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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated December 21, 2018 which held that the appellant did not meet the legislated criteria in Sections 1, 2 and 4 of the Employment and Assistance Act (EAA) and Sections 1 – definition of "earned income", Section 10 and 28 of the Employment and Assistance Regulation (EAR) and Schedule A – Section 1, 2, 4 and 5 as well as Schedule B – Section 1, 2, 3, and 4. Specifically, the appellant's net income exceeds the ministry's rate of assistance for her family unit size and she is therefore ineligible for income assistance

PART D – RELEVANT LEGISLATION

Sections 1, 2 and 4 of the Employment and Assistance Act (EAA)
Sections 1 – definition of "earned income", Section 10 and 28 of the Employment and Assistance Regulation (EAR)
Schedule A – Section 1, 2, 4 and 5
Schedule B – Section 1, 2, 3, and 4

[Redacted]

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration was as follows:

The Request for Reconsideration dated December 12, 2018

The appellant's bank statements stamped November 16, 2018 for the months of September-November 2018

The appellant's pay stubs for October and November 2018

The appellant applied for regular income assistance benefits on November 14, 2018, following a notification that her Canada Pension Plan Disability (CPPD) benefits would be suspended while Service Canada conducted a review of her file. Her last cheque from CPPD was issued in July 2018.

On November 27, 2018 the ministry denied the appellant's application for benefits after noting that her net income exceeded the ministry's rate of income assistance of \$710 and disability assistance of \$1133.42. The appellant provided bank statements and pay stubs as proof of income.

On December 11, 2018 the appellant noted that she was behind in her rent and utility bills, with creditors calling her several times per day. She also stated that she has lost weight due to the stress of her situation.

She re-applied for benefits on December 22, 2018 however she was told by the ministry representative receiving her application that her file had been closed and the application would not go forward.

At the hearing, the appellant stated that:

She had not been advised by the ministry that she had to apply specifically for Persons With Disabilities (PWD) designation. She believed that as she had been on CPPD for approximately seven years, when she applied for employment assistance benefits, her application would automatically be considered for PWD benefits because she is disabled.

She also noted that she has borrowed money from every source she can think of and is in a desperate financial situation. She has received an eviction notice and does not want to live on the street. The stress this situation has adversely affected her health.

Service Canada has informed her that her file review likely will not be finished for several more months due to a backlog.

The ministry relied on the reconsideration decision, in addition to explaining to the appellant the correct procedures, forms and timelines for applying for PWD benefits.

[Redacted]

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's reconsideration decision dated December 21, 2018 which determined that the appellant did not meet the statutory requirements of Sections 1, 2 and 4 of the Employment and Assistance Act (EAA), Sections 1 – definition of "earned income", Section 10 and 28 of the Employment and Assistance Regulation (EAR) Schedule A – Section 1, 2, 4 and 5 and Schedule B – Section 1, 2, 3, and 4 is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided established that the appellant's earnings exceeded the income threshold for the size of her family unit for both regular and PWD benefits.

The following legislation applies to this appeal:

Employment and Assistance Act:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"family unit" means an applicant or a recipient and his or her dependants;

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

"supplement" means any form of assistance specified by regulation, other than income assistance, hardship assistance or financial assistance provided under section 6 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

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

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

Employment and Assistance Regulations:

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,
- (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.

Income Assistance Rates

(section 28 (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.

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.

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	\$335.00

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. [B.C. Reg. 151/2018]

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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

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) any income earned by a dependent child attending school on a part-time basis;
 - (iii) any income earned by a dependent child attending school on a reduced basis;
 - (iv) 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. [B.C. Reg. 151/2018]

(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.C. Reg. 169/2017]

(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.

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.

The appellant has repeatedly stated that she is undergoing an extremely stressful financial emergency due to her CPPD benefits being suspended pending the results of a review by Service Canada. She has applied twice for regular EA benefits, not recognizing that a special application must be submitted if the applicant is disabled (PWD). She understands that her net income exceeds the threshold for regular (\$710/month) or PWD (\$1133.42/month) benefits as per Section 10(2) of the EAR, however she is asking for some leniency because her monthly net income (approximately \$1200) is barely above the limit for a family unit of her size. The panel considered potentially applying Schedule B, section 3(6) of the EAR, however it was determined that this would not be applicable in these circumstances.

The ministry maintains that it must adhere to the legislation in determining whether a person is eligible for benefits; there is no flexibility in the net income threshold amounts.

The panel finds that in the circumstances of the appellant, the ministry reasonably applied the legislation. The panel confirms the ministry's decision to deny the appellant regular benefits as her net monthly income exceeds the limits set out in the legislation. The appellant is not successful in her appeal.

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PARTG-ORDER
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY
THE PANEL <input checked="" type="checkbox"/> CONFIRM THE MINISTRY DECISION <input type="checkbox"/> RESCIND 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 type="checkbox"/> Yes <input type="checkbox"/> No
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>

PARTH-SIGNATURES	
PRINT NAME Jan Lingford	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/01/17

PRINT NAME Linda Pierre	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/17
PRINT NAME Reece Wrightman	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/17