

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 2, 2017 in which the ministry determined that the appellant is not eligible for income assistance because he receives non-exempt income that exceed the amount of shelter/support allowances for a sole recipient, pursuant to section 10(2) of the Employment and Assistance Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR) sections 1, 10, 28; Schedule A, sections 1, 2, 4; Schedule B, sections 1, 6, 7

## **PART E – SUMMARY OF FACTS**

The Appellant was not in attendance at the hearing. After confirming that she was notified, the hearing proceeded under s. 86 of the Employment and Assistance Regulation (EAR).

### **The evidence before the ministry at reconsideration was as follows:**

The appellant applied for assistance as a sole recipient in August 2017 stating that he was in receipt of Canada Pension Plan (CPP) benefits of \$647.00. The income assistance rate for a sole recipient is \$710.00.

October 2, 2017 – the ministry reviewed the CPP benefits and confirmed that the current amount of the benefit is \$711.99. The appellant was advised that he was not eligible for income assistance as the amount of his income exceeded the amount of shelter/support allowances.

October 30, 2017 – the appellant returned a Request for Reconsideration stating that his CPP was just over the limit by \$2.38/month.

### **Notice of Appeal dated November 26, 2017, the Appellant stated the following:**

“My CPP was only over by \$1.99/month. Just over the assistance rates (before or after taxes)?

### **At the hearing:**

#### **Position of the appellant:**

The panel relied on the Notice of Appeal where the appellant stated that his CPP was only over by \$1.99/month.

#### **Position of the ministry:**

The ministry re-stated the information and reasons contained in the reconsideration decision and provided an explanation of the application of Schedule B, Sections 1, 6 and 7 EAR.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry reasonably denied the appellant income assistance because he receives non-exempt income that exceeded the amount of shelter/support allowances for a sole recipient, pursuant to section 10(2) of the Employment and Assistance Regulation.

### **Legislation:**

#### **EAR**

#### **Definitions**

**“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;

#### **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**

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 (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.

<b>Item</b>	<b>Column 1 Family unit composition</b>	<b>Column 2 Age or status of applicant or recipient</b>	<b>Column 3 Amount of support</b>
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1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$335.00
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**Monthly shelter allowance**

(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:

<b>Item</b>	<b>Column 1 Family Unit Size</b>	<b>Column 2 Maximum Monthly Shelter</b>
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660

**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*

*(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);

(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;

(xlix) 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,  
(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.*

**Position of the Appellant:**

The appellant argues in the Notice of Appeal that he disagrees with the ministry's decision because he exceeded the assistance rates by only \$1.99 and questions if this is before or after taxes.

**Position of the ministry:**

The ministry position is that the appellant received non-exempt income that is in excess of his income assistance rate, therefore he is ineligible for income assistance.

**Panel decision:**

- The appellant is an applicant for income assistance as a sole recipient and under Schedule A EAR, is entitled to shelter allowance of \$375.00 and support allowance of \$235.00 for a total of \$710.00 per month.
- The appellant receives a CPP benefit of \$711.99 per month which is not exempted under Schedule B, Sections 1, 6 and 7.
- Section 10(2) EAR states that a family unit is not eligible for 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 panel finds that the appellant receives a monthly CPP benefit of \$711.99 which is not exempted under Schedule B EAR, the appellant is an applicant for income assistance as a sole recipient and under Schedule A EAR is entitled to income assistance of \$710.00 per month, and therefore the Panel finds that the ministry reasonably determined that the appellant is not eligible for income assistance under section 10(2), EAR because he has income in excess of his income assistance rate.

The panel therefore confirms the Ministry decision. The appellant is not successful on appeal.