

APPEAL NUMBER  
2020-00217

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 14, 2020 which determined that pursuant to section 10(2) of the Employment and Assistance Regulation (EAR) the appellant was not eligible for income assistance (IA) because the family's monthly net income, determined under Schedule B of the EAR, exceeded the IA rate determined under Schedule A of the EAR.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation section 10(2) and Schedules A and B

**PART E – SUMMARY OF FACTS**

The appellant is an applicant of income assistance (IA).

The information before the ministry at the time of reconsideration included:

- A Request for Reconsideration (RFR) dated August 31, 2020 which included the following as the reason for requesting a reconsideration:
  - They are a person with multiple disabilities;
  - Their total assets fall below the limit of \$100,000; and
  - They will comply with the annual income limit of \$14,400 for the family and are aware that if the annual income exceeds that they will automatically not receive payment.
- A copy of bank statements, for a chequing account, for the periods May 29, 2020 to June 30, 2020 and June 30, 2020 to July 31, 2020 that included payroll deposits;
- A copy of bank statements, for a savings account, for the periods June 6, 2020 to July 5, 2020 and July 6, 2020 to August 5, 2020;
- A copy of the Application for Income Assistance (Part 2) dated August 28, 2020, on which the appellant and spouse declared the following:
  - Spouse's employment wages of \$1,900
  - Other Asset Value (RDSP) of \$87,343.41
  - Five bank accounts in the applicant's name and spouse's name with a total account balances of \$14,763.30

**Additional Information**

Prior to the hearing, the appellant provided a Service Request dated September 15, 2020 from the appellant to the ministry, writing, in response to the Reconsideration Decision, that they were not seeking IA, but were seeking PWD designation and enquiring as to whether they can now apply for PWD.

At the hearing, the appellant acknowledged that their family income is higher than IA rates however they were only requesting an application package for Persons With Disabilities (PWD) designation, which the ministry did not provide to them despite repeated requests. The appellant referred to the annual earnings exemption of \$14,400 for a person with PWD designation, but did not claim an applicable exemption for an applicant of IA.

At the hearing, the ministry explained the process for applying for PWD designation starts with a review of whether the applicant's income is less than either IA or disability assistance (DA) rates prior to the PWD package being issued because the PWD application forms are only valid for one year. In the appellant's circumstance, their income (approximately \$1900 per month) is higher than both the IA (\$1077.22 per month) and DA (\$1597.56 per month) rates, therefore, they would have been found not eligible for DA which is why a package was not issued. However, the ministry explained there is nothing in legislation that prohibits them from providing a PWD designation application package, so the ministry representative indicated they would mail one out to the appellant right away. They also informed the appellant that if they were found eligible for the Canada Pension Plan Disability Program with the federal government, that the ministry is able to designate someone as PWD without going through the standard application process.

The ministry emphasized the appellant was found ineligible for IA due to their monthly net income being in excess of the IA rates. The ministry stated that an earnings exemption may not be claimed unless IA has been received in one of the previous three months and, therefore, does not apply to the appellant. The ministry further explained that eligibility for DA could only be determined, after a PWD designation had been made, based upon the appellant's income and assets at that time.

**Admissibility of Additional Information**

The panel admitted the appellant and ministry statements and the appellant's Service Request in accordance with section 22(4) of the *Employment and Assistance Act* because the information was reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the Ministry’s reconsideration decision dated September 14, 2020, which determined that under section 10(2) of the EAR the appellant was not eligible for IA because the family’s monthly net income determined under Schedule B of the EAR exceeded the IA rate determined under Schedule A of the EAR, was reasonably supported by the evidence or was a reasonable interpretation of the legislation in the circumstances of the appellant.

**Relevant Legislation**

**EAR – Section 10 - 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.

**EAR - Schedules A and B**

**Schedule A**

**Income Assistance Rates**

**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
7	Two applicants/recipients no children	Applicant/recipients are under 65 years of age	\$507.22

...

**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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

**Schedule B**

**Net Income Calculation**

**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;
- (xlili) 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,

(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.

**Appellant's Position**

The appellant's position is that they wanted to receive a PWD application package from the ministry and were aware their income was currently higher than the ministry rates, however, they believe it is their right to make an application.

**Ministry's Position**

The ministry's position is because the appellant's monthly net income is higher than IA rates they are not eligible for IA pursuant to Section 10(2) of the EAR. The ministry agrees the appellant can receive an application form for PWD designation, however they will assess eligibility for DA, if the designation for PWD is approved, based on the appellant's income and assets at that time.

**Panel Decision**

The appellant indicated they did not dispute that the monthly income of the family unit exceeds the IA rates, they had only applied for IA as a starting point for wanting to apply for PWD designation and they were not provided with a PWD application form. In the reconsideration decision, the adjudicator indicated the appellant may apply for PWD designation, and would be assessed for eligibility for DA, if approved, at that time. The ministry representative at the hearing indicated they would be sending the application form for PWD designation to the appellant. The panel will be making a decision in regards to the reconsideration decision, which determined the appellant was not eligible for IA due to their monthly net income being in excess of the IA rates.

Section 10(2) of the EAR states that a family unit is not eligible for IA if the net income of the family unit, determined under Schedule B, equals or exceeds the amount of IA determined in Section A. In the appellant's situation, the IA rate is \$1077.22 per month and their family income was \$2,110.14 for the month of June 2020 and \$1953.02 for the month of July 2020. The appellant did not claim that any of the exemptions provided in Schedule B applied to them. The panel notes that section 3(2) of Schedule B of the EAR requires receipt of IA or DA in at least one of the six calendar months immediately preceding the first calendar month to be eligible for the earnings exemption, and in the appellant's circumstance they had not received IA before their application for assistance. The panel finds the ministry was reasonable in their decision to determine the appellant was not eligible for IA because the appellant's monthly net income is higher than the legislated rates for the appellant's family unit.

**Conclusion**

The panel finds the Ministry reconsideration decision, which determined the appellant was not eligible for IA pursuant to EAR section 10(2), was a reasonable interpretation of the legislation in the circumstances of the appellant.

APPEAL NUMBER  
2020-00217

**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  
Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)  
2020 October 5

PRINT NAME  
Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2020 October 5

PRINT NAME  
Sandra Walters

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2020 October 5