

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 9, 2019, which held that, pursuant to section 27 of the *Employment Assistance Act*, the appellant must repay \$11,366.89 in income assistance that she received between November 2014 and January 2016, for which she was not eligible.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act (EAA)*, sections 27, 28  
*Employment and Assistance Act Regulation (EAR)*, sections 1, 10, 28, 33, 77.1 and Schedules A & B

**PART E – SUMMARY OF FACTS***Information Before The Ministry at Reconsideration*

1. The Appellant is a sole recipient of income assistance;
2. A portion of the Appellant's earned income was exempted pursuant to section 3 of Schedule B to the EAR;
3. Bank records from CIBC;
4. A sales report from Square Dashboard;
5. Bank records from BMO Bank of Montreal; and
6. The Appellant's T1 General 2015 including the Statement of Business or Professional Activities.

*Information Provided on Appeal*

1. The Appellant's Notice of Appeal dated April 11, 2019. In that Notice, the Appellant stated she runs a business as a sole proprietorship, and it makes a 20% profit. In addition, she stated that she got "ripped off by [service providers]". The Appellant did not dispute the accuracy of the bank records or her T1 General 2015.
2. The Appellant also provided a letter indicating she may be eligible as a person with disability. As this was not related to the appeal, and not in support of the information before the ministry at reconsideration, this information was not considered by the panel, pursuant to *Employment and Assistance Act*, section 22(4).

*Summary of Relevant Evidence*

1. The Appellant is a sole recipient of income assistance;
2. The Appellant was not a participant in the ministry's Self Employment Program;
3. The Appellant received assistance from the ministry between January 1, 2015 and March 31, 2016; and
4. The Appellant's 2015 T1 General indicates she declared \$54,403.49 in gross business income in 2015.

**PART F – REASONS FOR PANEL DECISION****Issue on Appeal**

The issue on appeal is whether the ministry's decision that the Appellant had received \$11,366.89 of income assistance that she was not eligible to receive and consequently must repay that amount to the minister was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel notes that EAA section 27(2) states that the minister's decision about **the amount** a person is liable to repay is not appealable.

**Relevant Legislation**

EAA section 27 states:

**Overpayments**

**27** (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [*reconsideration and appeal rights*].

EAR section 1 states:

"**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

EAR section 28 states:

**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.

EAR Schedule B states:

**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;

(lvi) 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 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.

#### **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.

#### **Ministry Position**

The ministry stated that because the Appellant was not enrolled in a self-employment program when she received assistance and earned income from her sole proprietorship, that section 4 of Schedule B of the EAR did not apply. The ministry did exempt some earned income from the total income of the family unit pursuant to section 3 of Schedule B of the EAR.

The ministry also stated that it had to rely on the financial documents provided by the Appellant as accurate when it made its determination.

#### **Appellant Position**

The Appellant stated that although all the money received from her sole proprietorship was received into her bank accounts that she had to pay most of that money to her service providers. The Appellant also stated that she incurred several expenses related to her sole proprietorship including advertising and creating a web site. The Appellant further stated that she thought she was enrolled in a self-employment program, or that the self-employment program was only for new immigrants. Ultimately, the Appellant acknowledged that she had received an overpayment but she thought the amount she had to repay had been incorrectly calculated by the ministry.

**Panel Decision**

The panel notes that EAA section 27(2) states that the minister's decision about the amount a person is liable to repay is not appealable. Consequently, the panel's decision is restricted to whether the money received from the Appellant's sole proprietorship is earned income as defined in the EAR and if it should be exempted when calculating the net income of the Appellant's family unit.

The definition of earned income is broad, "any money or value received in exchange for work or the provision of a service." The Appellant has stated that the money received from her sole proprietorship was because she was operating a business that coordinated service providers and customers. The panel finds that this was money received in exchange for work or the provision of a service and therefore the ministry's decision that it was earned income was reasonably supported by the evidence and was a reasonable application of the applicable enactment.

The panel notes that the ministry did apply the exemption to earned income provided for in section 3 of Schedule B of the EAR. However, as stated above, the Appellant's position is that further earned income should be exempted under section 4. EAR Schedule B section 4 details several permitted operating expenses applicable to the "operation of a small business" and states that the earned income of a recipient that is used for operating expenses is exempted from the total income of the family unit. However, this section requires that the recipient be participating in a self-employment program. The Appellant was not participating in a self-employment program during the period relevant to this appeal.

Consequently, the panel determines that the ministry's decision that the money received by the Appellant from the operation of her sole proprietorship was not exempt from the total income of the Appellant's family unit under EAR Schedule B section 4 was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

APPEAL NUMBER

**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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/29

PRINT NAME

Sean Carberry

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/30

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/29