

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated December 10, 2018 which held that the appellant was not eligible for income assistance ("IA") because, pursuant to s.10(2) of the Employment and Assistance Regulation ("EAR") his family's net income calculated under Schedule B of the EAR exceeded the rate of income assistance the appellant's family was eligible for under Schedule A of the EAR.

**PART D – RELEVANT LEGISLATION**

s. 1, s.10(2), s. 28, Schedule A, and Schedule B Employment and Assistance Regulation ("EAR")

## PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- On October 10, 2018 the appellant and his spouse applied for IA as an employable couple.
- The appellant indicated that he was injured and intended to apply for Persons with Disabilities ("PWD") designation.
- On November 5, 2018 the appellant provided bank statements to show that his spouse received \$1544.74 biweekly as pay from her employment.
- On November 8, 2018 the Ministry denied the appellant IA because his spouse's monthly income of \$3089.48 was more than the rate of IA for a couple.
- On November 28, 2018 the appellant submitted his request for reconsideration.
- An application for assistance completed by the appellant.
- Pages 1-5 of 11 of a November 3, 2018 bank statements of the appellant's spouse.

The appellant's request for reconsideration states that his medical condition prevents him from working currently and his wife's income did not cover their bills.

The appellant's notice of appeal states that the logic in the Ministry decision did not make sense.

At the hearing, the appellant stated that the legislated amounts were not adequate to pay for his expenses. He argued that the decision did not make sense because he has not asked for assistance in the past and it is not his pattern to reach out for help. He has always been self-sufficient, and he thought that he could have a bit of help to get on his feet. He stated that his spouse's income does not cover the bills.

The Ministry relied on their reconsideration decision.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant IA because, pursuant to s.10(2) of the Employment and Assistance Regulation ("EAR") his family's net income calculated under Schedule B of the EAR exceeded the rate of income assistance the appellant was eligible for under Schedule A of the EAR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

### S.1 EAR

"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;

### s.10 EAR

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.

### s.28 EAR

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

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);

"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.

Amount of support

7	Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age
	\$407.22	

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

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding month,

(ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and

(iii) the total amount of the supplements, if any, provided to or for the family unit under section 61 [supplement for delayed, suspended or cancelled family bonus] or 61.1 [supplement for delayed, suspended or cancelled Canada child benefit] of this regulation for the current calendar month.

(2.1) If the amount calculated under subsection (2) is less than zero, it is deemed to be zero for the purposes of this section.

(3) In calculating the adjustment under subsection (2), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from the family bonus or the Canada child benefit must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

(a) apply for the family bonus or the Canada child benefit for the preceding calendar month, or

(b) accept the family bonus or the Canada child benefit for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the Income Tax Act (Canada).

(5) If a family unit includes a person who

(a) immediately before reaching 19 years of age was a dependent child in the family unit, and

(b) reached that age while attending secondary school,

the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

(c) the end of the school year in which the person reaches the age of 19 years, and

(d) the date the person stops attending secondary school.

(6) For the purposes of this section, if the family unit includes a deemed dependent child, the BC child adjustment amount applies in respect of the deemed dependent child as if the deemed dependent child was a dependent child.

#### Prorating of support allowance

3 In the calendar month that includes the income assistance application date, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission.

#### 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:

#### Maximum Monthly Shelter

2	2 persons	\$570
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## 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;

(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;

(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.

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

(b) \$600, 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) \$700, 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) \$700, 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.

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, and
  - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
    - (i) is used for permitted operating expenses of the small business, or
    - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
      - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
      - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
    - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a

greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

#### Withdrawals and expenditures from reserve account

5 The amount of any expenditure or withdrawal out of a separate account described in section 4 (2) (b) (ii) of this Schedule is earned income for all purposes of this regulation, unless

(a) the expenditure or withdrawal is for the payment of permitted operating expenses of the small business referred to in section 4 (2) of this Schedule, and

(b) in the case of a withdrawal, the amount withdrawn is used within one month after the date of withdrawal to pay permitted operating expenses of the small business referred to in section 4 (2) (b) (i) 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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 1, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 24 (f).]

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

(a) a training allowance;

(b) student financial assistance;

(c) student grants, bursaries and scholarships;

(d) disbursements from a registered education savings plan.

(3) An exemption under subsection (2) may be authorized in respect of a student who is

(a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,

(b) an applicant or a recipient enrolled

(i) as a part-time student in an unfunded program of studies, or

(ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or

(c) a person in a category listed in section 29 (4) [consequences of failing to meet employment-related obligations] of this regulation enrolled as a part-time student in a funded program of studies.

(4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

(a) a training allowance;

(b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the Canada Student Financial Assistance Act;

(c) disbursements from a registered education savings plan.

(5) An exemption under subsection (4) may be authorized in respect of a student who is

(a) a recipient enrolled as a part-time student in a funded program of studies, or

(b) described in section 16 (1.1) [effect of family unit including full-time student] of this regulation.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

(a) the date the income is payable;

(b) the period for which the income is payable;

(c) the date the income is reported to the minister;

(d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

Backdated family bonus or Canada child benefit treated as unearned income

10 (0.1) In this section:

"backdated Canada child benefit payment", in relation to a child benefits cheque, means the portion of the cheque, if any, attributable to the Canada child benefit for one or more calendar months preceding the calendar month in which the cheque is issued;

"backdated family bonus payment", in relation to a child benefits cheque, means the portion of the cheque, if any, attributable to the family bonus for one or more calendar months preceding the calendar month in which the cheque is issued;

"supplement" means a supplement referred to in section 61 [supplement for delayed, suspended or cancelled family bonus] or 61.1 [supplement for delayed, suspended or cancelled Canada child benefit] of this regulation.

(1) If a person in the applicant's or recipient's family unit receives a backdated family bonus payment or a backdated Canada child benefit payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the lesser of the following amounts must be treated as unearned income:

(a) the portion of the backdated family bonus payment or the backdated Canada child benefit payment, as applicable, that is attributable to those calendar months for which the family unit was provided with a supplement;

(b) the sum of the supplements that are attributable to those calendar months for which the family unit received the backdated family bonus payment or the backdated Canada child benefit payment, as applicable.

(2) For the purposes of subsection (1), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from a family bonus or a Canada child benefit is considered to have been paid to a person in the applicant's or recipient's family unit.

(3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus or Canada child benefit

(a) to replace a lost or stolen cheque for which an amount was advanced under section 60 [advance for lost or stolen family bonus cheque] or 60.1 [advance for lost or stolen child benefits cheque — Canada child benefit] of this regulation, or

(b) to replace a cheque for which no amount was advanced under section 60 [advance for lost or stolen family bonus cheque] or 60.1 [advance for lost or stolen child benefits cheque — Canada child benefit] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued.

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

Backdated CPP treated as unearned income

11 (1) In this section, "pension benefit" means a pension or other payment under the Canada Pension Plan (Canada).

(2) If

(a) income assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and

(b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the Canada Pension Plan (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month,

the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

The panel finds:

The Ministry determined that the income earned by the appellant's spouse is earned income pursuant to s.1 EAR because it is money received in exchange for work or the provision of service. The appellant did not argue that the income earned by his spouse was not earned income. The panel finds that this was a reasonable interpretation of earned income by the Ministry.

The Ministry relied on the evidence of the spouse's payroll deposits which showed that \$3089.48 per month was deposited in her account and determined that no other deductions or exemptions pursuant to Schedule B EAR were applicable to the appellant's family. The appellant did not argue that the income earned by his spouse was exempt or eligible for deductions. The panel finds that it was a reasonable for the Ministry to determine that the appellant was not eligible for exemptions or deductions to his family income.

The Ministry determined that the maximum allowable rate of support and shelter for an employable couple is \$977.22. This amount is legislated. The appellant argues that the amount is not adequate or fair however, the panel does not have the jurisdiction to rule on the adequacy of the support amounts set out in the legislation. The Ministry is bound by the legislated support amounts and the panel finds that it was a reasonable calculation of the appellant's Schedule A EAR income.

For these reasons, the panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.



**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       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?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME  
MEGHAN WALLACE (by telephone)

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)  
2019-01-07

PRINT NAME  
KEVIN ASH

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2019-01-07

PRINT NAME  
ROSALIE TURCOTTE

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2019-01-07