

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated May 31, 2017 in which the ministry determined that the appellant is not eligible for income assistance for the month of March 2017 due to receiving non-exempt income from employment insurance in January 2017 that exceeded her income assistance rate, pursuant to section 10(2) of the Employment and Assistance Regulation and is required to repay the ministry \$945.58 for assistance she was not eligible to receive in pursuant to section 27 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) SECTION 27
Employment and Assistance Regulation (EAR) sections 1, 10, 33; Schedule A, sections 1, 2, 4;
Schedule B, sections 1, 6, 7

PART E – Summary of Facts

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

The appellant is a sole recipient of income assistance with one dependent child.

- March 6, 2017 – the ministry received a report that the appellant received \$2,464 employment insurance for a medical claim in January 2017.
- March 21, 2017 – the appellant indicated that she would not be declaring the income because it was for a medical EI claim back in September and October 2016 when she was not on income assistance.
- April 11, 2017 – the ministry verified that the \$2,464 was for a medical employment insurance claim for the period of September 4, 2016 to October 16, 2016.
- April 11, 2017 – the ministry informed the appellant that the \$2,464 received in January 2017 should have been declared on the appellant's request for continued assistance for March 2017 and because she failed to declare it, she received \$945.58 that she was not eligible to receive.
- May 16, 2017 - the appellant signed the Request for Reconsideration stating the EI maternity was paid to me in January however, was EI for September and October 2016. She was not on EI in January. She is a single mom not receiving child support and she was and is in debt. She received no income in September and October 2016, so this money received in January was for September and October 2016. She did not claim the amount she received in January on her stub because it was money that was not for January. It was money intended for September and October.

Additional Submissions:

June 12, 2017 – the appellant writes in the Notice of Appeal – The money I received in January from EI was not for January. It was for September 2016 and three weeks in October 2016. I was not on EI in January and this money is intended for September and October 2016.

At the hearing:

The appellant confirmed that she received EI Maternity Benefits in 2016 which changed to a regular medical claim for the months of September and October 2016. She commented that she understands that a regular medical claim benefit is not exempt income. She states that EI was late in making their payment and she collected a lump sum in January 2017. She states that the EI benefits were for September and October 2016 and she was not on EI in January 2017.

The ministry relied on the reconsideration decision and stated that the issue is about the month income is received and not the month it is for. The ministry further stated that there is no flexibility available to them in this case.

The panel admitted the appellant's testimony, 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 EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is not eligible for income assistance for the month of March 2017 due to receiving non-exempt income from employment insurance in January 2017 that exceeded her income assistance rate, pursuant to section 10(2) of the Employment and Assistance Regulation and is required to repay the ministry \$945.58 for assistance she was not eligible to receive in pursuant to section 27 of the Employment and Assistance Act.

Relevant Legislation:

EAA

Overpayments

27 (1) *If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.*

(2) *The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [reconsideration and appeal rights].*

EAR

Definitions

1 (1) *In this regulation:*

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

- (a) *money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;*
- (b) *cooperative associations as defined in the [Real Estate Development Marketing Act](#);*
- (c) *war disability pensions, military pensions and war veterans' allowances;*
- (d) *insurance benefits, except insurance paid as compensation for a destroyed asset;*
- (e) *superannuation benefits;*
- (f) *any type or class of Canada Pension Plan benefits;*
- (g) *employment insurance;*
- (h) *union or lodge benefits;*
- (i) *financial assistance provided under the [Employment and Assistance for Persons with Disabilities Act](#) or provided by another province or jurisdiction;*
- (j) *workers' compensation benefits and disability payments or pensions;*
- (k) *surviving spouses' or orphans' allowances;*
- (l) *a trust or inheritance;*
- (m) *rental of tools, vehicles or equipment;*
- (n) *rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;*
- (o) *interest earned on a mortgage or agreement for sale;*
- (p) *maintenance under a court order, a separation agreement or other agreement;*
- (q) *education or training allowances, grants, loans, bursaries or scholarships;*
- (r) *a lottery or a game of chance;*
- (s) *awards of compensation under the [Criminal Injury Compensation Act](#) or awards of benefits under the [Crime Victim Assistance Act](#), other than an award paid for repair or replacement of damaged or destroyed property;*
- (t) *any other financial awards or compensation;*
- (u) *Federal Old Age Security and Guaranteed Income Supplement payments;*
- (v) *financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the [Immigration and Refugee Protection Act](#) (Canada) or the [Immigration Act](#) (Canada);*

(w) tax refunds;

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation;

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.

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, B.C. Reg. 95/2012:

(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.

(2) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

[am. B.C. Regs. 334/2007; 400/2007, s. 5; 48/2010, Sch. 1, s. 1 (b); 85/2012, Sch. 1, s. 4.]

Schedule A

Income Assistance Rates

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

Schedule B

Net Income Calculation

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) Repealed. [B.C. Reg. 96/2017, App. 1, s. 2 (a).]

(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;

(xxxix) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);

(xl) 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;

(xli) money withdrawn from a registered disability savings plan;

(xlii) a working income tax benefit provided under the Income Tax Act (Canada);

(xliii) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]

(xliv) the climate action dividend under section 13.02 of the Income Tax Act;

(xlv) 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;

(xlvi) 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;

(xlvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xlviii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(l) 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;

(li) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(lii) a BC early childhood tax benefit;

(liii) child support;

(liv) orphan's benefits under the Canada Pension Plan Act (Canada);

(lv) gifts, other than recurring gifts;

(lvi) 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;

(lvii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(l) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(li) a disabled contributor's child's benefit paid or payable under the [Canada Pension Plan](#);

(lii) payments granted under an agreement referred to in section 94 of the [Child, Family and Community Service Act](#);

(liii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee,

(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 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.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [assets held in trust for person receiving special care] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [asset limits] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

(i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;

(iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the Income Tax Act (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the Income Tax Act (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the Income Tax Act (Canada) and section 4.1 (1) (a) of the Income Tax Act;

(f) a tax refund;

(g) a benefit paid under section 22, 23 or 23.2 of the Employment Insurance Act (Canada) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

Appellant's position

The appellant argues that she was not on EI in January 2017 and the amount she received in January 2017 which was EI for September and three weeks in October 2016. She did not declare the amount received in January 2017 because it was not EI for January 2017 but was for September and October 2016.

Ministry position

The ministry argues that the \$2,464 EI the appellant received in January 2017 is income that must be declared in January 2017 and exceeds the ministry's rate of assistance for her family unit size. As a result, the appellant received \$945.58 income assistance for March 2017 for which she was not eligible and must repay this amount to the ministry.

Panel Decision

The panel considered the appellant's argument that the EI received in January 2017 was from an EI claim for September and three weeks in October 2016 and she was not on EI in January 2017.

The ministry argues the \$2,464 the appellant received in January 2017 from EI was unearned income. The panel reviewed the legislation in Part 1 EAR Definitions which states: "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following...Section 1(1)(g) employment insurance. The panel notes that Schedule B Section 1(c) and (d) requires all earned and unearned income to be included in the Net Income Calculation and must be declared as received. The panel finds that the ministry reasonably determined that employment insurance received by the appellant in January 2017 is unearned income and must be included in the Net Income Calculation.

The ministry determined that the \$2,464 EI is considered unearned income received in January 2017 when calculating the appellant's eligibility for income assistance for March 2017. The panel finds the

ministry's decision was reasonable based on EAR section 10(2), which states that "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." The net income of the appellant determined under Schedule B is \$2,464 which exceeds the appellant's amount of income assistance determined under Schedule A of \$945.58.

The ministry determined that the \$945.58 income assistance that the appellant was ineligible to receive in March 2017 is an overpayment and must be repaid. The panel finds the ministry's decision was reasonable based on Section 27(1) EAA which states "If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay the government the amount or value of the overpayment provided for that period."

Conclusion

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision. The appellant is not successful in her appeal.