

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 6, 2016, which found that the appellant's assistance for the month of January 2016 must be reduced by his net income of \$383.06 composed of both earned and unearned income received in November 2015, pursuant to Section 28 of the *Employment and Assistance Regulation* (EAR).

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Undated handwritten notes in which the appellant wrote that he met with named people on specific dates in October, November and December 2015 earned gross income to which he applied expenses for a net amount. For November 2015, he wrote that he received Canada Pension Plan (CPP) benefits of \$198.60 and \$385 “gross” fees less \$200 “expenses”, for a net amount of \$135 (sic); and,
- 2) Request for Reconsideration dated January 4, 2016, with attached memo from the appellant.

In his Request for Reconsideration and letter, the appellant wrote that:

- In order to earn money, he needs to incur expenses for a membership fee, rental of a room and website costs.
- His expenses average out to \$50 per event. In October and November 2015, the expenses amounted to \$200 per month. In December 2015, it amounted to \$250 because there were 5 Tuesdays.
- He believes not allowing him to deduct these necessary expense amounts to be a punishment he does not deserve.
- The decision has not only harmed him financially, but has also done damage for his recovery from his triple by-pass heart surgery he had in September.
- The stress of this matter and an investigation being conducted by the loss prevention department has set him back unnecessarily.

In his Notice of Appeal dated January 10, 2016, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that this is the way he is earning money.

At the hearing, the appellant reiterated information at reconsideration and stated that:

- Although he earns income from the service he provides, he has to pay to rent the meeting room and for a yearly membership fee and for use of a website and he does not have this money for himself.
- He advertises for an event and provides a meeting room for about 2 hours once per week and participants in his program pay \$7 per person to attend. He provides instruction to build skills and time for the participants to share ideas and network.
- He got out of hospital from his heart surgery on September 28, 2015 and he did not have the strength to go to the ministry office. Since he had the address for a contact person in the ministry’s loss prevention department, he reported his income by sending it to loss prevention and he thought it would be forwarded to the main office.
- There was a traumatic incident in his family in 2008 and he has not been able to think very well since then.
- He applied for income assistance in January 2015 when he was in hospital for a leg and heart problem. They thought his heart would be okay but he ended up having surgery in September 2015. It was suggested that he apply for Persons With Disabilities (PWD) designation but he was denied when he submitted an application.

The ministry relied on its reconsideration decision, which included information that:

- The appellant is a sole recipient of income assistance and his monthly assistance is \$610, composed of \$235 for support and \$375 for shelter.

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- In November 2015, the appellant declared CPP benefits of \$198.06 and self-employment earnings of \$385.
 - In January 2016, the amount of the CPP benefits of \$198.06 and \$185 of the self-employment earnings were deducted from his assistance.

At the hearing, the ministry clarified that:

- In order to enroll in a self-employment program, a recipient must have either PWD designation or Person with Persistent Multiple Barriers to employment (PPMB) status, as set out in the *Employment and Assistance Regulation* (EAR) and also in the ministry policy.
- An application to the self-employment program also requires a business plan.
- The appellant is in receipt of regular income assistance and has neither PWD nor PPMB designation.
- The ministry does not have the discretion to provide exemptions or exceptions that are not set out in the legislation.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant's assistance for the month of January 2016 must be reduced by his net income of \$383.06 received in November 2015, pursuant to Section 28 of the *Employment and Assistance Regulation* (EAR), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the EAR provides that:

- 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.

Section 28 of the EAR provides that:

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 of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

Section 1 of the EAR defines "unearned income" to mean "...any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- ...
- (f) any type or class of Canada Pension Plan benefits; ..."

In calculating the net income of a family unit under Schedule B, specific exemptions and deductions from unearned income are provided for as follows:

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, . . .
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 [deductions from earned income] 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 [*education-related*] 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)-(5) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 16.]

(6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:

(a) \$200, if the family unit is not described in paragraph (b), (c) or (d);

(b) \$400, if the family unit

- (i) includes a recipient who
 - (A) has a dependent child, or
 - (B) provides care to a supported child, and
- (ii) is not described in paragraph (c) or (d);

(c) \$500, if

- (i) the family unit includes a recipient who
 - (A) has a dependent child, or
 - (B) provides care to a supported child,
- (ii) the child has a physical or mental condition that, in the minister's opinion, precludes the recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week, and
- (iii) the family unit is not described in paragraph (d);

(d) \$500, if the family unit includes a person who has persistent multiple barriers to employment.

(7) A transient is not entitled to an exemption under this section.

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
 - (b) accounting and legal services;
 - (c) advertising;
 - (d) taxes, fees, licences and dues incurred in the small business;
 - (e) business insurance;
 - (f) charges imposed by a savings institution on an account and interest;
 - (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
 - (g) maintenance and repairs to equipment;
 - (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
 - (i) motor vehicle expenses;
 - (j) premiums for employment insurance or workers' compensation benefits;
 - (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
 - (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs
 - (i) and (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
 - (m) office expenses;
 - (n) equipment purchases or rentals.
- (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
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total

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or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

Ministry's position

The ministry's position is that the appellant's assistance for the month of January 2016 must be reduced by his net income of \$383.06 received in November 2015, pursuant to Section 28 of the EAR. The ministry argued that the appellant is a single recipient of income assistance and his monthly assistance amount is \$610 under Schedule A of the EAR, consisting of a support allowance of \$235 plus a shelter allowance in the amount of \$375. The ministry argued that the appellant was in receipt of CPP benefits in November 2015 of \$198.06, which are included in the definition of "unearned income" in Section 1 of the EAR, and that there are no applicable exemptions available in Schedule B to reduce this amount of income. The ministry argued that the appellant was also in receipt of self-employment income in November 2015, which is included in the definition of "earned income" in Section 1 of the EAR, with an applicable exemption of \$200 under Section 3(6)(a) of Schedule B. The ministry argued that although the appellant stated that his expenses incurred to earn his self-employment income should be allowed as a deduction, the permitted operating expenses in Section 4 of Schedule B are only available to recipients enrolled in a self-employment program and who have either PWD or PPMB status. The ministry argued that, according to Section 28 of the EAR, the appellant's income assistance for the month of January 2016 must be reduced by his net income of \$383.06 received in November 2015 and that the ministry does not have discretion to do otherwise.

Appellant's position

The appellant does not dispute that he was in receipt of CPP benefits in November 2015 in the total amount of \$198.06 or that he was in receipt of \$385 in gross earnings from his self-employment earnings in November 2015, but he argued that he should be entitled to deduct the expenses he incurred to earn his self-employment income since these monies are paid out by him. In his Notice of Appeal, the appellant argued that he is incurring expenses that, if not allowed, will take away the \$200 per month he is permitted to earn. The appellant argued that not everyone fits into the "cookie cutter" established by the bureaucracy and he knows that exceptions can and have been made by the ministry in the past. The appellant argued that there has been past trauma in his family affecting his thinking and he recently had heart surgery and has felt stressed and he asked that an exception to the rules be made in his circumstances. The appellant argued that he deducted his expenses from his self-employment earnings in good faith, he thought they were legitimate, and there was no attempt by him to do anything wrong.

Panel's decision

The panel notes that it is not disputed that the appellant received CPP benefits of \$198.06 in November 2015. Money or value received from any type or class of Canada Pension Plan benefits is specifically included in the definition of "unearned income" under Section 1(1) of the EAR. Section 1(d) of Schedule B of the EAR stipulates that all unearned income must be included in income except the deductions permitted under Section 6 and any income exempted under Sections 7 and 8 of Schedule B. Section 6 of Schedule B of the EAR relates specifically to income tax deducted from source for employment insurance benefits and essential operating costs of renting self-contained suites and Section 8 of Schedule B provides an exemption for education-related costs. While Section 7(.01)(e) provides an exemption for a portion of CPP benefits, the appellant did not claim that any of the deductions or exemptions applied to his situation and the CPP exemption relates to the tax portion when a person is taxable; the panel finds that the ministry reasonably determined that none of the

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deductions or exemptions apply to the appellant's CPP benefits.

The panel notes that it is also not disputed that the appellant received \$385 in gross earnings from his self-employment in November 2015. Under Section 1(d) of Schedule B of the EAR, all earned income must be included in the calculation of net income unless there is an allowed deduction or an amount is specifically exempted and, according to Section 1 of the EAPWDR, "earned income" is defined to mean "...any money or value received in exchange for work or the provision of a service." At the hearing, the appellant clarified that he provides a service to participants of his weekly event and the panel finds that the ministry reasonably concluded that the appellant's income falls within the definition of earned income. While the appellant requested an exception be made due to his circumstances, the panel notes that the use of the word "must" in Schedule B of the EAR requires the ministry to include all earned income in the calculation of the net income of a family unit except for permitted deductions and applicable exemption amounts set out in the Schedule.

Section 3(6)(a) of Schedule B of the EAR sets out an applicable exemption for earned income of the lesser of \$200 and the family unit's total earned income in the calendar month of calculation, and this exemption is available to reduce the appellant's earned income in November 2015 to \$185. While the appellant argued that his expenses incurred to earn his self-employment income should also be allowed as a deduction, the panel finds that the ministry reasonably determined that the permitted operating expenses in Section 4 of Schedule B are only available to recipients enrolled in a self-employment program and the appellant did not claim to be enrolled in the ministry's program. The panel finds that the ministry reasonably concluded that the appellant's assistance for the month of January 2016 must be reduced by his net income of \$383.06, consisting of \$198.06 in unearned income and \$185 of earned income received in November 2015, pursuant to Section 28 of the EAR.

Conclusion

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence, pursuant to Section 24(1)(a) of the *Employment and Assistance Act* and confirms the decision under Section 24(2)(a).