

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated September 8, 2020, in which the ministry found the appellant was not eligible for income assistance ("IA") under section 10(2) of the Employment and Assistance Regulation ("EAR") for September 2020, because the appellant's net income exceeded the IA rate for the family unit. The ministry determined the appellant had unearned income in July 2020 from the Canada Emergency Response Benefit ("CERB") in excess of the IA rate as calculated under Schedules A and B of the EAR. The ministry determined that there was no exemption for the CERB because the appellant was not eligible for IA on April 2, 2020 as set out in section 2.1 of the EAR.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act - EAA - sections 1, 2, 4, and 11

Employment and Assistance Regulation - EAR - sections 1, 2.1, 10, 28 and 33, and Schedules A and B

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's reconsideration decision indicating that:

- The appellant is a sole recipient of IA with two dependent children.
- The file was open May 14, 2020 and the ministry issued pro-rated support and shelter allowances for May 2020.
- On August 25, 2020, the ministry advised that the appellant was not eligible for September IA because the appellant's net income exceeded the rate of assistance. The ministry states that the appellant received the \$2,000 CERB payment on July 8, 2020 which was not exempt and affected IA eligibility for September 2020.
- On August 26, 2020, the appellant submitted a Request for Reconsideration ("RFR") and on September 8, 2020 the ministry completed the review of the RFR.

2. The ministry record (section 2) includes the following background information:

- On May 11, 2020, the appellant applied for IA.
- On May 14, 2020, the appellant indicated (in a phone conversation with the ministry) recently giving birth and living off the Child Tax Benefit ("CTB"). The appellant reported working for 3 months, then quitting the job due to pregnancy. The appellant reported receiving \$2,000 CERB payments for March and April 2020. The appellant stated they were no longer eligible for the CERB. Based on the information provided the ministry determined the appellant was eligible for IA.
- On August 14, 2020, the ministry reviewed the IA file and requested the appellant's bank statements for May and June 2020 to ensure that the appellant was no longer receiving the CERB.
- On August 20, 2020, the appellant submitted bank statements for May and June 2020.
- On August 21, 2020, the ministry reviewed the May and June bank statements and determined the appellant was still in receipt of the CERB and that the CERB was not exempt because the IA file was opened after April 2, 2020.
- The ministry determined that the appellant's rate of IA under Schedule A of the EAR is \$1,185.58 per month.
- On August 21, 2020, the ministry sent a letter advising that the appellant was no longer eligible for IA. The ministry requested a bank statement for July 2020 if the appellant was no longer receiving the CERB.
- On August 25, 2020, the appellant submitted the July 2020 bank statement which showed a CERB payment in July. The appellant also submitted a screenshot from the ministry website indicating that CERB and EI are temporarily exempt. The ministry states that the exemption is only for clients who were eligible for and receiving IA on April 12 [*sic*, April 2], 2020.

3. The RFR, signed by the appellant on August 26, 2020, includes the following information and documents:

- The appellant notes that the ministry website mentions an exemption for the CERB without any detail about the date of April 2, 2020 (screenshot from ministry website attached stating that "CERB and EI are temporarily exempt, meaning they will have no effect on your regular Income Assistance or Disability").
- The appellant states they did not intend to receive further CERB payments but needed dental work and the ministry coverage was inadequate to reduce the cost to the appellant (estimate from a dental office attached).
- The appellant states they are not eligible for the CERB and was told by the ministry "that I have to repay that amount to the federal government which is fair. But the ministry worker never mentioned that receiving CERB will automatically lead to ineligibility."
- The appellant states they are at risk for homelessness because the ban on evictions has been lifted as of August 18, 2020 (screenshot of the announcement on evictions attached).
- A copy of a ministry letter dated August 14, 2020, stating that the next IA cheque date is August 26, 2020 and the appellant's IA cheque will be held at the office until the appellant submits bank statements for May and June. The letter states that a decision on eligibility will be made once all documentation is reviewed.

- A copy of the appellant's bank statement showing withdrawals and deposits from April 30 to June 24, 2020. The bank statement shows a \$2,000 CERB payment on May 20, 2020.
- A copy of a ministry letter dated August 21, 2020, stating that the appellant is no longer eligible for IA: "You stated that you were no longer in receipt of CERB, however, your bank statements show that you are. If you have bank statements showing you did NOT get CERB in July you can submit for review. If no information received your file will close on Sept. 22."
- A copy of the appellant's bank statement showing withdrawals and deposits from June 30 to July 27, 2020. The bank statement shows a \$2,000 CERB payment on July 8, 2020.

Additional information

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

Subsequent to the reconsideration decision, the appellant submitted the following documents:

- In a typed submission, the appellant provides argument and states that a bank statement that shows transactions from September 1 to 30, 2020 does not show any further CERB payments (attached bank statement shows withdrawals and deposits from September 3 to 29, 2020).
- In the *Notice of Appeal* dated September 16, 2020, the appellant provides argument and includes a bank statement showing withdrawals and deposits from August 7 to September 15, 2020.

[Panel note: The deposits from the federal government on the bank statements are CTB payments]

The panel accepts the submissions including bank statements as argument on appeal. The appellant provided recent bank statements to argue current eligibility for IA. The ministry states in an email to the Tribunal that the reconsideration summary is the ministry's written submission on appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant was not eligible for IA for September 2020 because the appellant's net income exceeded the IA rate for the family unit was reasonably supported by the evidence, or was a reasonable application of the legislation. The ministry determined the appellant had unearned income in July 2020 from the CERB in excess of the IA rate as calculated under Schedules A and B of the EAR and that the exemption for the CERB under section 2.1 of the EAR did not apply in the appellant's circumstances because the appellant was not eligible for IA on April 2, 2020. Was the ministry reasonable to find that an exemption for the CERB was not available to the appellant based on the date of eligibility for IA?

The ministry based the reconsideration decision on the following legislation:

EAA**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

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

- (a)** each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b)** the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

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 specified 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.

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:

(i) financial assistance provided under the Employment and Assistance for Persons with Disabilities Act or provided by another province or jurisdiction;

Modifications in relation to COVID-19 emergency — CERB and EI

2.1 (1) This section applies in relation to the provision of assistance for a calendar month after April, 2020 and before March, 2021 to or for

(a) a family unit that was eligible on April 2, 2020, or includes a person who was in a family unit that was eligible on April 2, 2020, for

(i) income assistance, or

(ii) hardship assistance, other than hardship assistance provided under section 43 because an applicant applied for

(A) an income support payment under the Canada Emergency Response Benefit Act, or

(B) employment insurance,

(3) Section 1 (a) of Schedule B is to be read as though it also provided that the following are exempt from income when calculating the net income of a family unit for the purposes of section 28 (b) of this regulation:

(a) an income support payment under the Canada Emergency Response Benefit Act,

(b) 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.

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 specified by the minister:
 - (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;

Schedule A

Disability Assistance Rates

(section 28 (a))

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,

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	525.58

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
3	3 persons	\$660

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:

[Panel note: amounts for the federal child tax benefit, other tax credits, redress/settlement payments, specific social benefit/program payments, and specific child benefits are the exemptions included under this section]

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:

[Panel note: amounts for interest payments, specific government benefits, injury settlements/awards, trust funds, and disability-related costs are the exemptions included under this section]

Analysis

Ministry's arguments

The ministry's position is that the appellant is not eligible for September IA under section 10(2) of the EAR because the CERB payment received in July 2020 exceeded the appellant's IA rate. The ministry's evidence which the appellant does not dispute is that the appellant's IA rate was \$1,185.58 per month under sections 2(1) and 4(2) of EAR Schedule A [\$525.58 support allowance and \$660 shelter allowance].

The ministry argues that the exemption for the CERB under section 2.1 of the EAR does not apply in the circumstances of the appellant because the appellant was not eligible for IA on April 2, 2020. The ministry argues that the CERB is unearned income under section 1(1) of the EAR and none of the deductions or exemptions for unearned income under Schedule B of the EAR apply to the CERB. The ministry considered the CERB payment of \$2,000 in July 2020 to be the appellant's net income which has to be deducted from the appellant's IA rate pursuant to EAR section 28.

The ministry explains the monthly reporting requirements under the EAA and EAR; specifically, the client is required to report all income including any changes in income by the 5th day of each month. The ministry uses the information to determine eligibility for IA for the following month. Therefore, the CERB payment received in July 2020 should have been reported by August 5, 2020 and will impact IA eligibility for the September 2020 cheque issue. The record shows that the ministry did not find out about the July 2020 CERB payment until it requested the appellant's July bank statement.

Appellant's arguments

Regarding the reporting requirement, the appellant argues that the CERB payments continued into July 2020 because the appellant had to pay for dental work out of their own funds. The appellant expected to repay the CERB to the federal government. The appellant acknowledges receiving a CERB payment in July 2020 and the bank statement submitted for the reconsideration shows a \$2,000 CERB deposit on July 8, 2020.

The appellant argues that the ministry provided an IA payment in May 2020 even though the appellant's bank statements showed CERB deposits in March and April. The appellant states not understanding why the ministry considered the appellant to be eligible for May IA but not September IA based on receipt of the CERB.

The appellant argues that the ministry gave confusing information about the exemption for the CERB by not stating on the ministry website that the exemption is subject to the client being eligible for assistance on April 2, 2020. The appellant states that the ministry worker said the appellant would need to repay the CERB to the federal government "but never mentioned that receiving CERB will automatically lead to ineligibility [for IA]."

The appellant argues being at risk for homelessness; lacking food, shelter, and essentials for their family; and facing increased exposure to Covid-19 if the ministry does not provide IA. The appellant submitted recent bank statements and argues current eligibility for IA as the bank statements show no further CERB payments.

Panel's decision re appellant not eligible for September 2020 IA

The panel finds that the ministry was reasonable in finding the appellant was not eligible for September 2020 IA because the exemption for CERB under section 2.1 of the EAR only applies when the family unit was eligible for assistance on April 2, 2020 as set out in subsection 2.1(1)(a).

The panel finds that the ministry's interpretation of the legislation was reasonable because subsection 2.1(3) of the EAR says that the CERB is exempt from income for the purpose of net income calculation under section 28(b) but the exemption is subject to the client being eligible for assistance on April 2, 2020. The appellant acknowledges applying for assistance in May 2020 and the ministry's evidence is that the appellant applied for IA on May 11, 2020 and the appellant's file was opened on May 14, 2020.

The record indicates the ministry issued pro-rated IA to the appellant in May 2020. The appellant notes that May assistance was issued even though the appellant received the CERB in March and April. The appellant suggests it was unfair for the ministry to exempt the earlier CERB payments but not the CERB payment that was received in July. However, in the reconsideration decision the ministry does not re-visit the appellant's eligibility for May IA or explain how it treated the earlier CERB deposits. The reconsideration decision concerns only the assistance that was issued in September 2020. The panel considers the scope of the reconsideration decision to be the appellant's eligibility for September 2020 IA and makes no findings regarding the IA that was issued in May 2020.

The ministry considered the CERB to be unearned income under the EAR because it was not money received in exchange for work or provision of a service. The panel notes that the definition of unearned income in section 1(1) of the EAR includes the requirement for the money to be received from any of the sources listed in clauses (a) to (y).

The CERB is not listed under its own clause but section 1(1)(i) includes money “provided by another province or jurisdiction.” The CERB was provided by “another jurisdiction”, the federal government. The panel finds that the ministry was therefore reasonable in treating the CERB as unearned income and determining that none of the deductions or exemptions for unearned income listed in sections 6 and 7 of EAR Schedule B apply to the CERB.

The appellant argues not being informed of the April 2, 2020 eligibility requirement and said that the information on ministry’s website was confusing and incomplete. The screenshot from the ministry’s website does not mention the April 2nd date and based on all of the evidence about what was communicated, the panel accepts that the appellant may not have received complete information about the exemption. Nevertheless, the ministry is still bound by the legislation. The ministry has no discretion under EAR section 2.1 to exempt the CERB from the net income calculation if the client was not eligible for assistance on April 2, 2020. The panel finds that the ministry followed the legislation in not allowing an exemption for the CERB.

Conclusion

The panel finds that the ministry reasonably determined the appellant was not eligible for September 2020 IA because the appellant’s net income exceeded the assistance rate for the family unit. The panel finds that the ministry reasonably applied the legislation in determining that the exemption for the CERB did not apply in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

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

PRINTNAME

Margaret Koren

DATE(YEAR/MONTH/DAY)

2020-10-28

PRINTNAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2020-10-28

PRINTNAME

Kim Read

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2020-10-28