



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 24, 2016 which found that the appellant is not eligible for income assistance pursuant to Section 10 of the Employment and Assistance Regulation (EAR) as the net monthly income of the family unit exceeded the amount of income assistance payable.

### 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) Application for Income Assistance (Part 1) dated April 29, 2016;
- 2) Application for Income Assistance (Part 2) dated April 29, 2016 showing family unit monthly employment income of \$1,871, \$500 per month in help from a family member to go towards utilities, the monthly mortgage payments totalling \$1,992, monthly utility, property tax and insurance payments totalling \$529.16;
- 3) Rent receipts for the months of January, February and March 2016 totalling \$500 per month from the tenant who occupies a self-contained suite in the family unit's residence;
- 4) Ministry Information/Documentation Checklist dated April 15, 2016 indicating that all documents required for eligibility had been provided by the appellant;
- 5) Weekly Pay Statements in the name of the appellant's spouse dated February and March 2016 showing net pay after deductions for the 28 day period from February 29, 2016 through March 27, 2016 totalling \$1,871.83;
- 6) Request for Reconsideration dated May 4, 2016.

In his Request for Reconsideration, the appellant wrote that:

- For health reasons he cannot work, and he has all the medical reports to substantiate this;
- He requires hardship assistance because his medications cost a lot of money;
- His spouse's work is temporary and they are having difficulty making ends meet - all of the income received by the family unit goes to mortgage payments, car loan payments, utilities and food.

In his Notice Of Appeal (NOA), stamped received by the Tribunal on June 9, 2016, the appellant wrote that his spouse's work status had changed. He also included a letter dated June 6, 2016 stating that he is unable to work due to his health conditions and that his spouse, who had been doing contract work at the time of the family unit's application for income assistance, is no longer working. He also included a copy of her "last pay stub" dated June 2, 2016.

At the hearing, the appellant said that he had worked in Canada for 30 years. In 2004 his doctor told him that he should not work due to his medical condition and suggested he apply for disability benefits but he has always wanted to work. Since he has been forced to stop working the ministry has not been willing to help. He is not asking for a lot; he just needs some assistance to help with the cost of his medicine, which is expensive.

The appellant said that his spouse had been working on a temporary basis under contract with an agency but had recently been laid off and was now looking for work. Because she only worked for 8 weeks, his spouse was not eligible for employment insurance. The appellant was earning \$2,000 per month in employment insurance after he stopped working but he is no longer receiving those funds.

About 2 months ago he started receiving a federal disability pension of \$1,026 per month. The family unit owns a house with a mortgage, a joint bank account, a vehicle likely worth about \$7,000 to \$8,000 and another automobile for which the value of the loan outstanding likely exceeds the value of the vehicle. He also said that the tenant in the self-contained suite within the family unit's home had not paid the \$500 rent due for the month of June 2016, and that the property taxes on the family unit's residence were \$3,900 per year, not the \$2,311 per year (\$192.66 per month) indicated on the Application for Income Assistance (Part 2) form that was evidence before the ministry at the time of the reconsideration decision.

The ministry relied on its reconsideration decision and emphasized that the ministry considered information about the family unit's income and expenses for the month of March 2016 as the application for income assistance was made in April 2016. In addition, the ministry said that the reason that the appellant was not able to apply for Persons With Disability (PWD) benefits in April 2016 was that the family unit's total income exceeded the disability assistance rate.

The ministry explained that, since there were a number of changes to the family unit's income since the original application for income assistance in April 2016, the appellant could phone the ministry and ask it to review the application. Normally it would be necessary for the appellant to begin the application process again, but because the file was still open he could ask to have the family unit's eligibility reviewed based on changes to income and allowable expenses since the initial application was completed and assessed.

The ministry did not object to the admission of the additional documentary evidence submitted with the NOA but argued that the "last pay stub" information would not have affected the ministry's reconsideration decision because that decision was based on family unit income for the month of March 2016. On review, the panel determined that the part of the documentary evidence submitted by the appellant with the NOA in the form of the appellant's letter dated June 6, 2016 stating that he is unable to work due to his health was admissible under Section 22 (4) of the *Employment and Assistance Act* as it was in support of the records before the minister at reconsideration.

The panel determined that the part of the appellant's letter dated June 6, 2016 stating that his spouse is no longer working and the copy of her "last pay stub" dated June 2, 2016 was not admissible under Section 22 (4) of the *Employment and Assistance Act* because, while in the appellant's request for reconsideration he had indicated that his spouse's work was temporary, he did not say how much longer she would work, and therefore the June pay statement information was not in support of the records before the minister at reconsideration.

The panel determined the additional oral evidence submitted by the appellant at the hearing regarding changes to the family unit's income since the income assistance application was submitted in April 2016 was not admissible under s. 22 (4) of the *Employment and Assistance Act* as it was not in support of the records before the minister at reconsideration.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant is not eligible for income assistance pursuant to Section 10 of the Employment and Assistance Regulation (EAR) as the net monthly income of the family unit exceeded the amount of income assistance payable, 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:

- 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.

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 "earned income" to mean "... any money or value received in exchange for work or the provision of a service..., or money or value received from renting rooms that are common to and part of a person's place of residence".

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 "rental of land, self-contained suites or other property except the place of residence of an applicant or recipient".

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 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.
- (3) to (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

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- (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.

### **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.

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## **Panel Decision**

### *Ministry's Position*

The ministry's position is that the appellant is not eligible for income assistance pursuant to Section 10 of the EAR as the family unit's net monthly income exceeded the amount of income assistance payable. The ministry argued that the appellant is an applicant for income assistance representing a family unit composing two applicants under 65 years of age with no dependent children and is, therefore, eligible for assistance of \$877.22 per month under Schedule A of the EAR, consisting of a support allowance of \$307.22 plus a shelter allowance in the amount of \$570. The ministry argued that the appellant declared monthly earned income totalling \$2,246.83 in net employment income (\$1,871.83) and financial help from a family member for utility bills of \$375 after a deduction of 25% of gross rent received (\$500) as permitted under EAR Schedule B Section 2(c), and unearned income of \$500 per month in rental property income for a total net income of \$2,746.83. The ministry argued that the earned income exemption in Section 3(1)(a) of Schedule B does not apply as it is not available to new applicants who have not previously received income or disability assistance, as set out in Section 3(2). The ministry also argued that there was no information provided to identify any essential operating costs for the self-contained suite that the appellant rents out and, therefore, the deduction permitted in Section 6(b) of Schedule B does not apply.

As the monthly total net income of the appellant's family unit exceeded the income assistance rate (\$877.22), the appellant is not eligible for assistance pursuant to Section 10(2) of the EAR.

The ministry acknowledges that the financial circumstances of the appellant might have changed since he applied for income assistance in April 2016, and that he is now in a position to contact the ministry and ask for a review of his application.

### *Appellant's Position*

The appellant's position is that he is not able to work due to his medical condition, and that while his spouse was employed at the time that he applied for income assistance, she has since become unemployed. In addition, the medicine he is required to take because of his medical condition is very expensive. As a result they are not able to make ends meet.

### *Appellant's Eligibility for Income Assistance*

Section 10(2) of the EAR states that a family unit is not eligible for income assistance if the net income of the family unit exceeds the amount of income assistance to which the family unit would otherwise be entitled.

Based on the information provided by the appellant concerning all sources of income and monthly expenses at the time of application, the panel finds that the ministry's calculation of the family unit's earned income as set out in Section 1 of the EAR to be \$2,246 for the month of March 2016 and unearned income under Section 1 of the EAR to be \$500 for that month, after taking into account the deduction and exemption rules for earned and unearned income as set out in EAR Schedule B was reasonable. Section 3(2) of Schedule B stipulates that if an application for income assistance (part 2) form is submitted, the family unit may not claim an exemption under section 3 in relation to the first calendar month for which the family unit becomes eligible for income assistance, and the panel finds that the ministry reasonably determined that the earned income exemption in Section 3(1)(a) of Schedule B would therefore not have applied in the first calendar month for the appellant as a new applicant, had the ministry found the applicant otherwise eligible for monthly income assistance. Section 6(b) of Schedule B provides that essential operating costs of renting self-contained suites may be deducted from the rent received as unearned income. As the appellant did not provide any information to allow for a calculation of the essential operating costs of renting the self-contained suite, the panel finds that the ministry reasonably concluded that there was insufficient information provided to deduct essential operating costs from the unearned income represented by monthly rent for that suite. The panel further finds that the ministry's calculation of the family unit's eligible assistance amount for the shelter allowance and the support allowance under Schedule A of the EAR to be \$877.22 based on the age and composition of the family unit was reasonable.

Because the family unit's net income of \$2746 exceeds the family units eligible assistance amount of \$877.22, the panel finds that the ministry reasonably determined the appellant was not eligible for income assistance.

### *Conclusion*

The panel finds that the ministry's determination that the appellant was not eligible for income assistance because the net monthly income of the family unit exceeded the amount of income assistance payable pursuant to Section 10 of the EAR was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the reconsideration decision in accordance with sections 24(1)(a) and 24(2)(a) of the EAA and therefore finds that the appellant is not successful in his appeal.