dated September 16, 2014 showing a net payment of \$191.11.
7. An earnings report from (Employer 2) dated September 27, 2014 showing a net payment of \$205.63.
8. An earnings report from (Employer 1) dated September 30, 2014 showing a net payment of \$359.35.
9. A ministry form titled "Monthly Report" dated October 6, 2014 stating that the appellant received employment income of \$191 and income from another employer of \$200.
10. A ministry form titled "Monthly Report" dated October 21, 2014 stating that the appellant received employment income of \$956. At the bottom of the statement the appellant has written: "*I was denied People with Multi barriers (sic) \$200.00 to make for a family is not enough for a family to servive (sic) on you can't save anything when trying to pay what you owe out. Shouldn't of been denied*".
11. The appellant's *Request for Reconsideration*. The first part of the form was completed by a ministry worker on October 24, 2014 and at the bottom of that section the appellant has written: "*I payed \$200.00 on gas bill in Sept/14 400.00 to fix car. Payed rent Oct. 1/14 \$536.00/ still have no beds for my children/ now no heat or hot water. Denied children of file even with lawyer letter. 5 reconsiderations to do with welfare why? Denied all my requests, Social service is to help no (sic) keep families apart*". The last page of the form was signed and dated by the appellant on October 29, 2014. The appellant states that she requested reconsideration because she had additional expenses arising from moving to another community, repairs to her vehicle, and an outstanding bill from her natural gas supplier. She has had the gas to her home discontinued and has no friends or family upon whom she can rely for help. She works at 2 part-time jobs but has been sick and was unable to work for a time thereby losing income. She stated that she needs help from the ministry.
12. A doctor's note dated October 29, 2014 stating that the appellant ". . . will be off work/school due to medical reasons for dates as follows: *(patient) unwell and has developed bronchitis over the past 2 weeks requiring antibiotics and an inhaler*".

In her *Notice of Appeal* dated November 12, 2014 the appellant explained that she is a single mother with 2 younger children who had been removed from her file without her having been consulted adequately. Last year she got sick and as a result lost her job and her home. Her children had to go

live with their father with whom the appellant does not have a good relationship. For a time she lost her gas service due to an unpaid bill and was without heat and hot water. Consequently her younger children were unable to stay with her. But her gas service has been restored and now her children stay with her some of the time. She works at 2 part-time jobs and was managing fine until she received her outstanding gas bill and incurred moving costs and vehicle repair costs. She is anxious to regain full custody of her children.

Prior to the hearing the appellant submitted:

- A bank statement dated November 14, 2014 showing payments of \$300 and \$242.11 to a natural gas supplier. A handwritten comment on the statement reads: "*P.S. Now short on rent*".
- a 5 page submission which included a handwritten note dated November 28, 2014 which read "To Whom it May Concern – We (name of appellant's younger daughter) and (name of appellant's son) spend 40% to 50% of time with our Mom (name of appellant). The note was signed by the appellant's younger daughter. Also included were 2 page Student Information Verification Forms for each of the appellant's younger daughter and son. In both of these forms it was indicated that the children live with their mother and not with their father. In addition, both forms listed the comment "Both parents share custody – children live with their mother" under "Additional Information". Neither form had a signature under the statement "I certify that the information on this form is correct".

At the hearing the appellant explained that she is divorced from her (ex) husband with whom she had 3 children. The eldest is a girl who lives on her own. The appellant had become sick in October 2013 when she had her younger daughter and son living with her. Before becoming sick the appellant had been working at 3 jobs and stated that she had worked as a community support worker for 24 years for a variety of organizations. She stated that she is a strong person who likes to work and doesn't have family to help her. She described herself as an "active person".

When she became ill she lost her jobs and was evicted from her place of residence. All her belongings were stolen including her furniture and family photographs, and she was without a home. Consequently, her 2 younger children had to go live with their father with the understanding that they would go back to living with their mother once she was ". . . back on her feet". She explained that her children should not be living with their dad since he drinks excessively and doesn't keep track of where the children are and what they are doing. She indicated that her ex husband unplugs the phone and interferes in her efforts to speak with her children when they are staying with him. She has asked the ministry to check on the children but they have not done so. The appellant feels that she was taken advantage of when she became sick and her younger children had to go live with their father. She stated that he has a family with money and he got a lawyer. Consequently he was awarded custody of the two younger children.

In August 2014 she moved into subsidized housing and re-applied for employment assistance. She stated that at that time she had been advised by ministry staff that she should apply as a sole recipient and was thereby eligible to receive a support payment of \$610 monthly. She encountered expenses associated with her move to her new accommodation and also had costs associated with repairs to her vehicle. After settling in to her new accommodation her children came to live with her and she had to support the cost of feeding three people. Sometimes her elder daughter would also come for meals. She explained that she spoke with a ministry worker about obtaining additional support because she was now responsible for the cost of feeding her children but she was advised that this was not possible because the 2 younger children were not on her file. She is trying to get

ahead but feels that the ministry has been slow and unresponsive to her requests for help. She suffers from Fibromyalgia which causes her to feel tired and affects her memory. She stated that she has applied for Persons with Disability designation.

In response to a question from the panel the appellant confirmed that her income for September 2014 was \$956.09.

The ministry explained that at the time the appellant re-applied for income assistance her children were not living with her and that there was a court order that stated that the two younger children were in the custody of their father. The ministry noted that the two younger children can only be added to the appellant's file with appropriate documentation such as a new court order or a legal agreement between the appellant and her ex husband to vary the existing court order. Neither of these has been provided by the appellant. Accordingly, the ministry had no choice but to treat the appellant as a sole applicant for assistance. The ministry noted that the handwritten note from the appellant's younger daughter dated November 28, 2014 and the attached *Student Information Verification Forms* would need to be checked and verified. But they would not be sufficient to establish that the appellant has custodial rights.

In response to a question from the panel the ministry was unable to state whether the two younger children were on the appellant's file when they were living with her prior to her becoming sick in October 2013. The ministry indicated that this information was not available. The appellant explained that when she and her husband divorced in 2007 there was a court order granting shared guardianship of the two younger children but the more recent court order granted custody of the children to her ex husband.

The ministry indicated that it had no objection to the admission of the bank statement dated November 14, 2014 showing payments of \$300 and \$242.11 to a natural gas supplier. But the ministry did object to the admission of the 5 page submission which included a handwritten note dated November 28, 2014 and the 2 page Student Information Verification Forms for each of the appellant's younger daughter and son. The ministry's objection was due to the lack of verification for the submission, the fact that it had just been received the morning of the hearing, and that it was not considered during the Reconsideration.

The panel admitted the oral testimony as being in support of the information before the ministry at reconsideration, in accordance with section 22(4) of the Employment Assistance Act (EAA). In addition, the panel admitted the 5 page submission which included a handwritten note dated November 28, 2014 and the 2 page Student Information Verification Forms for each of the appellant's younger daughter and son as being in support of the information before the ministry at reconsideration, in accordance with section 22(4) of the Employment Assistance Act (EAA) because it is in support of the appellant's claim that the appellant's younger children live with her. The panel did not admit the bank statement dated November 14, 2014 as it was not in support of the information before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant income assistance for the month of November 2014 based upon section 10 of the EAR because the appellant's earned income was in excess of the rate for which the appellant would be eligible otherwise. 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,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 1 (a).]
- (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;

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.

Schedule A

Income Assistance Rates

(section 28 (a))

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and 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:

"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	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

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

Schedule B

Net Income Calculation (section 28 (b))

Deduction and exemption rules

- 1 When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,
- (a) the following are exempt from income:
- (i) any income earned by a dependent child attending school on a full-time basis;
 - (ii) the basic family care rate paid for foster homes;
 - (iii) Repealed. [B.C. Reg. 48/2010, 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;
 (xi) 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;
 (xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program,
 (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.

The appellant's position is that she needs the income assistance for November 2014 because she has incurred expenses for her recent move and for repairs to her vehicle. In addition, she has her two younger children living with her and this results in additional costs of feeding them and caring for them. Since the income assistance she receives is appropriate for a single person living alone she does not have enough money to cover her living expenses. She believes that her two younger children should be added to her file and this would result in a more adequate level of income assistance being available to her.

The ministry's position is that the appellant's income for the month of September exceeded the amount of income assistance to which the appellant was entitled and therefore the ministry had no choice but to determine that the appellant was not entitled to receive income assistance for November 2014 in accordance with EAR section 10. In addition, the ministry noted that the children's father has custody of the two younger children and therefore the children cannot be added to the appellant's file until the ministry receives legal documentation that establishes that the appellant has custody of the two younger children.

Panel Decision

The panel noted that neither party disputed the fact that the appellant's earned income for the month of September 2014 was \$956.09. So the issue was what level of income assistance was the appellant entitled to receive. The appellant claimed that her two younger children lived with her and therefore should be on her file. But the panel noted that the appellant did not dispute the fact that the most recent court order awarded custody of her two younger children to their father. The panel accepts the appellant's testimony that the children are currently living with her but the panel finds that the ministry reasonably determined that the children could not be added to the appellant's file since the children's father has been awarded custody. Accordingly, the panel finds that the ministry reasonably determined that the appellant was eligible to receive income assistance as a single person with no dependants. As noted in the Reconsideration Decision this results in the appellant being eligible for a monthly income assistance of \$610. In addition, the ministry allows an additional \$200 in earned income to be exempted as per section 3(6)(a) of Schedule B of the EAR. Since the

appellant's income for September 2014 (\$956.09) exceeds the appellant's income assistance together with the exemption ($\$610 + \$200 = \$810$) the panel concluded that the ministry reasonably determined that the appellant was not eligible to receive the November 2014 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 for November 2014 was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.