

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated April 18, 2017 which denied the appellant income assistance for March 2017 pursuant to section 10(2) of the Employment and Assistance Regulation (EAR) on the basis that during the month of January 2017 the appellant earned employment income, which, after permitted deductions exceeded the appellant’s income assistance (shelter and support allowances).

PART D – Relevant Legislation

s. 22(3)(b) Employment and Assistance Act (“EAA”)
s. 1, s. 10, s. 33, schedule A, schedule B of Employment and Assistance Act Regulation (“EAAR”)

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The evidence before the minister at reconsideration was:

The appellant is in receipt of income assistance as a sole recipient. She earns \$650.00 per month in income assistance. Specifically, she earns \$235 in support, \$375 in shelter, and a \$40 diet allowance.

The ministry wrote that the appellant declared, through employer paystubs signed by a third party, that she earned employment income in the amount of \$873.48 during the month of January (\$473.27 on January 16, 2017 and \$400.48 on January 31, 2017). The paystubs were not dated. The panel notes small mathematical errors as the total of the two stated amounts is \$873.75. As well, the paystub for January 15, 2017 indicated net pay of \$473.57 while the paystub for January 31, 2017 indicated net pay of \$400.21, for a total of \$873.78.

A pay statement produced the by Ministry shows that the appellant earned \$865.53 during the month of January, 2017 (\$391.96 on January 1, 2017 and \$473.57 on January 16, 2017).

Notes from the Ministry phone records indicate that the appellant earned \$865.53 in employment income in January, 2017 and that the appellant only declared \$291.96 in employment income during the month of January, 2017.

The appellant's monthly income report dated January 20, 2017 states the appellant declared that she earned \$291.96 in employment income.

The appellant's monthly income report dated February 14, 2017 with a hand written notation states "January income to be declared on this stub" with no income reported.

A record of employment ("ROE") dated March 1, 2017 shows that the appellant earned \$4,864.00 between August 8, 2016 and February 4, 2017. There is a record of earnings for various pay periods but the pay period schedule is not provided with the ROE.

The appellant provided additional evidence through a late submission and her notice of appeal:

A late submission was received by the appellant on June 7, 2017. The late submission was accepted by the panel chair. The late submission states that the appellant ran into some unfortunate events including some health issues which prevented her from providing additional written material to the tribunal. She also wrote that her online accounts had been "hacked" and that she is a victim of identity theft. The appellant wrote that the bank manager recently confirmed fraudulent activity.

The appellant's Notice of Appeal states that she may need an adjournment request form and that her advocate is out of the office until May 1, 2017.

A letter from the appellant's advocate states that the advocate is out of office until May 1, 2017.

The panel determines that the additional evidence provided in the appellant's late submission, the notice of appeal, and the letter from the appellant's advocate is admissible pursuant to s.22(4) of the EAA as it is procedural in nature and relates to the appellant's request for reconsideration of the Ministry's decision which is in support of the records before the Ministry at the time of reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the Ministry's reconsideration decision dated April 18, 2017 which denied the appellant income assistance for March 2017 pursuant to section 10(2) of the Employment and Assistance Regulation (EAR) on the basis that during the month of January 2017 the appellant earned employment income, which, after permitted deductions exceeded the appellant's shelter and support allowances.

The legislation provides:

Section 1 of EAAR

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

Section 10 EAAR 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.

Section 33 EAAR 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).]

Schedule A of EAAR

Monthly support allowance

2 (0.1) ...

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

...

Monthly shelter allowance

4 (1)...

- (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
1	1 person	\$375

...

Deduction and exemption rules

1 ...

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.

...

The panel finds:

There is conflicting documentary evidence about the income the appellant earned in January. Although the appellant wrote in her submission that her online accounts had been “hacked,” and that she is a victim of identity theft recently confirmed by the bank manager, she does not dispute the Ministry’s finding that the appellant’s January monthly income was \$873.48. The panel relies on the pay stubs from the appellant’s employer as well as the Ministry’s findings to determine that the appellant earned an amount within a few dollars of the undisputed amount of \$873.48 during the month of January, 2017.

The legislated amount earned by the appellant as a single recipient for shelter and support is set out in in schedule A of the EAAR and totals \$610.00. Section 10(2) of the EAAR provides that if the appellant’s net income exceeds the shelter and support amount of \$610.00, the appellant is not eligible for income assistance. In order to determine the appellant’s net income, certain deductions, found in schedule B of the EAAR are permitted. In this case, the Ministry found that the source deductions set out in section 2 of schedule B of the EAAR were not included in the appellant’s declared employment income for the month of January, 2017. The panel has reviewed the appellant’s pay stubs and determines that Ministry’s finding that all permitted source deductions were not included in the appellant’s declared employment income for the month of January, 2017 to be reasonable. The Ministry applied the exemption amount in Section 3(6)(a) of Schedule B of the EAR of \$200 to determine that the appellant’s net income for the purposes of schedule B of the EAAR was \$673.48. The panel finds that Ministry’s determination of the appellant’s net income was reasonable and that it was reasonable for the Ministry to find that the appellant’s net income earned in the month of January (\$873.48) exceeded the monthly shelter and support amounts (\$610) and to find that the appellant was, therefore, not eligible for income assistance pursuant to section 10(2) of the EAR.

Section 33 of the EAAR provides that earned income must be reported to the Ministry by the 5th day of the calendar month. The appellant earned her final January, 2017 income on January 31, 2017. The appellant was required to report her January, 2017 income by February 5, 2017. It is unclear when the appellant actually reported the income that she earned during the month of January, 2017 as her paystubs are undated. The Ministry states in their reconsideration decision that March, 2017 was the earliest month that they could deduct the net income the appellant earned in the month of January, 2017. The panel finds that given that the legislation doesn’t require reporting until February 5, 2017 and given that it is unclear as to when the Ministry actually received the appellant’s report of earned income it was reasonable for the Ministry to deduct the appellant’s net income earned in January from her March, 2017 shelter and support amounts thereby determining that the appellant was not eligible for March, 2017 income assistance.

The panel finds the Ministry’s reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the Ministry’s reconsideration decision. The appellant’s appeal, therefore, is not successful.