

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of June 5, 2019 which determined that in accordance with section 10 of the Employment and Assistance Regulation (EAR) the appellant was ineligible for income assistance for the month of June 2019 as her April income exceeded the maximum rate of assistance for her family unit.

PART D – RELEVANT LEGISLATION

EAR Section 1 and 10

Schedule A Sections 1, 2 and 4

Schedule B Sections 1, 6, and 7

PART E – SUMMARY OF FACTS

The appellant is currently receiving disability assistance as a sole recipient.

On April 29, 2019 the ministry received confirmation the appellant received \$3244 from EI in April 2019. It was determined that she was not eligible to receive June assistance as a result of her income from EI.

In her request for reconsideration dated May 30, 2019 the appellant wrote that she received an EI payment for 15 weeks starting in September. At this time she was not on income assistance but was waiting for her medical EI claim to come through. During this time she had to borrow money to pay rent, bills and living expenses. She had to use her EI income to pay back her debts for expenses incurred from September to December when she started to receive hardship assistance and then regular social assistance. She is in dire need of assistance and cannot afford to live, eat and pay rent. She has submitted statements from EI showing the time span covered by the EI payment. The appellant adds she is unable to work due to medical reasons and her PWD designation is pending.

In her Notice of Appeal dated June 14, 2019 the appellant wrote she had to pay back funds borrowed from her roommate for rent and expenses. She has medical issues, cannot work and is in desperate need of money.

The panel admits the appellant's statements in her Notice of Appeal as being in support of the information and records that were before the ministry at the time of reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry reasonably determined that in accordance with section 10 of the EAR the appellant was ineligible for income assistance for the month of June 2019 because her April income exceeded the maximum rate of assistance for her family unit.

EAR**Definitions**

1 (1) In this regulation:

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

(g) employment insurance;

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**

(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

- (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	\$385.00

Monthly shelter allowance

4 (1) For the purposes of this section:

(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

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;
- (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;

(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;

(vi) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (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 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

(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.

Appellant's position

The appellant argues that she should be eligible for June allowance because she was in dire need of assistance for this month and is unable to work due to medical reasons. She had to use the EI funds to pay debts she incurred to pay for her living expenses during the time she was waiting for her medical EI.

Ministry position:

The ministry determined that the appellant received unearned income from EI in April 2019 in excess of the rate of assistance for the appellant's family size; therefore she was not eligible for income assistance for the month of June 2019.

Section 1 of the EAR defines unearned income as any income that is not earned income and includes EI income as unearned income. On her amended monthly report the appellant reported receiving \$2919.00 from EI in April 2019. The ministry received confirmation that she received \$3244 before deductions for an assignment of benefit from EI. The deductions from her gross EI for the assignment of benefits are not a legislated deduction and as such, the ministry is satisfied that she received \$3244 from EI in April. It is noted that regardless of whether the ministry considers her April EI income to be \$3244 as reported by EI or \$2919 as reported by the appellant, her unearned income still exceeds the maximum rate of assistance for her family size.

Schedule B sections 1, 6, 7, and 8 set out all eligible deductions or exemptions from unearned income for the purpose of calculating net income. Income from EI, unless for maternity, parental or critically-ill child benefits, is not included in the list of exempt income. The appellant was not in receipt of maternity, parental or critically-ill child benefits from EI. Furthermore, section 6(a) states that the only deductions that are permitted from EI benefits are income tax deductions.

Under Schedule A, a single person in receipt of income assistance is eligible to receive up to \$385 for support and \$375 for shelter. The appellant currently does not have shelter costs and as such, she is eligible for support only in the amount of \$385 per month.

While the ministry acknowledges that the appellant used her EI income to pay back pre-existing debts, the ministry has no discretion in the matter. Section 10 of the EAR clearly states that a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A. As indicated above, the appellant's unearned income from EI calculated under Schedule B is \$3244.00, and the maximum rate of income assistance, calculated under Schedule A is \$385.

As the appellant's income in April exceeds the maximum rate of assistance for her family unit size, under section 10 of the EAR, the ministry finds she is ineligible for income assistance for the month of June 2019.

Panel Decision

While the appellant argues she needs money to pay back debts she incurred to pay for living expenses while she had no income the panel finds that based on the evidence the ministry reasonably determined that the appellant was not eligible to receive income assistance for June 2019 because her April 2019 net income of \$3244 exceeded her maximum assistance rate of \$385.

Section 1 of the EAR defines EI as unearned income. The panel finds that the ministry reasonably determined that the entire amount of \$3244 received in April must be considered net income because there is no evidence that the EI funds qualify for exemptions or deductions for the purpose of calculating her net income as they are not among the items listed in Schedule B, sections 1, 6, and 7.

Consequently, the panel finds that the ministry reasonably determined that the appellant's income in April exceeded the maximum assistance rate for her family unit and therefore, pursuant to section 10(2) of the EAR, the appellant is ineligible for income assistance for the month of June 2019.

Conclusion

After considering all the evidence and the applicable legislation the panel finds that the ministry's reconsideration decision which held the appellant was not eligible for income assistance for the month of June 2019 was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the decision and the appellant is not successful on appeal.

PART G-ORDER	
THE PANEL DECISION IS:(Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input 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 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"/> and Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H-SIGNATURES	
PRINT NAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE(YEAR/MONTH/DAY) 2019/07/08

PRINT NAME Angie Blake	
SIGNATURE OF MEMBER	DATE(YEAR/MONTH/DAY) 2019/07/08
PRINT NAME Dawn Martin	
SIGNATURE OF MEMBER	DATE(YEAR/MONTH/DAY) 2019/07/08