

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated November 24, 2015 in which the Ministry found the Appellant ineligible for income assistance (IA) for December 2015 because the Appellant had employment income in excess of his income assistance rate pursuant to section 10 and Schedules A and B of the Employment and Assistance Regulation (EAR). The Ministry found that the Appellant's employment income meets the definition of earned income under section 1 of the EAR and that no additional exemptions or deductions apply under EAR Schedule B.

## PART D – Relevant Legislation

*Employment and Assistance Act* – EAA, sections 1 and 11

Employment and Assistance Regulation sections 1, 10, and 33, Schedule A sections 1, 2 and 4, and Schedule B sections 1-5

## PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of the following:

1. The Appellant's Request for Reconsideration dated November 19, 2015 in which he stated that he suddenly lost his employment because he did not pass all requirements. Due to the sudden loss of employment, shelter for the month of December 2015 is now in jeopardy during the cold months as he continues with his job search.
2. Bank statements for the Appellant's chequing account for the period August 31 to November 17, 2015, with the notation, "1,670.19 Oct. pay" and showing the following (highlighted) payroll deposits:
  - \$146.84 and \$471.86 on October 1,
  - \$353.68 on October 8,
  - \$352.95 on October 15,
  - \$372.16 on October 22, and
  - \$326.38 on October 29.
3. Information from the Ministry record indicating the Appellant is currently receiving IA as a sole recipient. His file was opened in July 2015 and he has been receiving IA since the October 2015 assistance month, effective October 1, 2015. On November 17, 2015 the Appellant provided his bank statements and stated that he had lost his job.

### *Additional submissions*

In his Notice of Appeal dated December 4, 2015, the Appellant stated that his dismissal from employment was rather abrupt and he was not given notice of termination. The Appellant also provided his argument on appeal which the panel will address in *Part F - Reasons*.

The Appellant attended the hearing with a relative whom he explained was an impartial observer. He stated that he found a new job but is only working part-time and cannot pursue his usual career for medical reasons. In response to questions from the panel, the Appellant confirmed that he has not been self-employed. The Ministry reviewed the reconsideration decision and did not submit any additional evidence. In response to questions, the Ministry explained that the \$200 earned income exemption under section 3 of EAR Schedule B is calculated on a per month basis.

The panel finds that the Appellant's oral testimony substantiates the reconsideration record concerning his loss of employment. The panel admits the testimony under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for income assistance for December 2015 because he received earned income from employment in excess of his monthly income assistance rate pursuant to sections 10 and Schedules A and B of the EAR, and did not qualify for any additional deductions or exemptions under EAR Schedule B.

The relevant sections of the legislation are as follows:

### **Employment and Assistance Act**

#### **Reporting obligations**

**11** (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time frame specified by the 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.

### **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,

#### **Limits on Income**

**10** (2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

(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

**33** (1) For the purposes of section 11(10(a) [reporting obligations] of the Act,

- (a) the report must be submitted by the 5<sup>th</sup> 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;

## Schedule A Income Assistance Rates

### Maximum amount of income assistance before deduction of net income

**1** (1) Subject to this section and section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

### 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, plus
- (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
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 to which section 15 (2) of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and



(b) the maximum set out in the following table for the applicable family size:

Item	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

## 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*], 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

(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, 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.

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- (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.
  - (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;

### **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.

(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;

### **Small business exemption**

4 (2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if

(a) the recipient is participating in a self-employment program, and

(b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and

The Ministry's position is that the Appellant is not eligible for IA for December 2015 because his income in October 2015 exceeded his income assistance rate of \$610. The Ministry noted that the Appellant's bank statements confirm that he received \$2,073.87 employment income in October and that this is the net amount after taxes and other deductions at source. The Ministry noted that the income was to be reported by November 5, 2015, thereby affecting the Appellant's December IA. The Ministry argued that only \$200 was exempt, leaving net income of \$1,823.87 to be deducted from his income assistance rate of \$610 in accordance with the regulation.

The Appellant's position is that the Ministry's decision has caused him financial hardship. His job loss was sudden and he was unable to save any of his earnings. Without his earnings, his shelter was in jeopardy and although he now has a new job, it is only part time for minimum wage, and he does not have sufficient funds for transportation and food. He is not asking for "free money" as he is trying to work and be a productive member of society. He has disclosed all the money he made and he does not dispute the amount he received in October 2015 or that only \$200 was exempt. He will abide by the legislation but is "appealing to a sympathy vote" because he needs help and would lose his job if he became homeless. .

### **Panel's decision**

The Appellant does not dispute that he had earned income of \$1,823.87. His bank statements as well, corroborate the amounts he received in October 2015. The panel finds that the Ministry reasonably determined that this employment income meets the definition of earned income under EAR subsection 1(1)(a).



[ ]

Section 10(2) of the EAR states that a family unit is not eligible for income assistance where their net income as determined under Schedule B exceeds the income assistance rate determined under Schedule A. Section 1 of Schedule B sets out the net income calculation. As noted by the Ministry, net income includes all of the earned income, minus any applicable deductions and exemptions under Schedule B sections 1 to 5:

- Section 1 lists deductions for dependents as well as deductions for individuals under various programs and legal settlements. As noted by the Ministry, none of these apply to the Appellant's employment income.
- Section 2 permits deductions at source such as income tax. As noted by the Ministry, there is no indication that these deductions were not already made on the deposit amounts shown on the Appellant's bank statements.
- Section 3 sets out that the Appellant is eligible for a \$200 earnings exemption [subsection 3(6)(a)(i)]. The panel notes that the Ministry factored it into the net income calculation.
- Sections 4 and 5 do not apply because these sections pertain to self-employment and small business operations and the Appellant is not self-employed.

As explained by the Ministry, EAA section 11 and EAR section 33 set out reporting requirements whereby income received in a particular month must be reported by the 5th day of the following month. The evidence is the Appellant reported his October employment income in November when he submitted his bank statements to the Ministry. The Ministry then applied that income to the calculation of IA for December 2015. The panel finds that the Ministry reasonably determined that the Appellant is not eligible for IA for the month of December pursuant to section 10(2) of the EAR because his income of \$1,823.87 exceeds the \$610 income assistance rate that was determined for the appellant's family size, and none of the deductions or exemptions listed in Schedule B apply to the appellant.

Accordingly, the panel finds that the Ministry's decision finding the Appellant ineligible for December 2015 IA under the EAR was a reasonable application of the regulation in the circumstances of the appellant. The panel confirms the Ministry reconsideration decision.