

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of October 18, 2018 in which the ministry determined that the appellant received an overpayment of income assistance (IA) in the amount of \$4,564.42 during the period February – September 2018 for which she was not eligible under Section 10 (2) of the Employment and Assistance Regulation (EAR) and is required to repay pursuant to Employment and Assistance Act (EAA) Section 27.

PART D – RELEVANT LEGISLATION

EAA: Sections 11, 27, 28

EAR: Sections 1, 10, 28, 33
Schedule A - Sections 1, 2, 4
Schedule B - Sections 1, 2, 3

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration included the following:

- appellant's request for reconsideration submitted to the ministry on October 10, 2018 with the following attachments:
 - 2 page letter from the appellant, summarized as follows:
 - she is a representative of a direct sales company (the Company);
 - she takes orders from customers, receives payment from them, and pays the Company's invoice for the ordered products;
 - her earnings represent the difference between the amount her customers pay to her and the amount she pays to the Company, which she terms her "discount";
 - the discount differs according to the type of product ordered;
 - she sells the products to customers in order to purchase products for her own use from the discount;
 - her actual earnings for the period January – August 2018 are broken down as follows: January: \$118; February: \$142; March: \$87; April: \$108; May \$147; June: \$131; July: \$84; August: \$232 [\$1,049 total];
 - any money made by her husband (P) went to food and scammers and was not used to pay household expenses;
 - she required the full amount of her IA to pay rent and utilities each month.
- copies of invoices from the Company to the appellant dated December 29, 2017, January 12, January 26, February 9, February 23, March 9, March 23, April 6, April 20, May 4, May 18, June 1, June 15, June 29, July 13, July 27, August 10 and August 24, 2018;
- appellant's bank account activity statements from Bank A covering the period December 1, 2017 – June 20, 2018;
- P's bank account summaries from Bank B covering the period March 1 – August 16, 2018;
- invoice/receipts from P's construction company covering the period February 27 – June 18, 2018 indicating that P received payment for construction services as follows:
 - February 27: \$60; February 28: \$25; March 16: \$175; March 23: \$120; April 6: \$75, \$100; April 18: \$75; April 20: \$225; May 28: \$50; June 4: \$150; June 18: \$100 [\$1,155 total];
- overpayment chart prepared by the ministry covering the period February 18 – August 18, 2018 indicating that:
 - in addition to IA the appellant's family unit received a total income of \$8,602.10, less declared Income of \$1,155.00, less legislated exemption amount of \$400 per month;
 - total IA received by the family unit during this period was \$7,832.76;
 - eligible IA during this period was \$3,268.34;
 - total overpayment to the appellant's family unit during this period = \$4,564.42 (\$7832.76 minus \$3268.34=\$4,564.422).

Oral Evidence at the Hearing

Appellant:

At the hearing the appellant stated that:

- she receives payment from her customers in the form of cash and cheques, with cheques made payable to her personally;
- the money deposited into her account from customers represents the full retail price of the products;
- the amount invoiced by the company represents the discounted cost to the appellant less advertising brochures and any products she purchased for her own use;
- the net income figures she provided in her request for reconsideration did not include products she purchased for herself from her discount and did not include her overhead expenses;
- she does not keep a separate statement of income and expenses related to her sales;
- she has not applied for designation as a Person with Persistent Multiple Barriers to Employment (PPMB).

Ministry:

In response to questions from the panel, the ministry representative confirmed that a recipient of IA is eligible to participate in a ministry-approved self-employment program only if he/she has been designated as a PPMB under EAR Section 2.

The panel determined that the appellant's oral evidence was admissible under Section 22 (4) of the EAA as evidence in support of the information before the ministry at reconsideration because it provided greater detail to the procedure through which she took orders from her customers and remitted them to the company, and did not raise new issues that had not been considered by the ministry at reconsideration.

The panel also admitted the oral evidence of the ministry representative as it contained no new information and clarified ministry policy relating to self-employment.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision which determined that the appellant received an overpayment of IA in the amount of \$4,564.42 during the period February – September 2018 for which she was not eligible under Section 10 (2) of the EAR and is required to repay pursuant to EAA Section 27.

Relevant legislation:

EAA:

Reporting obligations

- 11** (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must
- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
 - (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

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*].

Liability for and recovery of debts under Act

- 28** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
 - (b) deducted, in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the income assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

EAR:

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** (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.

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. 87/2018:
 - (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;

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.

Monthly support allowance

- 2 (0.1) For the purposes of this section:
 - (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
7	Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age	\$407.22

Monthly shelter allowance

- 4 (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

(section 28 (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) 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;
- (iv.1) the Canada child benefit, 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 [*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;

(xxxi) 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;

(l.1) 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 of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(l.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(lid) 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;

(liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lv) money that is paid or payable from a settlement under

(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada,

(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) A 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 or income assistance in at least one of the 3 calendar months immediately preceding that first calendar month.

(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) \$400, if the family unit is not described in paragraph (b), (c) or (d);

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

(a) purchase of supplies and products;

(b) accounting and legal services;

(c) advertising;

(d) taxes, fees, licences and dues incurred in the small business;

(e) business insurance;

(f) charges imposed by a savings institution on an account and interest;

(f.1) payments, including principal and interest, on a loan that is

(i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

- (ii) received and used for the purposes set out in the business plan;
 - (g) maintenance and repairs to equipment;
 - (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
 - (i) motor vehicle expenses;
 - (j) premiums for employment insurance or workers' compensation benefits;
 - (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
 - (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
 - (m) office expenses;
 - (n) equipment purchases or rentals.
- (2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if
- (a) the recipient is participating in a self-employment program

The appellant argues that the ministry was unreasonable in its determination of the amount of overpayment of IA paid to the appellant which must be repaid to the ministry.

The ministry argues that the net income of the appellant's family unit as calculated under Schedule B exceeded the appellant's IA as calculated under Schedule A during the months of February – August 2018 as set out in the overpayment chart and as a result the appellant received an overpayment of \$4,564.42 which must be repaid to the ministry.

Panel Decision

The appellant agrees that:

1. P reported earned and reported income of **\$1,155** from his construction company, calculated as follows:
 - February 27: \$60; February 28: \$25; March 16: \$175; March 23: \$120; April 6: \$75, \$100; April 18: \$75; April 20: \$225; May 28: \$50; June 4: \$150; June 18: \$100 [\$1,155 total];
2. she earned supplementary income from the sale of the Company's products during the period February – August 2018 that was not reported to the ministry as required under EAR Section 33;
3. P earned cash income as a handyman totaling **\$2,100** during the months of June and July 2018 that was not reported to the ministry as required under EAR Section 33, detailed as follows:
 - June 18 \$600
 - June 27 \$440
 - July 13 \$540
 - July 17 \$530

The issue remaining in this appeal is the amount of income earned by the appellant by selling the Company's products during this period. The appellant's evidence is that the deposits into Bank A represent gross retail sales amounts received from customers in the form of cash and cheques made payable to the appellant. From these gross sales deposits the appellant remitted to the Company the discounted amounts for each product, as illustrated by the Company's invoices found on pages 27-63 of the appeal record.

The overpayment chart prepared by the ministry lists as unreported income the deposits recorded in Bank A. In all but 7 of 27 entries these deposits are matched by payments made to the Company on the same day, illustrated as follows:

<u>DATE</u>	<u>PAYMENT to the COMPANY</u>	<u>DEPOSIT</u>
Dec 8/17	\$310	\$298.55
Dec 13	370	389.24
Dec 20	81.46	
Dec 27	430	
Dec 28		69.33
Jan 8/18	310	325
Jan 22	395	398.69
Feb 5	220	212.99
Feb 19	350	345.44
Feb 28		79.22
Mar 5	350	224.45
Mar 19	455	455.08
Apr 2	201.35	175.57
Apr 18	485	464.14
Apr 30	200	168.45
May 14	260	257.24
May 16		86.45
May 21	300	
May 28	200	159.59
May 31		70.35
June 8	325	265.10
June 11	80	80
June 22	310	314.30
June 25	165	167.12

Earned income is defined in EAR Section 1 as "any money received in exchange for work or the provision of a service". The allowable exemptions and deductions from income are set out in EAR Schedule B, Sections 1 and 2.

None of the income exemptions set out in Section 1 applies to the appellant's circumstances. Deductions from earned income set out in Section 2 include income tax, EI, CPP and other amounts typically deducted at source by a worker's employer. The appellant acknowledges that none of the Section 2 deductions is applicable to her circumstances.

Section 4 of Schedule B (which was not included in Appendix B of the reconsideration decision) permits a person who is involved in a self-employment program to deduct business expenses such as inventory, advertising, motor vehicle expenses and wages. These permitted operating expenses apply only to a self-employed person who has been determined by the ministry to be eligible under EAR Section 77.1 as a PPMB. Because the appellant has not been designated a PPMB she cannot claim permitted operating expenses under Schedule B, Section 4.

However, to interpret the statutory definition of "earned income" as including those deposited amounts that flowed out of the appellant's bank account directly to the Company on the same day, i.e., as including the costs of goods sold, would result in an unreasonable application of "money received in exchange for work" in the circumstances of the appellant. The bank statements demonstrate that the appellant retained only a small percentage of her clients' retail purchases of Company products. To not allow for an exclusion of the cost of goods sold arguably excludes a person earning a minimal supplementary income from obtaining IA. A more reasonable interpretation of "earned income" in the appellant's circumstances would be to exclude the cost of goods sold and forwarded directly to the Company.

Conclusion

The panel therefore finds that the ministry's interpretation of "earned income" in the circumstances of the appellant's earned income during the period February – September was not reasonable, and rescinds the reconsideration decision. Because the aggregate income of the family unit included undeclared cash income earned by P during June and July 2018 the panel decision is referred back to the ministry for determination of amount.

The appellant is successful in her appeal.

PART G – ORDER		
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY		
THE PANEL CONFIRMS THE MINISTRY DECISION <input checked="" type="checkbox"/> RESCINDS THE MINISTRY DECISION		
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
LEGISLATIVE AUTHORITY FOR THE DECISION:		
<i>Employment and Assistance Act</i>		
Section 24(1)(a) or Section 24(1)(b)		
and		
Section 24(2)(a) or Section 24(2)(b) <input checked="" type="checkbox"/>		

PART H – SIGNATURES	
PRINT NAME Joan Bubbs	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/Nov/26

PRINT NAME Mel Donhauser	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/Nov/26
PRINT NAME Jean Lorenz	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/Nov/26