

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 8, 2015 (and amended July 15, 2015) in which the Ministry reduced the Appellant’s income assistance for June 2015, due to actual shelter costs as calculated under Schedule A of the Income and Assistance Regulation (“EAR”) and a deduction for unearned pension income pursuant to section 28 to which no exemptions apply under Schedule B of the regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation – EAR – sections 1, 28, and 33; Schedule A and Schedule B

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on June 26, 2015 that references his letter to the Ministry dated June 26, 2015 in which he requested urgent reinstatement of the previously approved level of income assistance.
2. The Appellant's budget sheet – two versions: (i) revised April 27, 2015 and (ii) updated June 25, 2015. His monthly shelter costs include rent of \$1,200 per month, electricity \$100, internet/phone \$40, home insurance \$25, and mobile phone \$160. His income includes a pension annuity of \$225 per month, income assistance of \$235/ \$105 (with notations "reduced from \$610" and "variable amount"), and a loan from a family member for \$1,200. The Appellant's total monthly income was \$1,660 (reduced to \$1,530) and his monthly shortfall increased to \$905 as of June 25, 2015.
3. A document titled [Appellant's name] - Basic Facts and Timeline – two versions: (i) May 2015 and (ii) June 2015, in which he noted that he has resided at his current address since January 2015 after living in unsafe, temporary accommodations following his repatriation to Canada in January 2014. He worked in another country from 2005 to 2013 where he became permanently disabled and was bankrupted by medical costs. Upon his return to Canada, he immediately applied for income assistance and in March 2014, was approved for \$610 per month, shelter and support allowances. He applied for Persons with Disabilities ("PWD") designation in June 2014; was denied; reapplied and is awaiting a decision.

In April 2015, his income assistance was suspended during a review by the Ministry, despite verbal assurances otherwise. Following submission of extensive information, his income assistance was reduced to \$105 per month "against a minimum amount he requires to live" (\$2,435). He requested reconsideration of the decision and information on what emergency help was available and stated that none was given and the Ministry advised him that he was being penalized as he had sourced funds from family and from loans. The Appellant stated that he is now involving "all with executive responsibility" to investigate, urgently reinstate his previous level of income assistance, and approve his PWD status.

4. Two letters to the Appellant from an annuity administrator, both dated April 23, 2015 that stated the following:
 - (a) They cannot assess the Appellant's eligibility to sell the rights to a third party in return for cash until legislative changes take effect (April 2016 if passed).
 - (b) His pension start date was June 22, 2006 with a payment frequency "monthly in advance". The current annual gross amount is 1,523.28, foreign currency. An attached Summary of Payments listed an annual net rate for the years 2009 to 2014 of 1,523.28, foreign currency, and a monthly net payment of 126.94 foreign currency from May 2014 to April 2015. A notation stated that the pension amounts are converted to Canadian dollars using the Bank of Canada currency converter.
5. A Personal Assessment bank statement dated April 21, 2015 indicating the Appellant's total assets to be \$748.66 and his total liabilities \$349.43. His net worth is \$399.23.
6. Bank profiles and Statements of Accounts indicating accounts in the name of the Appellant:
 - (a) "Bank A" dated April 21, 2015 indicating three accounts: a chequing account with a balance of

\$247.35; a savings account with a balance of \$501.25 (the Appellant explained that he is required to hold \$500 to secure his credit card); and a credit card account.

(b) "Bank B" dated April 24, 2015 with an attached sheet showing no accounts and one dollar in assets within the past six months.

(c) "Bank C" dated April 30, 2015 showing a balance of \$330.38 on April 1, 2015.

(d) "Bank D" (his previous country of residence) – Final Statement, dated March 10, 2014 showing a pension credit of \$205.21 on February 19, 2014 and an ending balance of zero with notation stating "Final statement attached - Closed February 24, 2014".

7. Bank statements – Deposit Account History Financial Inquiry (59 pages) for the period March 1, 2014 to April 21, 2015. Amounts credited included loans, income assistance, a deposit for a credit card, and a monthly pension in varying amounts ranging from \$218 to \$236 per month. Debits included amounts for rent and other shelter costs as well as living and personal expenses.

8. A letter to the Ministry from the Appellant dated May 11, 2015. The Appellant confirmed that his monthly rent is \$1,200, and he also has to pay for electricity, a telephone line, and renters insurance. A family member ("the relative") initially loaned him money for a motel where he stayed from January 21 to December 31, 2014 and he had forwarded copies of rent paid (inclusive of utilities) for that period. He found more suitable accommodation at the beginning of this year but due to his unemployed status and lack of financial history in Canada, he was unable to meet the credit worthiness required to rent there. The rent has to be paid directly to the property management company ("property company") through a guaranteed payment. This is added to an accumulating loan from the relative that the Appellant hopes to be able to repay once he is employed. The Appellant referenced an attached copy of a letter from the relative with a statement/ ledger of payments made.

9. A letter from a Ministry investigative officer ("the investigator") to the Appellant dated May 13, 2015. The investigator advised that the Ministry conducts file reviews for the purpose of determining or reviewing income assistance and has completed a review of the Appellant's file. Based on the information available, the Appellant's income assistance has been reduced for the following reasons:

- He has a monthly pension income in the amount of 126.94, foreign currency per month. The income is considered unearned income and is deducted dollar for dollar from his income assistance benefits each month.
- Both the relative and property company confirmed that the relative pays rent on the Appellant's behalf for his current residence, in advance on a quarterly basis. The relative transfers the money directly to the property company's account. The rent is paid up to June 30, 2015 and the next quarter's payments will be transferred on June 15, 2015 from the relative's bank account.
- The Appellant's monthly unpaid eligible shelter costs are one basic phone line, contents insurance, and hydro totalling \$103.45.
- The Appellant is required to report all income, changes of circumstance, and asset changes every month in order that the Ministry may accurately determine his monthly supplement. The investigator attached copies of employment and assistance legislation regarding reporting obligations, income assistance and shelter calculations, and deduction and exemption rules including deductions from unearned income.

- 10.** A letter to the property company from the investigator dated May 7, 2015, asking the company to confirm an arrangement whereby the Appellant's rent is paid direct by the relative in advance on a quarterly basis.
- 11.** An email exchange from December 2014, between the property company and the relative. On December 19, 2014 the company emailed its banking information to the relative under the subject heading "International deposit". The company asked the relative to confirm the transfer and the amount. By reply on December 20, 2014, the relative stated that he had transferred \$4,200 to the property company's account. He confirmed that "this represents the Appellant's first quarters rent of \$3,600 plus \$600 damage deposit refundable, less any dilapidation charges at the end of the one year tenancy".
- 12.** A Tenant Ledger sheet in the Appellant's name dated July 5, 2015 that confirms rent of \$1,200; a deposit of \$600; and a move in date of January 1, 2015. Rent and security deposit totalling \$4,182.50 was paid via wire transfer on December 24, 2014 and applied to the months of January, February, and March 2015. Rent of \$3,617.50 was paid via wire transfer on March 9, 2015 and applied to the months of April and May 2015.
- 13.** A Residential Tenancy Agreement between the Appellant and the property company, signed on December 29, 2014.
- 14.** A letter to the investigator from the relative, dated May 11, 2015. The relative explained that the Appellant recently returned to Canada following a debilitating illness, and found it very difficult to establish himself and find employment. While he continues to seek permanent employment he requires "financial support to cope with day-to-day living" which the relative has provided, including "funds for the deposit and the rent" which he pays quarterly in advance. The relative emphasized that he regards these payments "as gifts, not loans", and he makes them to provide secure accommodation while the Appellant seeks regular employment and becomes self-supporting without state or private assistance. It is the relative's expectation that the Appellant will have paid work sufficient to support himself, as the relative is retired and his ability to provide financial support will end.
- 15.** The Appellant's telephone bill of April 17, 2015 showing internet of \$35 with a hand-written notation "phone line". Total due was \$79.98 which included an outstanding balance from the last bill.
- 16.** The Appellant's electric bill dated April 24, 2015 showing \$85.11 for two months usage plus a \$94.68 credit from the last bill.
- 17.** Certificate of Property Insurance for the period February 2015 to February 2016 for tenant's insurance of \$302 in the Appellant's name, for his rental address.
- 18.** A statement of insurance premiums for the Appellant, for \$25.90 per month for the months March to December 2015, with hand-written notation "insurance payments – rental requirement".
- 19.** Case Notes from the investigator – ten pages for March 31 to June 2, 2015. The investigator provided a detailed narrative of the investigation; highlights are as follows:
- Compliance review commenced because the Appellant's shelter costs exceeded 70% of his income assistance. In March 2014, his rent was \$1,000, for a motel where the Appellant was

residing. His income assistance was \$610 per month. The investigator noted "How is client managing to pay \$1,000 per month?"

- The motel informed her that the Appellant had moved out in January 2015. He confirmed his new address, and the arrangement whereby his relative pays the rent to the property company, and also deposits money into the Appellant's account at Bank A "to top up his income assistance".
- Throughout April and May, 2015 the investigator had several phone conversations with the Appellant; requested complete documentation; and advised him of his obligation to report a change of circumstances as well as all assets including funds from his relative (which the Appellant said are considered "privately deferred loans"). She also asked for verification of pension funds (which showed up on the statement from Bank D). He admitted he receives a pension annuity of approximately \$200 per month (fluctuates based on exchange rates). He was asked to provide information on whether he can convert the annuity to cash as this would affect whether he is eligible for any income assistance at all. The investigator "very clearly explained" that his income assistance will be reduced by the amount of his pension.
- In April 2015, the investigator noted "no shelter expenses" as the Appellant had moved without advising the Ministry and still needed to provide shelter documentation. The investigator noted that as rent is paid direct by the relative, shelter would be comprised of utility costs and basic phone service. The Appellant advised that he had to pay contents insurance as well. Client requested "full IA benefits" to be reinstated and was advised that no formal decision had been made for May as information was still needed to determine entitlement.
- In May 2015, the Appellant advised that he regards all of the assistance from his relative as an "accumulating loan"; however, the investigator noted that no repayment terms were reported and to be considered a loan, repayment terms must exist prior to acceptance; otherwise, the income may be viewed as a gift. The investigator noted that gifts must be "on a one-time basis...not periodic or ongoing" as such payments fall within the definition of unearned income. The investigator received the relative's confirmation that the payments are gifts, not loans.
- The Appellant's actual shelter costs were calculated at \$103.45 per month for phone, hydro, and contents insurance and the investigator noted that a notice of decision to reduce income assistance was sent to him. A reconsideration package was to be prepared per the Appellant's request.

Additional submissions

1. In his Notice of Appeal dated July 22, 2015, the Appellant stated that he had been told his "full IA", \$610 per month, would be reinstated while awaiting disability assistance. Also, the Ministry gave him no warning of "suspension of IA from April". He attached an email to the tribunal, dated July 25, 2015 confirming his situation.
2. A letter to the Appellant from the Ministry dated July 15, 2015 regarding an amendment to the reconsideration decision of July 8, 2015. The Ministry stated that it discovered an error in the calculation of the Appellant's shelter allowance and the amended monthly shelter allowance is \$77.55, a reduction of \$21.38. The Appellant's unearned income reduction of 126.94 foreign currency per month, remains unchanged.

3. The Appellant submitted seven additional documents at the hearing for the panel's consideration:

- Two letters to the Ministry, dated May 4, and July 9, 2015 in which he reaffirmed previous information and stated that the Ministry did not give him the opportunity to discuss the situation in person or to plan for the financial consequences when they suspended his income assistance without warning.
- A letter from the Appellant to eleven representatives including the premier, government officials, and representatives of advocacy groups. He described his aforementioned circumstances and requested reinstatement of income assistance until he receives PWD benefits. He stated that the premier's office "put it forward for review" and he received the reconsideration package.
- A one-page written submission outlining the Appellant's argument for the hearing, entitled "Appeal Tribunal – August 17th, 2015".
- A copy of the Appellant's curriculum vitae (in support of his job search);
- A two-page Basic Facts and Timeline updated to August 2015; and
- His Monthly Budget sheet updated to show the Appellant's increased monthly shortfall of \$933 per month and showing his new lowered assistance rate of \$77 monthly.

4. In his oral testimony, the Appellant summarized his circumstances and presented his argument regarding "matters of contention" with the Ministry's decision-making process. He added that although the lease for his current residence is in his name, the property company required a guarantor who would make the payments directly to the landlord.

Admissibility

The Ministry objected to the timeline and budget documents on the basis that they do not represent the reconsideration decision that was made as of July 8, 2015 with amendment to the shelter rate on July 15, 2015. The Ministry had no objections to the other submissions.

The panel admits all of the above submissions under section 22(4)(b) of the *Employment and Assistance Act*, as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made, except for the Appellant's curriculum vitae. The panel finds that this resume is not relevant to the Ministry's decision to reduce the Appellant's income assistance and it was not before the Ministry at reconsideration. The panel finds that the remaining documents and oral testimony corroborate the Appellant's information, regarding his background and his present circumstances, which was before the Ministry at the time the decision being appealed was made.

At the hearing, the Ministry reviewed the reconsideration record and clarified that it made two decisions: one regarding the reduction of the Appellant's shelter allowance, and the other regarding the reduction of his income assistance due to annuity income. In April 2015, he received the full allowance of \$610; and in May he received the support portion of \$235 as the investigation was still ongoing and the Ministry had not yet started deducting the annuity. There was no shelter allowance that month as the Ministry was still calculating actual shelter costs and awaiting more information. June 2015 was the first month that both shelter and income assistance were reduced, and in July and August 2015, the Appellant's shelter was further reduced pursuant to the Ministry's amended reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision, to reduce the Appellant's shelter costs and deduct annuity income from his income assistance for June 2015, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant sections of the EAR are as follows:

Definitions

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;
- (e) superannuation benefits;

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 For the purposes of section 11(1)(a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:
 - (i) change in the family's assets;
 - (ii) change in income received by the family unit and the source of that income;

SCHEDULE A Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 Subject to 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.

Monthly support allowance

2 (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,

| 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 |

Monthly shelter allowance

4(2) The monthly shelter allowance for a family unit 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 Family Unit Size | Column 2 Maximum Monthly Shelter |
|------|------------------------------|-------------------------------------|
| 1 | 1 person | \$375 |

How actual shelter costs are calculated

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

(d) hydro;

(f) rental of one basic residential single-line telephone.

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

(a) rent for the family unit's place of residence;

(c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;

SCHEDULE B Net Income Calculation

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;

(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] 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 or to the surviving spouse or dependent children of that person;

(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;

- (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,
- (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,
- (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.
- (xxiii) Repealed
- (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,

(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.

(xxxii) 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

(xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*,

(xxxvii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age,

(xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry.

(xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,

(xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry,

(xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parent program,

(xliv) a BC early childhood tax benefit,

(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

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

7 (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 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 saving 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*.

(f) a tax refund.

Appellant's Position

The Appellant argued that the reconsideration decision should be rescinded because the Ministry did not look at the whole picture. He stated that the Ministry views his PWD application as a separate process when it is actually tied together with his income assistance. He argued that it is unacceptable that no one is taking into account that time is going by without his "full income assistance" while waiting for a PWD decision. The Ministry denied his income assistance without warning, then reduced it to \$105 per month (and now only \$77), while ignoring his disability limitations. Their actions wiped him out financially and "took away his mobility" as he was using his pension annuity to pay for his vehicle insurance. He is in the hole every month and going into debt using his credit card to survive.

While the Ministry told him verbally that the \$610 would be reinstated "because he is in the appeal process", they would not confirm it in writing. However, his letters to the Ministry confirm what he was told. The Appellant was annoyed when his relative wrote that the "loans" are "gifts", as it was understood between them that the rent and other money was always considered to be a loan and the Ministry has not looked at the "moral responsibility". While the investigator gave him an extension to provide all of his information, it was cruel for the Ministry to suspend his income assistance without warning, despite all his efforts to supply the information.

The Appellant argued that he has "done everything by the book" and did not try to withhold information about his pension annuity as it was always on his bank statements; he did not know he had to report it but he amended his monthly reporting form to declare it when the Ministry asked him to do so. He "understands about the legislation" but it should be changed "to allow these things". He is most upset by the Ministry's process as they let him down by not inviting him to discuss the situation in person, and he is not letting the issue go.

Ministry's position

In the reconsideration decision, regarding the shelter allowance reduction, the Ministry argued that the Appellant's rent is zero dollars per month as his relative is paying the full rent costs. Further, house insurance premiums can only be included if the person owns the property or is a co-op or strata owner and there was no evidence of any of those situations. The Ministry noted that while the Appellant's phone bill indicated internet and did not demonstrate telephone costs, the Appellant reported cell phone costs in his monthly budget; therefore, the Ministry will allow \$35 for basic phone access. While the Appellant's hydro bill showed \$85.11 for two months usage, it did not show the time period for an outstanding amount from past usage so the Ministry could only include current charges when determining an allowance for electricity. The Ministry noted that it was not making direct payments to the utility company on the Appellant's behalf.

Regarding the reduction in the Appellant's support allowance, the Ministry argued that there is no discretion in the legislation (EAR section 28) to not reduce income assistance by the amount of the

client's net income. The Ministry argued that the Appellant's pension annuity falls under the definition of "superannuation" in EAR section 1. Further, the Ministry could find no applicable exemptions or deductions for the pension income under EAR Schedule B. The Ministry noted that income is to be reported per the schedule in EAR section 33 and pension income received in April would be deducted from the Appellant's June 2015 income assistance.

At the hearing, the Ministry addressed the Appellant's concerns that the proper process was not followed, and reiterated that PWD is a separate matter that is not the subject of this appeal. The Ministry explained that the letter from the investigator (of May 13, 2015) is "the normal way of informing people" of a decision to reduce income assistance. The Ministry explained that a template letter is used because it explains the legislation and the right to reconsideration and it would take too long to provide all of the information to clients over the phone or in person and go through all the pages of attached legislation. Further, the Ministry is employing more and more electronic processes and that is the norm for other agencies as well; however, clients can request an in person meeting with the Ministry.

Panel's decision

1. Reduction in shelter allowance

The panel finds that the Ministry reasonably determined that the Appellant's eligible shelter costs consist of basic telephone (\$35) and hydro (\$42.55 per month based on the April 24, 2015 bill in the reconsideration record) in accordance with EAR Schedule A. The panel finds that the Ministry was reasonable in not allowing anything for rent as both the property company and the relative confirmed that rent was being paid direct to the company on the Appellant's behalf. The Appellant also acknowledged this arrangement. The panel finds that the Ministry was reasonable to conclude that the relative is paying the full rent cost. Further, the Ministry was reasonable in not allowing an amount for tenant's insurance as there was no evidence that the Appellant is a home/co-op/ strata owner, thereby making him eligible to claim insurance pursuant to subsection 5(2)(c) of Schedule A.

2. Reduction in support allowance

Section 1(1) of the EAR defines unearned income as "any income that is not earned income" and specifies money, annuities, and superannuation benefits in subsections 1(a) and (e). The panel finds that these definitions capture the Appellant's pension benefits and that the Ministry was reasonable in concluding that it falls under superannuation benefits. The panel notes that the Ministry is required to follow the legislation and therefore had no option but to view the monthly pension annuity as unearned income. The panel further notes that neither the Ministry nor the panel has the authority to rewrite the legislation. Accordingly, the panel finds that the Ministry reasonably determined that unearned income "includes, without limitation, money or value received from" the Appellant's monthly annuity under EAR section 1(1).

Under section 28 of the EAR, the amount of monthly income assistance is determined by deducting the family's net income calculated under Schedule B of the regulation from the amount of shelter and support allowances calculated under Schedule A. Sections 1, 6, and 7 of Schedule B set out types of unearned income that may be excluded from the calculation of the income that must be deducted. Section 1 describes monies that are exempt from income, including benefits for children, government program payments available to eligible individuals, and payments from legal agreements and court

settlements. Section 6 permits an exemption for income tax deducted at source from EI benefits; and section 7 exempts a variety of unearned income including monies relating to real property transactions, federal government benefits, and court awards.

The panel notes that none of the deductions and exemptions listed in sections 1, 6, and 7 of EAR Schedule B include or apply to pension annuity payments. The panel therefore finds that the Ministry reasonably determined that no deductions or exemptions applied to the Appellant's pension annuity income and, thus, the amount of approximately \$200 per month (depending on the exchange rate for foreign currency) has to be deducted from the Appellant's income assistance rate pursuant to EAR section 28. The panel further finds that the legislation is directive in that the Ministry may provide "not more than" the amount calculated under EAR section 28; therefore, the Ministry reasonably determined that it does not have the discretion to not reduce the Appellant's support allowance by the amount of his monthly pension annuity. Further, despite the Appellant's argument that the reduction has left him destitute, the EAR permits only those exemptions that are listed in Schedule B; the Ministry had no legislative authority or discretion to grant an exemption on the basis of the Appellant's financial hardship. Accordingly, the panel finds that the Ministry was reasonable in deducting the pension payments pursuant to EAR sections 1, 28, and Schedule B.

In addition, the panel finds that the Ministry was reasonable to require the Appellant's pension annuity benefits to be reported as soon as he received them. EAR section 33 clearly requires "any change in income" [subsection 33(b)(ii)] and the source of that income to be reported. As the Appellant's pension annuity was fluctuating each month in accordance with foreign currency exchange rates, he is required to report the amount he receives on each of his monthly reports.

3. Process arguments

Regarding the Appellant's arguments that the Ministry did not take into account his PWD application; that they verbally agreed to reinstate his "full income assistance"; and that they suspended and reduced his income assistance "without warning", the panel notes that PWD designation is a separate process and none of the sections of the EAR cited by the Ministry in the reconsideration decision at hand, apply to the Appellant's situation of awaiting a decision on PWD status. As for "agreeing" to reinstate his "full" income assistance, the panel found above, that the Ministry correctly calculated the Appellant's assistance rate in the reconsideration, and \$ 77.55 per month was his entitlement for June 2015 forward. As explained above, the Ministry does not have discretion under the EAR to provide a higher rate.

Regarding the Appellant's argument that his income assistance was suspended, then reduced "without warning", the panel notes the Ministry investigator's detailed case notes citing several telephone conversations and written exchanges with the Appellant wherein he was informed and reminded of his reporting obligations; the requirement for his pension income to be deducted from this income assistance; and that his income assistance would be reduced on the basis of both his pension income and his actual shelter costs.

Conclusion

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant. The Panel confirms the reconsideration decision.