

APPEAL NUMBER  
2020-00231

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated September 30, 2020 which held that the appellant was not eligible for Income Assistance (“IA”) because the appellant’s net income determined by Schedule B of the Employment and Assistance Regulation (“EAR”) exceeded any assistance they may be entitled to determined by Schedule A of EAR.

**PART D – RELEVANT LEGISLATION**

s. 22(3)(b) Employment and Assistance Act (“EAA”)

s. 1, 10, and 28, Schedule A (1, 2, 4) and Schedule B (1, 2, 3, 4, 5, 7) Employment and Assistance Regulation (“EAR”)

**PART E – SUMMARY OF FACTS**

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act (“EAA”).

The evidence before the Ministry at reconsideration was:

- The appellant applied for income assistance (“IA”) on September 1, 2020.
- The appellant moved from another province where they received financial assistance from that province in June 2020.
- The appellant indicated that they did not qualify for Employment Insurance or Canada Emergency Relief Benefit (“CERB”).
- The appellant provided a letter from the financial assistance program in the province they moved from. The letter, dated August 27, 2020, states that the appellant was medically able to work. The letter states the appellant would no longer receive an \$88 benefit as of September 11, 2020 and that the appellant is expected to actively seek full time employment or pre-employment training.
- The appellant’s bank statement showed they received \$833 on July 31, 2020 and on September 1, 2020 from the province they moved from. They also received a \$2000 payment from “CanFed” on September 4, 2020.
- On September 14, 2020 the appellant was denied IA.
- The appellant submitted a request for reconsideration (“RFR”). The appellant’s RFR states they were unable to work. The appellant provided a letter from a physician at an Epilepsy Clinic dated September 8, 2020 that confirms that the appellant has a diagnosis of juvenile myoclonic epilepsy and is currently on carbamazepine (the “Physician Letter”). The writer recommends that the appellant remain off work for 12 months while the appellant works on stabilizing their seizures.

The appellant’s Notice of appeal states “I gave a doctors note saying I can’t work for 12 months so I don’t have income. I believe that CERB will not last that long, so I need income to live.”

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

The issue on appeal is whether the Ministry's decision to deny the appellant IA because the appellant's net income determined by Schedule B of the Employment and Assistance Regulation ("EAR") exceeded any assistance they may be entitled to determined by Schedule A of EAR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

*The legislation provides:*

*Employment and Assistance Regulation*

### **Definitions**

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;*
- (b) cooperative associations;*
- (c) war disability pensions, military pensions and war veterans' allowances;*
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;*
- (e) superannuation benefits;*
- (f) any type or class of [Canada Pension Plan](#) benefits;*
- (g) employment insurance;*
- (h) union or lodge benefits;*
- (i) financial assistance provided under the [Employment and Assistance for Persons with Disabilities Act](#) or provided by another province or jurisdiction;*
- (j) workers' compensation benefits and disability payments or pensions;*
- (k) surviving spouses' or orphans' allowances;*
- (l) a trust or inheritance;*
- (m) rental of tools, vehicles or equipment;*
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;*

(o) interest earned on a mortgage or agreement for sale;

(p) maintenance under a court order, a separation agreement or other agreement;

(q) education or training allowances, grants, loans, bursaries or scholarships;

(r) a lottery or a game of chance;

(s) awards of compensation under the [Criminal Injury Compensation Act](#) or awards of benefits under the [Crime Victim Assistance Act](#), other than an award paid for repair or replacement of damaged or destroyed property;

(t) any other financial awards or compensation;

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

(v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the [Immigration and Refugee Protection Act \(Canada\)](#) or the [Immigration Act \(Canada\)](#);

(w) tax refunds;

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation;

### **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.

Schedule A

**Monthly support allowance**

**2** (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of a warrant in [section 15.2](#) [consequences in relation to outstanding arrest warrants] of the Act.

(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>
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$385.00

**Monthly shelter allowance**

**4** (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of a warrant in [section 15.2](#) [consequences in relation to outstanding arrest warrants] of the Act.

(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>
1	1 person	\$375

**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;
- (xvii.1)money that is paid or payable to or for a person if the payment is in accordance with
- (A)the Sixties Scoop Settlement made November 30, 2017, or
  - (B)the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (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;*

*(xliv.1) a BC child opportunity benefit;*

*(xlv) child support;*

*(xlv) 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](#);

(lii) 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 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** (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in [section 13 \(1\)](#) [assets held in trust for person receiving special care] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under [section 11](#) [asset limits] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

(i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;

(iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A-B) \times C$ , where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under [section 118 \(1\) \(c\)](#) of the [Income Tax Act \(Canada\)](#) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under [section 118 \(1\) \(a\) \(ii\)](#) of the [Income Tax Act \(Canada\)](#) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under [section 117 \(2\) \(a\)](#) of the [Income Tax Act \(Canada\)](#) and [section 4.1 \(1\) \(a\)](#) of the [Income Tax Act](#);

(f) a tax refund;

(g) a benefit paid under [section 22](#), [23](#) or [23.2](#) of the [Employment Insurance Act \(Canada\)](#) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

- (i) make periodic payments to the person for a fixed term or the life of the person,*
- (ii) purchase a single premium annuity contract that
  - (A) is not assignable, commutable or transferable, and*
  - (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,**
- (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and*
- (iv) remain liable to make the payments required by the settlement agreement.*

*(2.1) Repealed. [B.C. Reg. 204/2015, App. 1, s. 4 (b).]*

*(3) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 24 (f).]*

*The panel finds:*

At the time the appellant applied for IA through the Ministry the appellant was in receipt of income assistance from another province (the "Former Province") in the amount of \$833 per month. The appellant received this sum on July 31, 2020 and on September 1, 2020. The appellant was informed via letter dated August 27, 2020 from the Former Province that they would no longer receive an \$88 per month "earnings replacement benefit". There was no indication that the appellant's September assistance payment from the Former Province was reduced by \$88. There was also no indication in the evidence before the Ministry that the appellant's monthly assistance would cease, apart from this \$88 per month which would cease commencing September 11, 2020.

The Ministry determined that there was insufficient evidence to determine if the \$2000 payment from CANADAFED was in fact CERB. The Ministry stated that they would not include the \$2000 amount in calculating the appellant's income. The panel finds that it was reasonable for the Ministry not to make a determination on the \$2000 payment and not to include it in the calculation of the appellant's net income.

Pursuant to s.1(i) EAR, "unearned income" includes financial assistance provided by another province. The panel finds that it was reasonable for the Ministry to determine that this appellant was in receipt of unearned income in the sum of \$833 per month from another province at the time the appellant applied for IA with the Ministry.

Pursuant to Schedule B, 1(d) EAR, all unearned income must be included in an applicant's income unless the appellant qualifies for exemptions or deductions as set out in section 6 and 7 of Schedule B EAR. There is no indication in this case that the appellant qualified for any exemptions or deductions set out in these sections and the appellant did not argue that they qualified for any exemptions or deductions. The panel finds that it was reasonable for the Ministry to determine that the appellant's unearned income of \$833 per month was not entitled to a deduction or exemption pursuant to Schedule B EAR.

Pursuant to Schedule A EAR, the appellant as a sole applicant, with no dependents, under 65 years of age is entitled to \$385 in support and \$375 for shelter for a total IA payment of \$760.

Pursuant to s.10(2) EAR, "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."

At the time of the application for IA, the appellant was in receipt of \$833 per month and that exceeds the \$760.00 IA the appellant would have been eligible for from the Ministry. It may be that in future months the appellant will only receive \$745.00 in unearned income from the Former Province or nothing from the Former Province. However, at

APPEAL NUMBER  
2020-00231

the time the appellant applied for IA, and based on the evidence before the Ministry at the time of Reconsideration, the appellant's Schedule B EAR net income exceeded the IA they would have been entitled to under Schedule A EAR. As such the panel finds that it was reasonable for the Ministry to determine that, based on the evidence before them, this appellant was not entitled to IA.

For these reasons, the panel finds the Ministry's decision was reasonably supported by the evidence and confirms the decision.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) Nov 11, 2020

PRINT NAME Kevin Ash	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) Nov 11, 2020
PRINT NAME Dawn Martin	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) Nov 11, 2020