

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) that the appellant is not eligible for income assistance for the month of February 2016 because he received unearned income of \$1,142.00 in the form of a training allowance for living supports which, according to section 8 of Schedule B of the Employment and Assistance Regulation (EAR), must be deducted from the monthly shelter/support allowances of \$610.00 that the family unit is eligible for in accordance with sections 10 and 33 of the EAR.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 10  
Employment and Assistance Regulation (EAR) Section 33  
Employment and Assistance Regulation (EAR) Schedule B, Section 8

## PART E – Summary of Facts

The ministry had completed a “Request to Attend by Telephone” because the ministry representative lives in another community. The ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had been notified of hearing, the hearing proceeded under section 86(b) of the EAR.

### **Summary of the ministry’s information:**

In the Appeal Record Package, the ministry states that the appellant has been in receipt of income assistance as a sole recipient since September 15, 2015. The ministry further states that the appellant was in receipt of training allowances for the month of December 2015, and a portion of these training allowances could be exempted under section.8 of Schedule B of the EAR. The amount received for living supports of \$1,142.00 could not be exempted because it was received as living supports. Under section 33 of the EAR, the appellant is required to report this income by January 5, 2016 and the income is included in the calculation of the amounts received at the first opportunity which is the month following the month the income is reported. Under section 10 of the EAR the training allowance received in the form of living supports (\$1,142.00) exceeds the appellants shelter/support allowances (\$610.00) resulting in the appellant not being eligible for income assistance for the month of February 2016.

### **Information provided on appeal:**

The appellant’s advocate submitted a 6-page submission to the tribunal on February 22, 2016. The submission is comprised of a Release of Information to allow the advocate to participate in the hearing, a record of employment, shelter information and the Employment Program of British Columbia detailed information.

The panel determined that the additional submission provided further explanation and was therefore admissible under section 22(4) of the EAA as it was in support of the information before the ministry at reconsideration.

The advocate pointed to the discretionary powers of the minister to exempt the costs of tuition, student fees, books, equipment, supplies and transportation that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

She pointed out that all the training costs, including tuition, costs and fees, commuting and living supports should be considered training costs in its entirety and not have one component of the training costs separated. All of the components in the EPBC Program are listed as “Training – Occupational.”

She further stated that if the portion of living supports included in the training costs were going to affect the appellants’ income assistance benefits, then that should have been disclosed to him before he entered into the EPBC training program. It is highly unfair to reduce his monthly income assistance benefits for February 2016 after he entered into and completed the training program in December 2015. Had the appellant known that this would occur, he may not have entered into the training program in the first place. However, the appellant is not on PWD and must agree to an employment contract, so he had no choice.

The advocate discussed the fact that the appellant lived in one community and had to commute to

another community to attend the training program. She pointed out to the panel the fact that the cost of this travel was a part of the EPBC training program.

She further pointed to the legal precedents that all the training benefits provided should be included as training costs. She stated that when laws are written and something is to be excluded, those exclusions are clearly identified in the legislation. In this case, living supports are not specifically excluded. Section 8 of Schedule B of the EAR clearly states that training allowances are exempted and to exclude living supports is absurd.

The advocate reminded the panel that the ministry was aware of the EPBC training allowances prior to the appellant registering for the training and the appellant worked with the ministry step-by-step throughout the training period.

The advocate and the appellant argued that the \$1,142.00 living supports should be combined with the other training amounts received and the total should be exempted from reducing the income assistance benefits for February 2016.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant was not eligible for income assistance for the month of February 2016 because he received unearned income of \$1,142.00 which, according to section 8 of Schedule B of the EAR, must be deducted from the monthly shelter/support allowances of \$610.00 that the family unit is eligible for in accordance with sections 10 and 33 of the EAR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

### Applicable Legislation

#### EAR

##### 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.

### 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, (BC Reg. 334/2007)

(i) whether the family unit requires further assistance;

(ii) changes in the family unit's assets;

(iii) all income received by the family unit and the source of that income;

(iv) the employment and educational circumstances of recipients in the family unit;

(v) changes in family unit membership or the marital status of a recipient.

(vi) any warrants as described in section 15.2 (1) of the Act. (B.C. Reg. 85/2012)

### Schedule B – Net Income Calculation (section 28(b))

#### Minister's discretion to exempt education related unearned income

**8** (1) In this section:

"**day care costs**" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit; (B.C. Reg. 145/2015)

"**education costs**", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies. (B.C. Reg. 145/2015)

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

(a) a training allowance;

(b) student financial assistance;

(c) student grants, bursaries and scholarships;

(d) disbursements from a registered education savings plan.

(B.C. Reg. 145/2015)

(3) An exemption under subsection (2) may be authorized in respect of a student who is

(a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,

(b) an applicant or a recipient enrolled

(i) as a part-time student in an unfunded program of studies, or

(ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or

(c) a person in a category listed in section 29 (4) [*consequences of failing to meet employment-related obligations*] of this regulation enrolled as a part-time student in a funded program of studies.

(4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

(a) a training allowance;

(b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the *Canada Student Financial Assistance Act*;

(c) disbursements from a registered education savings plan.

(B.C. Reg. 145/2015)

(5) An exemption under subsection (4) may be authorized in respect of a student who is

(a) a recipient enrolled as a part-time student in a funded program of studies, or

(b) described in section 16 (1.1) [*effect of family unit including full-time student*] of this regulation.

#### **Appellant's position:**

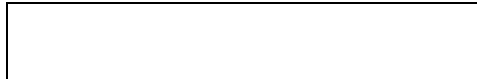
The appellant's position is that the reconsideration decision is unreasonable on the basis that the training benefits received should all be exempt because they were provided for the purpose of allowing the appellant to participate in an occupational training program that would lead to full employment while continuing to receive income assistance.

#### **Ministry's position:**

The Ministry's position is that the unearned income amount received in December 2015 from training allowances through the Employment Program of BC (EPBC) of \$1,142.00 living supports exceeds the appellant's shelter/support allowances of \$610.00 resulting in the appellant not being eligible for assistance for the month of February 2016.

#### **Panel's decision:**

Under EAR, Schedule B, section 8(1) – the minister has discretion to exempt education related unearned income. Specifically, the minister can exempt “education costs” in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies. In the case of the appellant, the exemption applies to the tuition amount of \$7,390.00, the other incidental training related costs of \$260.00, the commuting costs of \$517.00. The appellant also received \$1,142.00 in the form of living supports for the month of December 2015. The panel finds that living supports are not included in the “education costs” that may be exempted by the minister. The living supports amount of \$1,142.00 exceeds the shelter/support allowances that the appellant receives in the form of income assistance and in accordance to the EAR section 10 and section 33 are correctly deducted from the \$610.00 income



assistance benefits.

In summary, the panel finds that the ministry's reconsideration decision was reasonably supported the evidence and was a reasonable application of the applicable legislation in the appellant's circumstances.

The panel confirms the ministry's reconsideration decision.