

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated February 3, 2016, which held that the appellant was not eligible for income assistance for February 2016 in accordance with section 10(2) of the Employment and Assistance Regulation (EAR) due to earned income received in December 2015 which resulted in a net income in excess of the amount of income assistance determined under Schedule A for her family unit.

## PART D – Relevant Legislation

EAR, sections 1 (definition of “earned income”), 10, 28, 33 and Schedule B

## PART E – Summary of Facts

The appellant is a sole recipient with one dependent child, for whom the rate of income assistance as determined in Schedule A is \$945.58. The ministry determined that the appellant received earnings totaling \$4178.93 in December 2015 from her business.

The appellant's evidence is that while the business was in her name, her husband, who passed away in October 2015, did all of the work, with the assistance of one worker ("the worker"). Since her husband's death, all of the money that typically came into the household was being paid to the worker, less the 10% subcontracting fee and taxes. Consequently, she earned very little and has closed the business as it was no longer viable. The appellant submitted four invoices from the business, two dated December 3, 2015, and two dated December 17, 2015. The appellant also submitted copies of bank statements for her personal and business accounts for the period of December 7 – 31, 2015.

At the hearing, the appellant's advocate submitted the following documents.

- Copies of the appellant's personal and business bank account statements for December 1 – 31, 2015.
- Pages 3 and 4 of a bank prepared document showing the front and back of six cheques drawn from the business account, including cheques debited to the credit of the worker on the 3<sup>rd</sup>, 10<sup>th</sup> and 17<sup>th</sup> of December 2015.
- A letter dated March 14, 2016 from the owner of the roofing company for which the appellant's business subcontracted, stating that, other than a 10% subcontract fee which was a goodwill gesture from the worker to help the appellant after her husband's accident, all monies paid to the appellant's business from September 17, 2015 to December 31, 2015 were paid for work done by the worker.

The advocate also provided a 9-page submission which outlined in detail the correlation between the cheques issued to the worker and debits from the business account. The submission also included argument, which is set out in Part F of this decision as the appellant's position.

At the hearing, the appellant stated that, at the time she requested reconsideration of the ministry's original decision, she was advised to write a quick letter but was not advised to submit additional documentation. The appellant explained that in the past her husband would contact the roofing company directly and she would handle administrative duties, including invoicing the roofing company and issuing cheques for the worker. It was normal practice for the roofing company to issue payment on the same day it received the invoice from the appellant. The appellant explained that she had made personal purchases from the business account during December 2015, because her personal bank card expired at the end of November. She transferred money from her personal account to the business account so that she could make purchases via debit. The advocate maintains that the total amount of these personal expenditures from the business account does not exceed the total of the transfers from the personal account, the opening balance on December 1<sup>st</sup>, and the appellant's earnings for the month. Respecting the particulars of the business account statement for December 2015, the advocate and appellant explained as follows.

- The \$3,000.00 withdrawal on December 2<sup>nd</sup> relates to the cheque [copy included] in the same

[Redacted]

amount dated November 27, 2015 payable to the worker which was held pending clearance of the funds on December 2<sup>nd</sup>.

- The \$2,273.93 deposit on December 3<sup>rd</sup> reflects payment of both December 3<sup>rd</sup> invoices (\$981.75 and \$1,241.63), which include GST payable on both the amount payable to the worker and the appellant, plus \$50.55 for an outstanding balance owing by the roofing company. Less GST, the amount payable to the worker is \$1,925, which appears as a withdrawal on December 3<sup>rd</sup> [copy of cheque of the same date included].
- The \$519.75 deposit on December 10<sup>th</sup> reflects payment for one of the December 17<sup>th</sup> invoices. The appellant explained that in this case, the worker sought payment immediately after completing a job. The roofing company provided him with the cheque for \$519.75, knowing that the appellant would bring the invoice for the work to them within the week. The worker took the cheque to the appellant, and on December 10<sup>th</sup> the appellant deposited the \$519.75 cheque and issued a cheque for \$450.00 to the worker, as seen on the business account statement. The appellant subsequently issued the December 17<sup>th</sup> invoice for \$519.75.
- The \$1,386.00 deposit on December 17<sup>th</sup> corresponds with the other December 17<sup>th</sup> invoice, with the \$1,200.00 withdrawal of the same date being payment to the worker [copy of cheque included].

The ministry did not raise an objection to the admissibility of the additional information. The panel admitted the additional information, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration in accordance with section 22(4) of the Employment and Assistance Act.

At the hearing, the ministry stated that when determining the amount of earned income received, GST, business deductions and expenses, such as subcontractor wages, are not taken into account, except for participants in the ministry's Self Employment Program. The legislative scheme is such that if a deduction or exemption is not expressly set out in the legislation, there is no exemption. As the sole proprietor of the business, the appellant was providing a service. The ministry did not submit additional evidence and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry's reconsideration decision which held that the appellant was not eligible for income assistance for February 2016 in accordance with section 10(2) of the EAR due to earned income received in December 2015 which resulted in a net income in excess of the amount of income assistance determined under Schedule A for her family unit, is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Relevant Legislation

**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,
- (b) Repealed (B.C. Reg.197/2012)
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

**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.

**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** (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) )***

**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 in respect of a child in care; (B.C. Reg. 145/2015)
  - (iii) Repealed (B.C. Reg. 48/2010)
  - (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); (B.C. Reg. 180/2010)

(viii) through (xlvii) list other exemptions which are not relevant to the appellant's circumstances.

(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;

(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.....

(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).....

#### Appellant's position

The appellant's position is that the ministry has unreasonably characterized all of the monies received from the roofing company as the appellant's earned income. The legislative definition of earned income is "money or value received in exchange for work or the provision of a service." As the only compensation the appellant received for her services was the 10% subcontracting fee, only those payments constitute the appellant's earned income. That the appellant made personal expenditures from the business account does not alter the fact that the money paid to the business for the service provided by the worker, which were debited from the business account as cheques to the worker, is not the earned income of the appellant.

The advocate argues that the legislation does not expressly state that debts, such as monies owing to the worker and GST owing to the government, cannot be considered when determining eligibility under the legislation. Further, as this legislation is benevolent, in accordance with *Hudson v. Employment and Assistance Appeal Tribunal*, any differences in its interpretation must be resolved in favour of the appellant.

#### Ministry's position

The ministry's position is that upon review of the appellant's December business bank statement, business earnings were deposited to her account and it appears she used the earnings for personal

expenses. The appellant's net earned income received in December 2015 was \$4178.93, as calculated under Schedule B including the \$400 exemption set out in section 3 of that Schedule, which exceeds the rate of income assistance for her family unit of \$945.58. As income received in December is to be reported by the 5<sup>th</sup> of January, to be taken into account when determining assistance for February, in accordance with section 10(2), she is not eligible for income assistance for February 2016.

Panel Decision

The panel finds that when reconciled with the appellant's bank statements and the bank's copies of the processed cheques payable to the worker, the amounts invoiced to and paid by the roofing company in December 2015, excepting the 10% subcontracting fee and the GST paid on the total invoiced amounts, are shown to have been paid to the worker. In reaching this conclusion, the panel notes that the ministry did not have the benefit of the detailed cross-referencing of the particular amounts at reconsideration. The panel concludes that the monies paid by the roofing company are not properly characterized as the appellant's earned income as defined in section 1 of the EAR, as they do not represent money received for the provision of a service performed by the appellant. Further, while the panel accepts that personal expenditures from the business account do not alter the characterization of the monies received on behalf of the worker, the panel does not accept the argument that exemptions and deductions beyond those set out in the legislation can be included when determining the amount of net income received by the appellant. Schedule B of the EAR provides an exhaustive list of deductions and exemptions, and in particular, section 2 begins with "The only deductions permitted from earned income are the following." GST is not included in any of the applicable exemptions and deductions set out in Schedule B. The panel does not make a definitive finding as to the net income of the appellant for December 2015, but does conclude that most of the \$4178.93 received was not reasonably characterized as the appellant's earned income by the ministry. Therefore, the panel finds the ministry unreasonably included the entire amount when determining the appellant's eligibility for income assistance for February 2016 under section 10(2) of the EAR.

The panel concludes that the reconsideration decision was not a reasonable application of the legislation in the appellant's circumstances and rescinds the decision.