

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated May 10, 2017, which found that the Appellant is not eligible for a supplement for a delayed family bonus (“family bonus top-up”) for the month of May 2017 pursuant to Section 61 of the Employment and Assistance Regulation as the net monthly income of the family unit for that month exceeded the amount of income assistance payable.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Sections 2 and 4
Employment and Assistance Regulation (EAR), Sections 1, 10(2), 28, 61, Schedule A Sections 1(1) 1(2), 2, and 4(2), and Schedule B Sections 1 and 3

PART E – Summary of Facts

The Appellant is a recipient representing a two parent family unit of six persons in receipt of income assistance benefits.

The evidence before the Ministry at the time of reconsideration consisted of:

1. May 1, 2017 Request for Reconsideration (the first RFR), which is signed by the Appellant and states that the Appellant has four small children who require “milk, diapers and food” and for whom the family unit has not received child tax benefits for more than 6 years;
2. May 26, 2017 Request for Reconsideration (the second RFR), which is signed by the Appellant and states that:
 - He came to Canada in 2008 as a refugee;
 - His spouse and her 2 children came to Canada in 2010 as refugees, and together they have since had 2 more children, both of whom are Canadian citizens;
 - He and his spouse are refugee claimants who have applied for resident permits which are still being processed, and it is likely to be another “few months” before the resident permits are granted;
 - His family unit has not been receiving child tax benefits, currently valued at \$2,000 per month, since his wife arrived in Canada (August 13, 2010) and the family unit is not receiving any other income supplements;
 - He and his spouse are both working part-time and have been looking for full-time employment, so far without success;
 - Their children are in school and need “food and personal items”;
 - The family unit requires continued assistance in the form of a family bonus until it qualifies for child tax benefits; and
 - He is asking the Ministry to continue to provide health coverage for all family members because he has received bills from doctors and ambulance services that have to be paid.
3. A letter to the Ministry dated May 1, 2017 and signed by the Appellant stating that he and his wife are working but not full-time and that they have not received child tax benefits, which would total \$2,000 per month, for over 6 years. The letter asks the Ministry to continue to provide assistance and health coverage until the family unit qualifies for child tax benefits. He also states that they have to pay over \$500 in work permit fees and have a total of \$200 in dentist and ambulance bills;
4. A letter from the Canada Revenue Agency (CRA) dated February 14, 2017 and addressed to the Appellant stating that the CRA cannot process the Appellant’s application for Canada Child Tax Benefits (CCBT) for the two children born in Canada because the documents submitted by the Appellant do not give him status in Canada. The letter also states that to be eligible for the CCBT “temporary residents” as defined under the *Immigration and Refugee Protection Act* (Canada), such as the Appellant, must be residents for Canada for tax purposes for at least 18 consecutive months and have a valid permit in the 19th month, provided the permit does not state “does not confer status” or “does not confer temporary resident status”;
5. A letter from Immigration, Refugees and Citizenship Canada (IRCC) dated March 28, 2017 referring to the Appellant’s application for a Temporary Resident Permit for the family unit and indicating that the application has been transferred to a regional Canada Immigration Centre for processing. The letter further states that the Canada Immigration Centre will be contacting the Appellant with further instructions in due course;

6. A CRA 2016 Tax Return Summary printed April 29, 2017 in the name of the Appellant's spouse, showing taxable income of \$3,593.00, tax payable of \$0, a refund of \$64.12 based on Canada Pension Plan and Employment Insurance overpayments of the same amount, and an estimate for a 2017 CCBT in the amount of \$2,005.00 per month;
7. A Confirmation of Application for Medical Benefits issued by the Ministry on September 30, 2016 confirming that the Ministry has made an application to the Medical Services Plan of British Columbia (BC) for Ministry-sponsored medical coverage for all members of the Appellant's family unit, effective September 1, 2016;
8. A credit card statement dated May 1, 2017 showing authorized and posted transactions dated between March 9, 2017 and April 29, 2017, the minimum payment amount, the payment due date, a current balance owing of \$2,411.36 and the available credit;
9. An invoice dated April 28, 2017 for medical services from a medical practitioner and addressed to the Appellant's spouse for services performed totalling \$390.00; and
10. An invoice dated March 24, 2017 from BC Emergency Health Services in the amount of \$80.00 for transporting one of the Appellant's children from the family residence to a local hospital on November 24, 2016, addressed to the Appellant and stamped "Final Notice".

Evidence On Appeal

In his undated and unsigned Notice of Appeal (NOA), the Appellant stated that he disagreed with the Ministry's reconsideration decision because the family unit comprises refugee claimants whose residency permit is still in process and the family unit, which includes 4 small children, is not receiving child tax benefits, a low income supplement or any other benefits. The Appellant also states in the NOA that he and his spouse are working part-time and looking for full-time employment and need food and personal items for the children.

The panel finds that the information provided by the Appellant in the NOA is admissible because it supports the information and records before the Ministry at the time of reconsideration of the decision under appeal, pursuant to section 22(4) of the EAA.

Additional Evidence Submitted Prior to Hearing

The following additional documents were submitted by the Appellant after the Ministry's Reconsideration Decision and prior to the hearing:

1. Assistance benefit statements dated August 16, 2016 and June 16, 2016 in the name of the Appellant issued by another Province;
2. A letter from the CRA dated February 14, 2017 and addressed to the Appellant's spouse stating that the CRA cannot process the Appellant's application for CCTB for the two children born in Canada because the documents submitted by the Appellant's spouse do not give her status in Canada. The letter also states that to be eligible for the CCBT, the Appellant or the Appellant's spouse must be:
 - A Canadian citizen;
 - A "permanent resident" as defined under the *Immigration and Refugee Protection Act* (Canada);
 - A "protected person" or "Convention Refugee" as defined under the *Immigration and*

Refugee Protection Act (Canada); or

- A “temporary resident” as defined under the *Immigration and Refugee Protection Act (Canada)* who has lived in Canada throughout the previous 18 months and who has a valid permit in the 19th month, other than one which states “does not confer status” or “does not confer temporary resident status”.

The letter also states that if, at a later date, the Appellant’s spouse obtains a document which gives her status in Canada, she can submit a copy of that document along with a new application to the CRA so that the CRA can determine eligibility for the CCTB;

3. Two letters from the CRA, one dated August 30, 2011 and the other dated January 30, 2012, both addressed to the Appellant’s spouse and in response to the Appellant’s spouse’s application for the CCTB, stating that the CRA cannot process the application because it is incomplete. Both letters state that the Appellant’s spouse did not provide proof of her or the Appellant’s citizenship status;
4. Three invoices from an elementary school in the Appellant’s community, each with the name of one of the Appellant’s children hand-written at the top of the invoice, and each for the cost of a “Starter Package” of stationery and supplies. One invoice is in the amount of \$53.75 including shipping, another invoice in the amount of \$42.33 including shipping, and a third invoice in the amount of \$38.26 including shipping. All three invoices bear a “Manual Order Form Deadline” of June 1, 2017;
5. An invoice dated March 17, 2017 for an “Initial Visit (Private Pay)” from a doctor at a medical clinic, in the name of one of the Appellant’s children, for services performed totalling \$60.00;
6. A statement of account from a medical practitioner dated April 4, 2017 in the name of one of the Appellant’s children, showing payments made on that date in the amount of \$60.00 for services rendered; and
7. The first page of a two page credit card statement for the period March 28, 2017 to April 25, 2017, showing authorized and posted transactions dated between those dates, the minimum payment amount, the payment due date, the rate of interest on unpaid balances, a current balance owing of \$452.62 and the available credit.

The panel finds that the additional documents submitted by the Appellant after the Ministry’s Reconsideration Decision are admissible under Section 22(4) of the EAA as they represent information that was before the Minister when the decision being appealed was made or written testimony in support of the information and records that were before the Minister when the decision being appealed was made.

Before the hearing, the Ministry had asked if it could have an observer present at the hearing. At the hearing, the Appellant objected to having the Ministry observer present, so the oral hearing proceeded without the observer.

Evidence at the Hearing

At the hearing, the Appellant stated that he is the male head of a family unit comprising 6 persons,

including four young children, two of whom were born in Canada and two born in another country. Three of the children are attending elementary school and require the family bonus supplement to pay for the necessities of life as the Appellant and his spouse, who both work part-time, do not earn enough income to cover those costs. In addition, the Appellant stated that the elementary school that three of his children attend has billed the family for the cost of school supplies for the upcoming school year and he cannot afford to pay those bills. The Appellant stated that, in addition to these costs, the family has had to pay medical costs, including the cost of ambulance services for one of the children and medical appointments that were not covered by Ministry-sponsored medical coverage, and that in addition his family has had employment-related expenses such as \$500 for an annual work permit which expires on June 28, 2017 and still has to be renewed, and an \$800 fee relating to his immigration status application. As a result, the family unit has run up several thousand dollars in credit card debit because their income is not adequate to cover their living expenses.

The Appellant stated that he and his wife are looking for full-time employment but they cannot both work full-time because one of them has to look after the children. He explained that he has three part time jobs, none of which provides regular hours of work, and, as a result, some months he works more hours than others. He explained that he does not own a vehicle and has to rely on public transit and that one of his jobs is four hours from his home. He said that it is impractical for him to work there unless he has at least one full day of work available. He stated that, while the family unit earned income in excess of the monthly allowable amount in May 2017, this would not be the case in June 2017 as he and his spouse had not worked as many hours in June.

The Appellant pointed out that with four children his family unit would normally be eligible for \$2,005 per month in CCBT, but because the family does not have status in Canada they have never received this supplement. Despite the fact that the family unit has applied for CCBT many times over the past 6 years, they are still ineligible even though two of the children are Canadian citizens. He stated that the Canada Immigration Centre has not yet contacted the family with further instructions as it indicated it would do in its March 28, 2017 letter.

The Appellant stated that he does not agree with the Ministry decision to not provide a family bonus supplement because another Province, in which the family unit lived before moving to British Columbia in August 2016, was providing the family unit with \$640 per month in family bonus supplement support as it did not qualify for the CCBT. He feels that the Ministry should be doing something similar until the family unit qualifies for CCBT.

The Ministry relied on its reconsideration decision and emphasized that the supplement provided by the Appellant's family's former Province of residence was subject to legislation in place in that Province and that the Ministry did not have discretion with respect to whether or not a family unit is eligible for income assistance in a given month based on net income earned in relation to the shelter and support amounts available to the family unit, and that the legislation in British Columbia prohibits the Ministry from providing any supplements in any months where the net income of the family unit exceeds the prescribed amount.

The Ministry advised the Appellant that, as long as the family unit was eligible for assistance in July 2017, the family unit's July benefit would include a supplement for school supplies which would cover the cost of the bills received from the elementary school for school supplies in the upcoming school year. The Ministry also explained that the Ministry has arranged for Ministry-sponsored medical coverage for all members of the Appellant's family unit, which remains in effect even in months where the family unit is ineligible for assistance due to income earned above the prescribed amount, but that this medical coverage did not cover all medical costs. However, the Ministry explained that there were other BC programs, such as BC Healthy Kids and Premium Assistance, which the family unit

might qualify for, and that the Ministry could assist the Appellant by providing him with information on how to apply for these programs.

The Ministry also stated that in its experience an application to IRCC for the Temporary Resident Permit necessary for the Appellant's family unit to qualify for the CCTB can take up to 8 months to process and that the Ministry was attempting to intervene on the Appellant's behalf.

PART F – Reasons for Panel Decision

The issue before the panel is whether the Ministry's reconsideration decision, which found that the Appellant is not eligible for a supplement for a delayed family bonus top-up for the month of May 2017, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant sections of the EAA are as follows:

Eligibility of family unit

- 2 For the purposes of this Act, a family unit is eligible, in relation to income assistance ... or a supplement, if
- (a) each person in the family unit on whose account the income assistance ... or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
 - (b) the family unit has not been declared ineligible for the income assistance ... or supplement under this Act.

Income assistance and supplements

- 4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

The relevant sections of the EAR are as follows:

Definitions

- 1 (1) In this regulation:

... **"assistance"** means income assistance ... or a supplement;

"basic child tax benefit" means the Canada child tax benefit minus the national child benefit supplement; ...

"Canada child tax benefit" means an amount deemed to be an overpayment on account of a person's liability for the taxation year determined under section 122.61 of the *Income Tax Act* (Canada) ... ; ...

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service, ...

"family bonus" means an amount consisting of the sum of the BC basic family bonus and the national child benefit supplement; ...

"national child benefit supplement" means the amount that is 1/12 the value of "C" in the formula calculated under section 122.61 of the *Income Tax Act* (Canada); ...

Limits on income

- 10 (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.

Supplement for delayed, suspended or cancelled family bonus

- 61 (1) In this section, "**maximum national child benefit supplement**", 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, and
 - (b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero.
- (2) The minister may provide a supplement to ... A family unit that is eligible for income assistance ... if
- (a) payment of the family bonus for a calendar month to a person in the family unit is delayed, suspended or cancelled under the *Income Tax Act* (Canada) or the *Income Tax Act* (British Columbia) for any reason other than that
 - (i) the person refuses to apply for the family bonus,
 - (ii) the person refuses to provide information necessary to determine eligibility for the family bonus, or
 - (iii) the person refuses to accept the family bonus, and
 - (b) the minister considers that the supplement is immediately needed for basic needs of food, clothing or shelter.
- (3) The amount that may be provided for a calendar month as a supplement under subsection (2) is equal to
- (a) the maximum national child benefit supplement, minus
 - (b) the family bonus, if any, received by the family unit for the preceding calendar month.

Schedule A

Maximum amount of income assistance before deduction of net income

- 1 (1) Subject to this section and section ... 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 section ... 4 ... of this Schedule.

Monthly support allowance

- 2 (0.1) For the purposes of this section: ...

"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); ...

- (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 subsection ... (2) ... 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
12	Two applicants/recipients and one or more dependent children	Both applicants/recipients are under 65 years of age	\$401.06

- (2) If the family unit includes one or more dependent children ... , the support allowance under subsection (1) for a calendar month is increased by an amount equal to

- (a) the maximum adjustment, minus
- (b) the sum of
 - (i) the family bonus, if any, paid to the family unit for the preceding calendar month, and
 - (ii) the amount of the supplement, if any, provided to or for the family unit under section 61 [*supplement for delayed, suspended or cancelled family bonus*] of this regulation for the current calendar month.

Monthly shelter allowance

- 4 (2) The monthly shelter allowance for a family unit ... 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
6	6 persons	\$785

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:
 - ... (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
 - (v) the basic child tax benefit; ...

Exemption — earned income

- 3 (1) ... the amount of earned income calculated under subsection (6) is exempt for a family unit. ...
- (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: ...
- (b) \$400, if the family unit
 - (i) includes a recipient who
 - (A) has a dependent child ...

* * * *

The Appellant's Position

The Appellant argues that his family unit does not earn adequate income to cover the necessities of life and, because the family unit does not have immigration or refugee status in Canada, does not qualify for the CCTB, which is a significant monthly benefit. As a result, the Appellant argues that the Ministry should provide a family bonus supplement to help cover living costs until the family unit qualifies for the CCTB.

The Ministry's Position

The Ministry's position is that the Appellant's family unit is not eligible for the family bonus top-up in May 2017 because it was found ineligible for May 2017 income assistance due to it having income in excess of Ministry rates.

The Panel's Decision

Section 28 of the EAR states that income assistance may be provided to a family unit, for a given calendar month, in an amount that is not more than the amount determined under EAR Schedule A, minus the family unit's net income determined under EAR Schedule B.

In addition, 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 determined under EAR Schedule B equals or exceeds the amount of income assistance determined under EAR Schedule A for a family unit matching that family unit.

The panel notes that the Ministry determined that the Appellant's family unit's net earned income for May 2017 was reported by the Appellant to be \$1,492.13, and unearned income from unemployment insurance benefits to be \$258.00. The Appellant does not dispute these amounts. The panel further notes that EAR Schedule B Section 3 states that \$400.00 of earned income is exempt from the calculation of income in a given month for a family unit which includes a recipient who has a dependent child (the earned income exemption). The panel therefore finds that the Ministry reasonably calculated the Appellant's family unit's earned income net of the earned income exemption to be \$1,350.13.

The further panel notes that the Ministry determined that the Appellant's family unit's income assistance rate for the month of May 2017 was \$1,106.06. Section 1(1) of Schedule A of the EAR states that the monthly amount of income assistance to which a family unit is entitled is the sum of the monthly support allowance under Section 2 of Schedule A of the EAR for a family unit matching the family unit of the recipient, plus the monthly shelter allowance calculated under Section 4 of Schedule A of the EAR. Section 2.1 of the Schedule A of the EAR states that the monthly support allowance for a family unit comprising two recipients under 65 years of age and one or more dependent children is \$401.06. Section 4 of EAR Schedule A states that the monthly shelter allowance for a family unit comprising six persons is \$785. Therefore the panel finds that the Ministry reasonably determined that the Appellant's family unit's income assistance rate for the month of May 2017 was \$1,106.06.

As the Appellant's family unit's earned income net of the earned income exemption for May 2017 was \$1,350.13 and the Appellant's family unit's income assistance rate for the month of May 2017 was \$1,106.06, the panel further finds that the Ministry reasonably determined that the Appellant's family unit's income for May 2017 was more than the Appellant's family unit's assistance rate for that month. Because 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 equals or exceeds the amount of income assistance for a family unit matching that family unit, the panel finds that the Ministry reasonably determined that the Appellant's family unit was not eligible for income assistance in May 2017.

EAR Section 61(2) states that the Ministry may provide a family bonus supplement to a family unit that is eligible for income assistance if certain specified other conditions are met. The panel notes that, because the family unit did not qualify for income assistance in May 2017, Section 61(2) does not apply. The panel therefore finds that the Ministry reasonably determined that the Appellant's family unit was not entitled to a family bonus supplement in May 2017.

Conclusion

The panel finds that the Ministry's reconsideration decision, which found that the Appellant's family unit was ineligible for a family bonus top-up supplement in May 2017 because the family unit did not qualify for income assistance in that month was a reasonable application of the applicable legislation and a reasonable interpretation of the evidence in the circumstances of the Appellant. The panel therefore confirms the ministry's decision. The appellant is not successful in his appeal.