

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision of February 15, 2015 wherein the ministry determined that the appellant received \$855 of unearned income in January 2015 in the form of a superannuation payment and that the funds do not qualify for an exemption based on the legislated list of allowable exemptions contained in The Employment and Assistance Regulation Schedule B. The ministry determined the appellant is ineligible for assistance, pursuant to EAR section 28, for March 2015 because her unearned income, as defined by the EAR, exceeded the shelter and support amount she was eligible for.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 11  
Employment and Assistance Regulation (EAR) Sections 1, 10, 28, 33, Schedule B

## PART E – Summary of Facts

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

- A cheque stub dated December 17, 2015 from a Superannuation Fund organization. The stub shows a cheque made out to the appellant for \$855.
- A letter from a union dated December 2014. The letter explains that the cheque the appellant received is the result of a court-approved settlement between the appellant's past employer and the union regarding the pension plan. The funds being distributed are part of a "surplus distribution payment" from the plan.
- A 2015 T4 form in the name of the appellant from her old employer showing a payment of \$950 and an income tax deduction of \$95.
- A letter written by the appellant dated February 11, 2015. She writes:
  - The \$855 she received was from a settlement that came from a surplus distribution
  - She worked for this employer from 1985 to 2000
  - The payment is from earnings she made while she was employed
  - Her contribution to the superannuation plan was not optional
  - She feels that she should have \$500 exempted as allowed for earned income
  - She is required to declare the money as taxable income on her taxes

At the hearing the appellant told the panel that her superannuation is directly tied to her earnings as an employee from 1985-2000 and it is not an age-based pension like Old Age Pension. She reasoned that since any money she receives from her superannuation is due to contributions she made as an employee it therefore should be considered earned income when calculating her allowable earning exemption. The appellant added that the legislation does not include details on how superannuation funds that are paid out due to a court settlement should be handled and suggested that the legislation be updated to be more detailed. The appellant stated that since superannuation is only available to people who have worked, the superannuation funds paid out should be considered earned income and she should be allowed to keep \$500 as allowed by the earning exemption. She also questioned if the money she received can be considered a "superannuation benefit" since the documents that accompanied the cheque describes the money as a "surplus distribution payment" versus a benefit.

At the hearing the ministry told the panel that superannuation is clearly listed in the legislation as unearned income. The ministry was satisfied that the \$855 that the appellant received is a superannuation benefit because the cheque was issued by the superannuation fund organization and because the accompanying letter read that the \$855 is a distribution from the appellant's superannuation fund. The ministry added that although most superannuation programs include contributions from both the employee and the employer, even if the appellant's superannuation fund was solely funded by the employee, any money she receives from the fund would be treated as unearned income.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant received \$855 of unearned income in January 2015 in the form of a superannuation payment and that the funds do not qualify for an exemption based on the legislated list of allowable exemptions contained in The Employment and Assistance Regulation Schedule B. The ministry determined the appellant is ineligible for assistance, pursuant to EAR section 28, for March 2015 because her unearned income, as defined by the EAR, exceeded the shelter and support amount she was eligible for.

The relevant legislation is as follows:

### EAA

#### Reporting obligations

- 11 (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must
- (a) submit to the minister a report that
    - (i) is in the form prescribed by the minister, and
    - (ii) contains the prescribed information, and
  - (b) notify the minister of any change in circumstances or information that
    - (i) may affect the eligibility of the family unit, and
    - (ii) was previously provided to the minister.
- (2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

### Employment and Assistance Regulation

#### 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) tax refunds,
- (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;

**"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*;
- (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) widows' or orphans' allowances;
- (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;

#### 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.

#### Monthly reporting requirement

- 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, B.C. Reg. 95/2012:
    - (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.

### Employment and Assistance Regulation, Schedule B

#### Deduction and exemption rules

##### Exemptions — unearned income

- (1) The following unearned income is exempt:
- (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 that 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*;

(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(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.

The argument of the appellant is that the money she received is part of a superannuation payout from a past employer and should be considered as earned income. The appellant argues that her superannuation was part of her over-all pay package from her previous employer and was directly linked to her earnings and therefore is earned income. If the money is considered earned income as the appellant argues, she would be entitled to have a \$500 earning exemption applied to her March 2015 assistance calculation.

The ministry's position is that superannuation payments are defined as unearned income in the legislation, EAR 1 (e). The ministry maintains that, as it is unearned income, it is not subject to an earning exemption in the same way earned income would. The ministry maintains that the appellant's unearned income for January 2015 is in excess of her shelter and support amount she was eligible for and she is therefore ineligible for income assistance in March 2015.

The panel considered the appellant's argument that because superannuation was part of her over-all pay package from her previous employer, and was directly linked to her earnings, it is therefore earned income. The panel accepts that superannuation may have been a benefit relating to her employment agreement, however the legislation is unambiguous in defining superannuation payments as unearned income. The panel finds that the ministry was reasonable to determine the \$855 superannuation benefit the appellant received in January 2015 is unearned income as defined by EAR 1 (e).

The panel considered the appellant's argument that the \$855 is a "surplus distribution payment" versus a "superannuation benefit" as defined by the legislation. The panel is left to determine if the ministry was reasonable to consider if a "surplus distribution payment" is synonymous with "benefit." The panel was not given any evidence to support a distinction between the two descriptions. The appellant presented no further details about the terms or reasons of the court-approved payout to the members of the superannuation fund. Considering the evidence before it, the panel finds that the ministry was reasonable to consider the \$855 paid to the appellant from the superannuation fund organization to be considered a "superannuation benefit" for the purposes of determining whether the income was earned or unearned.

The panel considered the ministry's determination that the \$855 received by the appellant is unearned income and does not qualify for one of the exemptions listed in EAR Schedule B. The panel was not provided evidence to suggest that the money was eligible for an allowable exemption. The panel reviewed the applicable legislation and finds the ministry was reasonable to find the \$855 that the appellant received is not eligible for an exemption to unearned income listed in the EAR Schedule B.

As the \$855 is unearned income, the panel finds that the ministry was reasonable to determine the appellant is ineligible for assistance for March 2015 because her unearned income exceeded the shelter and support amount she was eligible for as determined under the EAR section 28.

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