

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 24, 2016 wherein the ministry determined that the appellant was not eligible for income assistance for March 2016, as set out in section 10 Employment and Assistance Regulation (“EAR”), because in December 2015 the appellant received \$2,530.00 in Employment Insurance (“EI”) benefits, which is considered unearned income, and, must be included in calculating the appellant’s net income for January 2016 under Schedule B EAR to determine the amount of income assistance, if any, he will be eligible to receive in March 2016.

## PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 11

Employment and Assistance Regulation (EAR) Section 1, 10, 28, 33

EAR Schedule A Section 2, 4.

EAR Schedule B Section 1,3, 6, 7

## PART E – Summary of Facts

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

- Request for Continued Assistance for benefit month March 2016
- Bank Statements January 1-31, 2016, February 1-10, 2016
- Monthly report, dated February 11, 2016, from the appellant showing \$2530.00 EI benefits
- Request for Reconsideration dated February 23, 2016

The appellant is the sole recipient of income assistance since September 2015. His monthly assistance is \$610.00 per month.

On January 26, 2016 the appellant advised the ministry he had received a medical EI benefit of \$2530.00 covering the period of May 2015 to September. He was advised he must declare the income and would not be eligible for March 2016 assistance.

On February 18, 2016 the appellant submitted his monthly declaration and a copy of his bank statements confirming his receipt of the EI benefits on January 5, 2016. The funds were deducted from the appellant's March 2016 assistance. As the income exceeds his monthly shelter/support allowances the appellant was not eligible for March 2016 assistance.

In the appellant's Request for Reconsideration, he wrote:

- The period of time he was paid EI benefits was 15 weeks following May 27, 2015
- He was not receiving assistance during the period he was without income, May to Sept 2015
- He had used the payment to repay borrowed funds he had borrowed during this period.

During the hearing the appellant stated he was aware his income for the month of February 2016 had exceeded his assistance allotment and that he had been advised that EI benefits are considered unearned income and is deducted from his income assistance dollar for dollar. The appellant also stated he felt the ministry was reasonable in its application of the legislation but that he didn't agree with the legislation. The appellant testified that the funds received from EI covered the period from May 2015 to September 2015, a time when he was not on income assistance and therefore the ministry should not be considering this money as income at this time. He had hoped that through the tribunal process there may be a chance that he would not have to pay back the March income assistance.

[ ]

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry reconsideration decision of February 24, 2016 wherein the ministry determined that the appellant was not eligible for income assistance for March 2016, as set out in section 10 EAR, because in December 2015 the appellant received \$2,530.00 in EI benefits, which is considered unearned income, and, must be included in calculating the appellant's net income for January 2016.

The relevant legislation is as follows:

### **EAA Section 11**

#### **Reporting obligations**

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

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and (B.C. Reg. 263/2002)

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

### **EAR Section 1**

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(a)-(f);

(g) employment insurance;

(h)-(y)

### **EAR Section 10**

#### **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.

**EAR Section 28**  
**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.

**EAR Section 33**  
**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)
- (2) Repealed (B.C. Reg. 48/2010)

**Schedule A Section 2**  
**Monthly support allowance**

**2** (0.1) For the purposes of this section:

- (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

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(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

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

**Schedule A Section 4  
Monthly shelter allowance**

4 (1) For the purposes of this section:

(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 Section 1  
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:

A list of exemptions from income, none of which apply to the receipt of Employment Insurance benefits or this appeal.

(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.

**Schedule B Section 3  
Exemption – earned income**

3 (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

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(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) Repealed (B.C. Reg. 145/2015)

(4) Repealed (B.C. Reg. 145/2015)

(5) Repealed (B.C. Reg. 145/2015)

(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.

(B.C. Reg. 145/2015)

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

(B.C. Reg. 87/2005) (B.C. Reg. 43/2006) (B.C. Reg. 57/2007) (B.C. Reg. 48/2010) (B.C. Reg. 197/2012)

**Schedule B Section 6**  
**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.

**Schedule B Section 7**  
**Exemptions – unearned income**

A list of sources of unearned income, none of which apply to this appeal.

**Schedule B Section 9**  
**Application of deductions and exemptions**

**9** (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

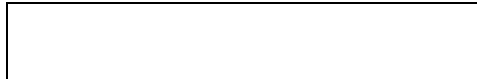
(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force. (B.C. Reg.429/2004)

**Appellant's Position**

The appellant is aware of the legislation that the ministry must follow but felt it was not right that his EI funds should be considered income as per EAR Schedule B Section 9, as the funds represented an EI application made before he received assistance.

**Ministry's Position**

The appellant's monthly assistance rate is \$610.00. The ministry argued the appellant was a recipient of an EI benefit of \$2530.00 in January 2016 which was reported in February 2016. Section 1 of the EAR defines employment insurance as unearned income and Schedule B section (1)(d) states that all unearned income must be included in calculating an applicant's monthly net income. The calculation showed that the appellant's monthly net income was over his monthly income assistance entitlement and therefore was not eligible for March income assistance.

**Panel Decision**

While the appellant argued the EI benefits he received January 2016 were from a claim for a period of 15 weeks commencing on May 27, 2015, Schedule B, Section 9 of the EAR states that income is calculated from the date the funds are received despite the period for which the income reflects. EI benefits are defined as unearned income and Schedule B section 1(d) EAR states all unearned income must be reported and included in the calculation of the appellant's net income.

The panel finds that when he reported his EI benefit in February and his net income was calculated it was determined that the appellant's net income exceeded his monthly assistance rate and therefore he was not eligible for income assistance in March 2016.

**Conclusion**

The panel finds that the Ministry's reconsideration decision that the appellant was not eligible for income assistance for March 2016 was reasonably supported by the evidence and confirms the decision