

--

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision of January 3, 2019 in which the ministry determined that the appellant was ineligible for income assistance (IA) because the net income of her family unit exceeded the income assistance rates determined under Schedule A of the Employment and Assistance Regulation (EAR) for the size of her family unit. The ministry also determined that the appellant was ineligible for an exemption to earned income under EAR Schedule A, Section 3(2) because no member of her family unit had received disability assistance or IA in at least one of the three previous calendar months preceding the month in which she submitted her application for IA.

**PART D – RELEVANT LEGISLATION**

**EAR:** Sections 1, 10, 28  
Schedule A – Sections 1, 2 and 4  
Schedule B – Sections 1, 2, 3 and 6

## PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

- appellant's request for reconsideration submitted to the ministry on December 19, 2018. In Section 3 of the request for reconsideration the appellant provided the following information:
  - her mortgage payment is \$1,700 per month and she also has a second mortgage for which \$1,152 is due;
  - she pays all of the household utilities;
  - in 2015 she was injured in an accident. By the summer of 2018 her injuries had become unbearable and she had been diagnosed with many illnesses;
  - she planned to sell her home but the market was flooded with homes for sale;
  - she plans to submit an application for disability assistance within a couple of days;
- appellant's application for IA which listed the following information related to monthly income: \$1,440 from rental property, \$500 from child support, \$450 from federal child tax benefit;
- copy of rent receipt dated October 1, 2018 acknowledging payment from Tenant 1 in the amount of \$715;
- copy of rent receipt dated November 9, 2018 acknowledging payment from Tenant 2 in the amount of \$725.

### Information Submitted after Reconsideration

#### 1. Notice of Appeal

On January 10, 2019 the appellant submitted a Notice of Appeal in which she noted that:

- her assets were purchased from monies arising from a financial settlement of her 2015 accident;
- Tenant 2 moved out without paying rent;
- her mortgage is now in default;
- her boat and bike are in repair shops and won't be released to her because she cannot pay the bills;
- her car is not running and she can't pay to repair it;
- she does not have an income;
- on top of her existing disabilities her celiac disease has worsened;
- recently she was diagnosed with non-fatty liver disease.

#### 2. Additional Package #1

On January 23, 2019 the appellant submitted a 3-page typewritten document. Page 1 ("Part 1a") consisted of argument only. Pages 2 and 3 ("Part 1b") included argument, details of the unexpected absconding of Tenant 2 in December 2018, a breakdown of the utilities portion of her tenants' gross rent, and details the appellant's health problems. The ministry objected to admission of the entire document.

The panel considered Additional Package #1 and determined that the information contained in Part 1b concerning the unexpected departure of Tenant 2 in mid-December and the breakdown of tenants' rent versus utilities were admissible under EAA Section 22 (4) as evidence in support of the information before the ministry at reconsideration because they related directly to information before the ministry at reconsideration. The portion of Part 1b that related to the appellant's health problems was determined to be inadmissible because it was not relevant to the issue under reconsideration.

#### 3. Additional Package #2

Additional Package #2 contained argument and information related to her application for Persons with Disability (PWD) designation, which is not an issue in this appeal. The ministry objected to admission of the entire package. The panel determined that none of the information contained in Additional Package #2 was admissible under EAA Section 22 (4) because it consisted of PWD-related information not relevant to this appeal.

#### 4. Additional Package #3

Additional Package # 3 contained:

- the appellant's PWD application;
- a statement of physiotherapy costs incurred, which relates to the appellant's PWD application;
- argument related to federal poverty reduction legislation and the appellant's belief that she was entitled to IA while awaiting the results of her PWD application.

The ministry objected to the admission of Additional Package #3. The panel determined that none of the information contained in Additional Package #3 was relevant to or in support of the information before the ministry at reconsideration, and was therefore not admissible under EAA Section 22 (4).

**Oral Evidence at the Hearing**

The appellant reiterated her position that the base rent charged to tenants was \$380 to Tenant 1 and \$335 to Tenant 2, with the remainder applied to monthly utilities and breakfast costs. She added that in mid or late December 2018 she informed that ministry that Tenant 2 had left without paying his December 2018 or January 2019 rent.

The appellant confirmed that the information provided to the ministry in her application for assistance submitted November 23, 2018 was accurate as of that date, and that the rented premises were not self-contained suites.

The panel determined that the oral evidence provided by the appellant at the appeal hearing was admissible under EAA Section 22 (4) as information in support of the information before the ministry at reconsideration.

The ministry relied on the reconsideration decision.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision which determined that the appellant was ineligible for IA because the net income of her family unit exceeded the IA rates determined under Schedule A of the EAR for the size of her family unit.

The ministry also determined that the appellant was ineligible for an exemption to earned income under EAR Schedule A, Section 3(2) because no member of her family unit had received disability assistance or IA in at least one of the three previous calendar months preceding the month in which she submitted her application for IA.

Relevant legislation:

**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
- (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;

**"unearned income"** means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

### 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 - Income Assistance Rates

#### Maximum amount of income assistance before deduction of net income

1 Subject to 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 (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.

Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$475.58
---	--	----------

**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:

2	2 persons	\$570
---	-----------	-------

**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,
- (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

**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)** 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:

- (b) \$600, if the family unit
  - (i) includes a recipient who
    - (A) has a dependent child

#### **Deductions from unearned income**

6 The only deductions permitted from unearned income are the following:

- (b) essential operating costs of renting self-contained suites.

The appellant argues that:

- the actual rent paid by Tenant 1 is \$380 per month and by Tenant 2 is \$335, with the remainder allocated to utilities and food costs associated with provision of breakfast;
- her earned income is less than that assessed by the ministry in the reconsideration decision because Tenant 2 vacated his room without notice in mid-December 2018 without paying December 2018 or January 2019 rent.
- she is entitled to receive IA while she awaits approval of her application for PWD designation, submitted by her to a ministry office on or about December 21, 2018 and received by the ministry on January 8, 2019.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- maximum IA payable to the appellant for her family unit under Schedule A is \$475.58 support plus \$570 shelter for a total of \$1045.58;
- the appellant's "earned income" under Schedule B is \$1440, in the form of rental income (\$715 from Tenant 1 and \$725 from Tenant 2 = \$1440);
- pursuant to EAR Schedule B Section 2 (c) the appellant is entitled to deduct 25% of gross rent received from the rental of rooms. As a result appellant's net income is calculated as \$1,080 ( $\$1440 \times 25\% = \$360$ .  $\$1440 - \$360 = \$1080$ ).
- because the appellant's Schedule B net income of \$1440 exceeds the maximum IA payable to her family unit under Schedule A of \$1045.58, she is not eligible for IA; and
- the appellant is not eligible for an additional exemption under Section 3(6) of Schedule B because at the time of her application no one in her family unit had received PWD assistance or IA in at least 1 of the 3 previous calendar months.

#### **Panel Decision**

EAR Section 10 (2) clearly states that in order to be eligible for IA the family unit's net income as calculated in Schedule B must not exceed the amount of IA determined under Schedule A. There is no dispute as to the maximum allowable amount of IA determined under Schedule A, which is **\$1045.58** per month in the appellant's circumstances.

The appellant receives \$500 per month in child support and \$450 per month in child tax benefits. Neither of these amounts was included in calculating her net income because both are exempt from income under Subsections 1(a)(v) and (xiv) of Schedule B.

The appellant does not dispute that the amount of rental income listed in her November 23, 2018 application for IA was \$1440 per month from Tenant 1 (\$715) and Tenant 2 (\$725). As set out in EAR Section 1 (1) (e) “earned income” includes “money or value received from renting rooms that are common to and part of a person’s place of residence”. Schedule B, Section 1(c) states that “all earned income must be included in calculating net income, subject to the exemptions set out in Section 1 and the deductions allowable under Sections 2, 3 and 4”. Section 2() allows a family unit to deduct 25% of gross rent received from the rental of rooms. Application of the 25% deduction results in a net income of **\$1080** ( $\$1440 \times 25\% = \$360$ .  $\$1440 - \$360 = \$1080$ ).

Under certain circumstances a family unit may deduct \$600 per month for a recipient with a dependent child (Schedule B, Section 3(6)). However, pursuant Section 3(2) this deductions does not apply in relation to the first calendar month in which the family unit becomes eligible for IA unless a member of the family unit received PWD assistance or IA in at least 1 of the 3 calendar months preceding that first calendar month. The appellant first applied for IA on November 23, 2018 and did not receive PWD assistance or IA in the 3 months preceding her application.

The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for IA because her net income of \$1080 calculated under Schedule B exceeded \$1045.58, the maximum amount of IA payable to her under Schedule A.

The appellant also argues that only \$715 of the \$1440 November 2018 total rental income received from Tenants 1 and 2 constituted rent because the remaining \$715 was allocated to the cost of utilities and breakfast. The appellant acknowledges that the premises rented to Tenants 1 and 2 were not self-contained suites. This distinction is important, because income from rental of self-contained suites is considered “unearned income” under EAR Section 1(n), from which essential operating costs can be deducted, as set out in Schedule B, Section 6(b).

The panel therefore finds that the ministry reasonably determined that because the rooms rented to Tenants 1 and 2 were not self-contained suites the appellant cannot deduct the cost of utilities from gross rents received. The panel also finds that the ministry reasonably determined that the appellant did not provide board and room to the tenants because only one of three daily meals was included in the tenancy. There is no definition of “room and board” in the EAR, but the provision of only one meal is more accurately categorized as “partial board”, for which there is no deduction set out in the legislation.

The appellant also argues that her earned income under Schedule B should be reduced by \$725 because Tenant 2 left her home in mid-December without notice and without payment of his December 2018 or January 2019 rent. The panel notes that the appellant’s Request for Reconsideration, submitted to the ministry on December 19, 2019, does not contain information related to the sudden departure of Tenant 2. The reconsideration decision was based on the information available to the ministry at the time of reconsideration and did not include notification by the appellant that Tenant 2 was no longer paying rent to the appellant. Both tenants paid their combined rent of \$1040 for the month of November 2018. The panel therefore finds that, based on the information before the ministry at reconsideration, the ministry reasonably determined that the net income of the appellant had not changed since the original denial of IA on December 12, 2018.

Finally, the appellant argues she is entitled to IA while awaiting the ministry’s determination of her PWD application, which was delivered to a ministry office on or about December 21, 2018 and was activated by the appropriate branch of the ministry on January 8, 2019. Applications for PWD designation are separate and distinct from applications for IA. In order to receive IA the applicant must meet the eligibility requirements set out in the legislation even if she is concurrently applying for PWD designation. The appellant did not meet the eligibility requirements when she applied for IA on November 23, 2018 because, for the reasons set out in this decision, her net income calculated under Schedule B exceeded her maximum amount of IA determined under Schedule B.

## **Conclusion**

The panel finds that that the ministry’s decision to deny IA to the appellant because her Schedule B net income exceeded the IA rates for her family unit under Schedule A was reasonably supported by the evidence, and confirms the decision. The appellant is not successful in her appeal.

--

**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 Joan Bubbs	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/01/30

PRINT NAME Patrick Cooper	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/30

PRINT NAME Marilyn Mellis	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/30