

APPEAL NUMBER  
2020-00198

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision of 31<sup>st</sup> July 2020 (the “Reconsideration Decision” or the “RD”), which held that the appellant was not eligible for income assistance as the appellant’s income exceeds the maximum rate of assistance for the appellant’s family unit, as prescribed in Sections 1 and 10 of the Employment and Assistance Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), Section 1, Section 10 and Schedules A & B

## **PART E – SUMMARY OF FACTS**

The information and evidence before the ministry at reconsideration included the following:

1. Application for Assistance dated 15<sup>th</sup> June 2020 by the appellant and the appellant's spouse. Amongst other matters, it states that:
  - a. the appellant and the appellant's spouse are a married two parent family with dependent children;
  - b. the appellant and the appellant's family unit were not applying for income assistance as persons with disability (PWD);
  - c. the appellant was not employed due to medical reasons; and
  - d. the appellant's spouse was employed.
2. A copy of a Bank Statement for the period 2<sup>nd</sup> April 2020 to 2<sup>nd</sup> May 2020 (Pages 50 and 51 or 77 and 78 of Record of Appeal)
3. Shelter Information dated 2<sup>nd</sup> July 2020. Amongst other matters, it states that the appellant's portion of the rent is \$500.00 per month;
4. A communication dated 15<sup>th</sup> July 2020 from the appellant to the ministry. Amongst other matters, it states that:
  - a. the appellant has had traumatic experiences in 2016 that have resulted in certain medical conditions, which required treatment as well as regular use of prescribed medication;
  - b. due to the medical condition of the appellant, the appellant has had to give up the appellant's work in 2017;
  - c. the appellant has sold all of the appellant's "assets" to help out around the house; and
  - d. the appellant's spouse has gone into debt, which makes the appellant feel like a burden.

In addition to the information described above, the panel reviewed the Reconsideration Decision dated 31<sup>st</sup> July 2020. Amongst other matters it states that:

1. the appellant is a member of a two-parent family unit with two dependent children, and had applied for income assistance on June 15, 2020;
2. the appellant had stated that the appellant was not employed, and last worked in December 2017. The appellant's spouse was employed, and the appellant had been living off the income and savings of the appellant's spouse;
3. with the appellant's application, the appellant had provided bank statements showing the income of the appellant's spouse's income from the spouse's employer, which showed the following deposits:
  - i. April 15 \$1,309.51 from Spouse's employer
  - ii. April 20 \$1,023.90 from Government of Canada
  - iii. April 29 \$1,364.91 from Spouse's employer
  - iv. May 13 \$1,309.51 from Spouse's employer
  - v. May 20 \$1,623.90 from Government of Canada

4. the appellant submitted a request for reconsideration, which explained that (i) the appellant experienced significant trauma that has resulted in substantial difficulties in the appellant's life and (ii) although the appellant has worked continuously since a young age, the appellant's trauma is affecting the appellant's ability to maintain employment;
5. the appellant has provided contact information for the appellant's physician and another official, as they are advocating for the appellant to apply for income assistance;
6. while the ministry is empathetic to the circumstance of the appellant, the relevant legislation does not allow for discretion when calculating the net income of the appellant's family unit;
7. the ministry noted that the deposits in the bank account of the appellant's spouse received on April 20 and May 20 is likely "**child tax benefit**", which is exempt when determining eligibility for income assistance. Therefore, this income is not included in the net income calculation of the appellant;
8. the deposits received by the appellant's spouse from the spouse's employer on April 15, 29 and May 13 are earned income because it is money received in exchange for work or the provision of service. The appellant has not disputed this and has not indicated that the income of the appellant's spouse has changed. As the appellant's family unit has not received assistance in the past three months, the said income is not exempt;
9. the net income of the appellant's family unit for April is \$2,674.52 and for May is \$1,309.51 according to the bank statements provided by the appellant.
10. The maximum rate of income assistance for the appellant's family (\$601.60 in income support and \$700.00 in shelter support) is \$1,301.60. As the family unit's income exceeds the maximum rate of assistance for the appellant's family unit, the appellant's family unit was not eligible for income assistance based on the provisions of Section 1 and 10 and Schedules A and B of the EAR;
11. The ministry noted that the appellant may apply for PWD designation; and
12. disability assistance is an income and asset tested program. The ministry will assess the appellant's eligibility for disability assistance, if the appellant's designation for PWD is approved, based on the appellant's income and assets at that time.

#### **Additional Information – New Documentary Evidence**

The appeal package contains the appellant's Notice of Appeal dated 13<sup>th</sup> August 2020, which amongst other matters, states that: (i) the income shown for the appellant's spouse total \$300.00 more than is typically the case; (ii) the appellant's spouse received the \$300.00 as a COVID19 top up pay for April 2020; and (iii) the appellant would look in to applying for a PWD designation.

The panel considered whether the Notice of Appeal contains legal arguments or new evidence, and whether such new information is admissible as new evidence. The panel notes that the ministry did not object to the said additional information being admitted as additional evidence before the panel.

Section 22 (4) of the Employment Assistance Act (EAA), states that:

- (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Having considered the foregoing new information and evidence, the panel finds that the additional information described in the Notice of Appeal is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Therefore, the panel finds that, pursuant to the provisions of Section 22(4)(b) of the EAA, the information is admissible as evidence, as it is reasonably required in support of the information and records that were before the ministry at the time of reconsideration.

### **Oral Evidence at the Hearing**

At the hearing the appellant provided the following information and made the following submissions:

- The appellant has:
  - a mental disability due to a trauma and is considering applying for a person with disability (PWD) designation;
  - used up all the appellant's assets, including RRSP monies, for the support of the appellant and the appellant's family;
  - not yet applied for any CPP disability benefits;
- The appellant's:
  - spouse and the appellant are still married and living together as a family unit with children;
  - spouse is still employed and continuing to receive salary income;
  - spouse's bi-weekly income is approximately \$1300.00;
  - spouse received a one-time COVID-19 salary top-up of \$300.00 as during the month of May 2020

At the hearing, the ministry relied upon the Reconsideration Decision and made the following submissions:

- The appellant would be eligible for \$601.60, as income support, plus \$700.00 , as shelter allowance, for a total of \$1301.60 per month;
- The appellant was eligible to apply for a PWD designation. However, the income eligibility requirements for persons with a PWD designation was the same both under the EAR and the Employment assistance Persons with Disability Regulation (EDPWR). Therefore, even as a PWD designation, the same or similar principles would apply;
- The appellant may be eligible for income assistance under CPP disability assistance and that the appellant should consider applying for it;
- The one-time salary top-up of \$300.00 received by the appellant's spouse in May 2020 was "earned income" and was therefore included in the calculation of the net income of the appellant;
- The ministry had no explanation as to why the Record of Appeal only included legislation relating to EAPWDR. However, the appellant's income assistance was considered under EAR, which is expressly referenced in the Reconsideration Decision.

### **Findings of Fact**

Having regard to the issues it has to decide, the panel finds that the evidence before it establishes the following facts:

- (a) The panel notes that although the Application for Assistance dated 15<sup>th</sup> June 2020 lists the name of only one child of the appellant's family, the ministry has acknowledged and confirmed in the Reconsideration Decision that the appellant's family unit has two dependent children. Based on such evidence, the panel finds that the appellant and the appellant's spouse are a married two parent family with two dependent children.
- (b) A deposit of \$1309.51, a deposit of \$1364.91, and a deposit of \$1309.51, respectively received by the appellant's spouse from the spouse's employer on 15<sup>th</sup> April 2020, 29<sup>th</sup> April 2020 and 13<sup>th</sup> May 2020, are "**earned income**" described in Section 1(c) of Schedule A, because they represent amounts received by the appellant's spouse in exchange for work or provision of services rendered for the spouse's employer.

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- (c) A deposit of \$1623.90, received by the appellant's spouse from the spouse's employer on 20<sup>th</sup> May 2020 includes a one-time COVID-19 top-up pay of \$300.00. This pandemic pay is not a wage increase, but merely a one-time top-up salary benefit in exchange for work or provision of services to the spouse's employer. It is therefore not a deduction permitted from the "**earned income**" of the appellant, as provided in Section 2 of Schedule B of EAR.

## **PART F – REASONS FOR PANEL DECISION**

The issue on the appeal is whether the ministry's Reconsideration Decision, which denied the appellant's application for income assistance on the grounds that the appellant's net income exceeds the maximum rate of assistance for the appellant's family unit, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant applicable legislation is as follows:

### **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;

"**child**" means an unmarried person under 19 years of age;

"**dependant**", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person, or
- (b) is a dependent child of the person;

"**dependent child**", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2) but excludes a child in circumstances prescribed under subsection (2.1);

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

### **Employment and Assistance Regulation:**

#### **Part 1 — Interpretation**

##### **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.

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

**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.

**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.

<b>Item</b>	<b>Column 1 Family unit composition</b>	<b>Column 2 Age or status of applicant or recipient</b>	<b>Column 3 Amount of support</b>
12	Two applicants/recipients and one or more dependent children	Both applicants/recipients are under 65 years of age	\$601.06

(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding month,

(ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and

(iii) the total amount of the supplements, if any, provided to or for the family unit under section 61 [supplement for delayed, suspended or cancelled family bonus] or 61.1 [supplement for delayed, suspended or cancelled Canada child benefit] of this regulation for the current calendar month.

(2.1) If the amount calculated under subsection (2) is less than zero, it is deemed to be zero for the purposes of this section.

(3) In calculating the adjustment under subsection (2), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus or the Canada child benefit must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

(a) apply for the family bonus or the Canada child benefit for the preceding calendar month, or

(b) accept the family bonus or the Canada child benefit for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada).

#### **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:

<b>Item</b>	<b>Column 1 Family Unit Size</b>	<b>Column 2 Maximum Monthly Shelter</b>
4	4 persons	\$700



## 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,

(v) the basic child tax benefit;

(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;

#### 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 6 calendar months immediately preceding that first calendar month.

### **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.

### **Panel Decision**

The panel considered the “Finding of Facts” made by the panel in **SECTION E –SUMMARY OF FACTS (above)** and the following provisions of the applicable enactment, which are set out above:

- **Section 1 of the EAR, Section 10 of the EAR**, which defines: (i) “*earned income*” and “*unearned income*” and (ii) the limits on income;
- **Schedule A of the EAR**, which prescribes: (i) the maximum amount of income assistance before deduction of net income; (ii) monthly support allowance;
- **Schedule B**, which describes the formula for the calculation of net income of the family unit and prescribes (i) the “**Deduction and exemption rules**” for “**Net Income Calculation**”; (ii) the deductions from “earned income” and “earned income” exemptions; and (iii) “unearned income” exemptions.

As a result of the foregoing, the panel finds that the ministry reasonably determined that the appellant, as a member of a two-parent family unit with two dependent children, would be eligible to receive a maximum income assistance of up to \$1301.60, consisting of \$601.60 for monthly income support and \$700.00, as a monthly shelter allowance in accordance with the applicable legislation. The panel further notes that the appellant has not disputed this determination made by the ministry.

The ministry determined that the deposits in the appellant’s spouses accounts received on 20<sup>th</sup> April and 20<sup>th</sup> May 2020 possibly included basic “**child tax benefit**”, which is exempt under **Section 1 (a) (v) of Schedule B** when determining eligibility for income assistance. The amount was not included by the ministry in the appellant’s net income calculation. The panel finds that the ministry reasonably determined that any “**child tax benefit**” received by the appellant should not be included in the appellant’s net income calculation.

According to the appellant’s information in the Notice of Appeal and oral evidence at the hearing, the appellant’s spouse received \$300.00 in May 2020 as COVID-19 top-up pay for services rendered by the spouse to the employer. The panel finds that the ministry reasonably determined that the said top-up pay should be included as

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“**earned income**” in the payment of \$1623.90 received by the appellant’s spouse on 20 May 2020.

The appellant’s income, as determined above, is \$2674.52 for the month of April 2020 and \$1609.51 for the month of May 2020. As these amounts exceed the maximum of assistance of \$1301.60 that the appellant’s family unit would be eligible to receive, the panel finds that the ministry reasonably determined that the appellant was not eligible for income assistance.

The panel therefore confirms the Reconsideration Decision.

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**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

TAJDIN MITHA

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/09/03

PRINT NAME

ANIL AGGARWAL

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/04

PRINT NAME

LINDA SMERYCHYNSKI

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/03