

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 July 23, 2019 (the “Reconsideration Decision”), which determined that the Appellant was not eligible for income assistance in the month of July of 2019, pursuant to section 10(2) of the *Employment and Assistance Regulation* (“EAR”) as the Appellant’s income for the month of May, 2019 had exceeded the amount of disability assistance otherwise payable to the Appellant, as determined under Schedule A to the EAR.

**PART D – RELEVANT LEGISLATION**

Section 11, *Employment and Assistance Act* (“EAA”)  
Sections 1, 10, 28, 33, and Schedules A and B, EAR

**PART E – SUMMARY OF FACTS**

The Appellant is a sole recipient of income assistance.

The information before the Ministry at the time of the Reconsideration included:

- E-mail correspondence, dated June 28, 2019, to the Ministry from an employer of the Appellant's;
- The Appellant's Monthly Report (the "Report"), received by the Ministry on June 28, 2019;
- The Appellant's Request for Reconsideration ("RFR"), dated July 16, 2019, in which the Appellant set out that that:
  - he had received \$2,500.00 for painting work on May 28<sup>th</sup>, 2019 (it should be noted that the Appellant's Monthly Report for May, however, indicated that this was actually \$2,200.00);
  - he had received no income for June;
  - he would be returning to work on July 17, 2019; and
  - he had not completed a work search because he already had a job and saw no reason to fill one out.

In his Notice of Appeal, the Appellant stated that he did not receive benefits for over a month because of work and that he had declared all his income.

At the hearing of the appeal, the Appellant gave evidence that:

- he worked on a contract in May for which he was paid \$2,200.00;
- he continued to wait for work but had nothing lined up after the May contract;
- he did not receive income assistance benefits in the month of June;
- he does not submit his Monthly Reports to the Ministry or his work search information because he is not permitted to attend at Ministry offices and, as a result, a third party does this for him;
- he submitted his Monthly Report for May late in June;
- he did not provide work search information to the Ministry because he expected to be working again when his employer had a contract from him;
- it took until July before his employer was able to find another contract for him; and
- he could not recall if he worked at all in the month of April but did note that it was hard to find work in his community in the winter months.

The Ministry confirmed that, although section 33 of the EAR requires recipients of income assistance to complete their monthly reporting requirement by the 5<sup>th</sup> day of each month for the previous month, because of processing times, any net income received by a recipient in a particular month and reported by the 5<sup>th</sup> day of the following month does not affect the recipient's income assistance until the month after the report is submitted. For example, where a recipient would report his or her other income in the month of May, the net income for an Appellant in May, if it exceeds any applicable exemption, would not be deducted from the recipient's income until the month of July.

The panel admits the evidence of the Appellant and the Ministry representative as oral evidence in support of information that was before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4) of the EAA.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for income assistance in the month of July 2019, pursuant to section 10(2) of the *Employment and Assistance Regulation* ("EAR") as the Appellant's income for the month of May of 2019 had exceeded the amount of disability assistance otherwise payable to the Appellant, as determined under Schedule A to the EAR.

**Statutory Framework**

Section 11 of the EAA, obligates a recipient of income assistance to submit reports monthly in forms prescribed by the Ministry and containing information prescribed by the Ministry:

**Reporting obligations**

**11** (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Section 33 of the EAR sets out the specifics of what information referred to in section 11 of the EAA must be submitted and when it must be submitted:

**Monthly reporting requirement**

**33** (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of each calendar month, and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

(i) whether the family unit requires further assistance;

(ii) changes in the family unit's assets;

(iii) all income received by the family unit and the source of that income;

(iv) the employment and educational circumstances of recipients in the family unit;

(v) changes in family unit membership or the marital status of a recipient;

(vi) any warrants as described in section 15.2 (1) of the Act.

Section 28 of the EAR sets out the maximum amount of income assistance that a family unit is eligible for in a given month:

**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.

Section 10 of the EAR sets out that a family unit is not eligible for income assistance if the family unit's net income exceeds its income assistance entitlement under Schedule A to the 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.

Section 2 of Schedule A sets out the amount of income assistance payable to a family unit in the circumstances of the Appellant:

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

Section 4 of Schedule A to the EAR sets out the shelter allowance for which a family unit in the Appellant's circumstances is eligible:

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

Section 1 of the EAR defines "earned income":

**"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;

Section 1 (c) of Schedule B to the EAR sets out that all earned income must be included in the calculation of a family unit's net income unless it is deductible or exempt:

**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...

Section 2 of Schedule B to the EAR describes the deductions which are permitted from earned income

**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.

Section 3 of Schedule B to the EAR sets out which exemptions in the calculation of a family unit's net income may be claimed in respect of earned income:

**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.

Finally, section 4 of Schedule B to the EAR provides for certain small business exemptions:

**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.

### Panel Decision

The Appellant received \$2,200.00 in pay for the month of May. He reported that income on his June Monthly Report and, although reported late, the information received by the Ministry for the Appellant's income in May was, as per the Ministry's practice of making it deductible from a recipient's income assistance two months later, was added to the Appellant's net income calculation for the month of July.

As a sole recipient of income assistance, the Appellant is eligible for monthly income assistance in the amount of \$385.00 per month, pursuant to section 2(1) of Schedule A to the EAR. He is also eligible for a monthly shelter allowance, pursuant to section 4(2) of Schedule A.

As such, under sections 10 and 28 of the EAR, if the Appellant's net income exceeds the amount of income assistance provided for in Schedule A, the Appellant would not be eligible for income assistance in that calendar month.

The starting point for calculating the Appellant's net income is to determine whether the monies received by the Appellant in May of 2019 are of a nature that they are required to be considered part of his net income.

The \$2,200.00 earned by the Appellant in May of 2019, which came from work done as a painter, clearly meets the definition of "earned income" set out in section 1 of the EAR as it was money received in exchange for work.

Section 1(c) of Schedule B to the EAR requires that all "earned income" be included in the calculation of a family unit's net income. In the result, the entire \$2,200.00 must be included in the calculation of the Appellant's net income for the month of May of 2019. The next issue is whether any of the deductions or exemptions set out in section 1(c) apply to the Appellant.

There is no evidence before the panel about whether anything was deducted from the \$2,200.00 paid to the Appellant that falls within the class of deductions described in section 2 of Schedule B to the EAR (i.e. income taxes, employment insurance premiums, etc.). Given that the \$2,200.00 was paid under what the Appellant described as a contract, it stands to reason, however that no source deductions, statutory or otherwise, were made from the monies paid to the Appellant and the panel concludes that none of the deductions under 2(a) are applicable. Likewise, there is no evidence before the panel that the Appellant provides room and board to anyone or received any rental income and, accordingly, subsections (b) and (c) also appear to not be applicable.



With respect to the exemptions set out in section 3 of Schedule B to the EAR, which describe the amount of income that a recipient is able to earn that is exempt from inclusion in Appellant's net income calculation, only subsection (a) could apply to the Appellant, as subsections (b) and (c) refer to family units with children and subsection (d) refers to persons who have been designated as persons with persistent multiple barriers.

Subsection (6)(a) permits a family unit to have up to \$400.00 of earned income in a calendar month that is exempt from inclusion in the family unit's net income calculation for that month. In effect, if otherwise eligible under subsections (1) and (2) of section 3 of Schedule B to the EAR, the Appellant can earn up to \$400.00 per month and not have it added to his net income calculation for the purposes of reducing his entitlement to income assistance in that calendar month. However, even if the Appellant were eligible for the \$400.00 earned income exemption in May of 2019, he still earned an additional \$1,800.00 in May that *would* have to have been included in his net income calculation for May of 2019.

As the Appellant's net income for May of 2019 was at least \$1,800.00, which amount exceeded his \$760.00 entitlement to income assistance and a shelter allowance, the Appellant was not entitled to receive any income assistance for May unless section 4 of Schedule B to the EAR applied to him.

Section 4 of Schedule B to the EAR provides for a small business exemption and, as with the deductions set out in section 2 of Schedule B to the EAR, there is insufficient evidence before the panel that the Appellant incurred any of the deductible operating expenses described in section 4(1). Likewise, there was no suggestion in the evidence that the Appellant is participating in a self-employment program and, in the result, section 4(2) of Schedule B to the EAR also appears inapplicable to the Appellant.

In the result of all of the foregoing, the panel finds that the Ministry reasonably concluded that the Appellant was not eligible for any income assistance in the month of July of 2019, as his net income in May of 2019 exceeded the amount of disability to which he was entitled. As per Ministry policy, the deduction of the Appellant's net income for May was made to his July income assistance. The Appellant is not successful in this appeal.

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/08/27

PRINT NAME

Gurjit Chaplin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-08-29

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-08-29