



### 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 15, 2017, which determined that the appellant was not eligible for income assistance. Specifically, the ministry determined that the appellant's income is in excess of the rate of assistance for her family unit making her ineligible for assistance under the Employment and Assistance Regulation, section 10(2). The reconsideration decision also determined that the appellant is eligible to apply for the Persons with Disabilities Designation.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 1, 10, 28, Schedule A and Schedule B.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. A completed Application for Income Assistance (Part 1) dated January 13, 2017.
2. A completed Application for Income Assistance (Part 2) dated February 1, 2017.
3. A completed Medical Report – Employability form dated January 11, 2017.
4. A completed Information/Documentation Checklist dated January 17, 2017.
5. A contact information page from the appellant's banking institution.
6. Banking statements for November 2016, December 2016 and January 2017.
7. January 2017 shift schedule for the appellant's workplace.
8. A 15 page fax, which included the following:
  - a. A completed shelter information form.
  - b. A pay stub dated November 10, 2016 indicating gross income of \$ 542.90 and net pay of \$510.50.
  - c. A pay stub dated November 25, 2016 indicating gross income of \$866.48 and net pay of \$757.84.
  - d. A pay stub dated December 9, 2016 indicating gross income of \$ 811.48 and net pay of \$718.84.
  - e. A pay stub dated December 23, 2016 indicating gross income of \$ 734.18 and net pay of \$661.99.
  - f. A pay stub dated January 6, 2017 indicating gross income of \$815.06 and net pay of \$724.90.
  - g. A copy of a BC Hydro disconnection notice email (no date legible) on which was written the appellant's name and "Hydro due by Friday".
  - h. A copy of an email from Bell (directed to a person who shares the appellant's surname) indicating a balance of \$599.75 and due date of January 11, 2017. On this page there is a handwritten note with the appellant's name and "this is part of my cell phone bill".
  - i. A furniture lease agreement dated March 10, 2016 indicating a total lease of \$494.50 and monthly payments of \$24.74.
  - j. A BC Hydro bill dated November 30, 2016, indicating a past due amount of \$87.88.
  - k. A BC Hydro bill dated January 3, 2017, indicating a past due amount of \$216.59.
  - l. A notice to end tenancy for unpaid rent or utilities dated December 8, 2016.
9. A Request for Reconsideration form dated 9 February 2017, which included the following information:
  - My income since December 2016 has significantly diminished;
  - My health issues depression, anxiety and abdominal pain (weight loss 100 lbs.) have significantly worsened;
  - I will be applying for PWD as soon as possible;
  - I am scheduled for gynecological surgery for March 2017; and
  - I have not been able to adapt to my device (C-PAP) that treats my sleep apnea and therefore am suffering from chronic fatigue.

### Notice of Appeal

The Notice of Appeal dated February 23, 2017 includes the following information:

- My health is not improving and I haven't been given any hours at work for some time now.

## **At the hearing**

### Appellant

At the hearing the appellant argued that things have changed, her health is not getting better. She stated that she often has to leave work to go to the hospital because she is in pain from past surgeries. She stated she hasn't worked since travelling to Vancouver for medical treatment (Feb. 28 – Mar. 4) and that she will have another surgery on March 28, following which she will require 6-8 weeks off of work to recover.

The appellant also stated that she cannot take care of her regular bills because she cannot work and has no scheduled hours. The appellant indicated that she has exhausted E.I. and has submitted an application for Persons with Disabilities designation on February 24, 2017.

### Ministry

The ministry relied on its reconsideration decision at the hearing.

### **New Information**

At the hearing the appellant provided information from her March 2, 2017 paystub indicating that it reflected gross pay of \$441.44 and net pay of \$421.06. The appellant also described the contents of a letter dated February 17, 2017 from her employer as stating that she is not getting full-time hours because it is a slow time of year and she has missed work due to medical problems. She also described the letter as stating that hours won't pick up until April or May. The appellant stated that she submitted this letter to the ministry on February 17, 2017.

The ministry's position on the admissibility of the pay stub is that it relates to a different matter as the decision was made prior to March 2<sup>nd</sup>. The ministry's position on the admissibility of the employer letter is that it has no bearing on the decision and merely confirms that the appellant is not working full time hours, which was never in question.

### **Admissibility of Additional Information**

Section 22(4) of the *Employment and Assistance Act* (EAA) permits the panel to admit as evidence information and records that were before the ministry at the time of the reconsideration decision and oral or written testimony in support of the information and records before the ministry at reconsideration.

The panel determined that the information provided in the Notice of Appeal was admissible under s. 22(4) of the EAA as it was in support of the evidence before the minister at reconsideration.

The panel determined that the March 2<sup>nd</sup> pay stub was not admissible as it is for a pay period after the date of reconsideration and does not contain information that is in support of the evidence before the minister at reconsideration. Further, the panel determined that the employer letter is not admissible because it, to some extent, contradicts the evidence that was before the ministry at reconsideration; therefore, it is not in support of the information and records before the ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision, which determined that the appellant is not eligible for income assistance pursuant to the EAR section 10(2) because the appellant's net income is in excess of the rate of assistance for her family unit, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the EAR apply to this appeal:

### 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,

...

### 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.

### Schedule A

#### Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(3) If

(a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,

(b) the family unit is found eligible for income assistance, and

(c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*,

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

#### Monthly support allowance

2 (0.1) For the purposes of this section:

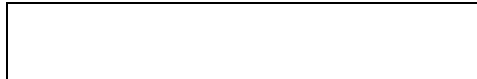
"**deemed dependent children**", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"**maximum adjustment**", in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

(a) the family unit were entitled to receive the national child benefit supplement for the calendar month,

(b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and

(c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act* (Canada);



**"warrant"** has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

- (1) A monthly support allowance for the purpose of section 1 (a) is the sum of
- (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
  - (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$375.58

**Monthly shelter allowance**

4 (1) For the purposes of this section:

**"family unit"** includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

**"warrant"** has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

**How actual shelter costs are calculated**

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) rental of one basic residential single-line telephone.

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

- (a) rent for the family unit's place of residence;
  - (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
  - (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
  - (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
  - (e) utility costs;
  - (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.
- (3) If utility costs fluctuate, they may be averaged over the periods
- (a) beginning on October 1 and ending on March 31, and
  - (b) beginning on April 1 and ending on September 30.
- (4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by
  - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
  - (ii) multiplying the result by the number of persons in that one family unit, and

(b) the amount declared by the family unit as the shelter costs for that family unit.

## Schedule 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;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (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);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
  - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
  - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 22 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (xxi) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (xxv) a loan that is
  - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
  - (B) received and used for the purposes set out in the business plan;
- (xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
  - (A) Autism Funding: Under Age 6 Program, or
  - (B) Autism Funding: Ages 6 — 18 Program;
- (xxvii) Repealed. [B.C. Reg. 148/2015, App. 1, s. 1 (a).]

- (xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxix) a refund provided under Plan I as established under the Drug Plans Regulation;
- (xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxvii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xliv) a BC early childhood tax benefit;
- (xlv) child support;
- (xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (xlvii) gifts, other than recurring gifts;
- (xlviii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act,
- (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

(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.

**Excess Income**

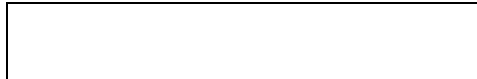
*Ministry's Position*

The ministry's position is that the appellant is not eligible for income assistance pursuant to Section 10 of the EAR because her net monthly income exceeded the amount of income assistance payable for her family unit size. The ministry submitted that the appellant is a single parent with a dependent child and, therefore, the rate of assistance would be \$945.58 month under Schedule A of the EAR, which includes support allowance of \$375.58 and shelter allowance of \$570. The ministry submitted that the appellant received \$1268.34 in November 2016 and \$1400.83 in December 2016 and \$724.90 on January 6, 2017. The ministry argued that the appellant's employer had confirmed that she would continue working 24 hours per week. The ministry argued that it had calculated the appellant's net income of \$1076 using 24 hours per week, confirmed by the appellant's employer, and the appellant's pay rate of \$11.21 per hour. As the monthly net income of the appellant's family unit exceeded the income assistance rate (\$945.58), the appellant is not eligible for assistance pursuant to Section 10(2) of the EAR. The ministry argues that if the appellant's earnings were reduced, she could re-apply for assistance.

*Appellant's Position*

The appellant does not take issue with the ministry's calculation of \$945.58 as the rate of assistance under Schedule A of the EAR. The appellant also does not dispute that she received \$1268.34 in November 2016 and \$1400.83 in December 2016 and \$724.90 on January 6. Nor does she dispute that her employer previously confirmed that she would continue working 24 hours per week. Instead, the appellant argues that her situation has changed. She argues that her health is not getting better; she is unable to work, has not been scheduled for any hours at her job and cannot take care of her bills.





*Panel Decision*

The panel notes that the Schedule B of the EAR, at section 1 provides that when calculating net income for the purposes of section 28 of the EAR, all earned income must be included except for deductions permitted under section 2 and earned income exempted under section 3 and 4. The panel notes that Schedule B Section 3 provides that an exemption is not available in the first calendar month for which the family unit becomes eligible for assistance unless a person in the family unit received disability in the previous calendar month.

The panel notes that the ministry's calculation of estimated net income for the appellant in the amount of \$1076, on which the ministry based its reconsideration decision, does not provide any explanation of deductions taken into account in accordance with Schedule B Section 2. The panel further notes that the pay stubs before the ministry at reconsideration demonstrate that there were deductions from the appellant's pay cheques for tax, Canada Pension Plan and employment insurance. As such, the panel concludes that the ministry's calculation of net earned income of \$1076 does not take into account any of the permitted deductions under section 2. The panel finds that the ministry has not calculated the appellant's net income in accordance with the provisions of the EAR. As the estimated net income calculation is relied upon in the reconsideration decision to determine that the appellant's net income exceeds the rate of assistance for her family unit under Section 10(2) of the EAR, the panel concludes that this determination is not reasonable.

**Conclusion**

The panel concludes that the ministry's reconsideration decision, which determined that the appellant was not eligible for income assistance because her income exceeded the rate of assistance, was based on an inaccurate calculation of the appellant's net income and was therefore not a reasonable application of the applicable enactment in the circumstances of the appellant. The panel does not make a finding as to the net income of the appellant but does conclude that the amount calculated by the ministry does not reflect a calculation of net income in accordance with the relevant provisions 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. The appellant is successful in her appeal.