

APPEAL NUMBER  
2021-0113

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision (RD) dated May 27, 2021, which denied the Appellant's request for back-dated income assistance (IA) for the period between June 1, 2020 and August 23, 2020.

Specifically, the Ministry determined that the Appellant had received IA for May 2020, August 24 to 31, 2020, September 2020, and October of 2020, but was ineligible for IA in June 2020, July 2020 and between August 1 and 23, 2020 because her file was closed at her request on May 13, 2020 and she did not re-apply for IA until August 24, 2020.

### **PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act (EAA) Section 11(1)*

Employment and Assistance Regulation (EAR) Sections 1, 2.1, 4, 4.1, 4.2, 4.21, 26, 28, 33 and Schedule A Sections 1(1), 2(1), 3 and 4 and Schedule B Section 1

*The relevant legislation is provided in Appendix A.*

## PART E – SUMMARY OF FACTS

The Appellant is receiving IA as a sole recipient.

The evidence before the Ministry at the time of the RD included:

- A Request for Reconsideration (RFR), signed by the Appellant on May 12, 2021, in which the Appellant wrote that:
  - She was laid-off from her job on March 24, 2020;
  - She contacted the Ministry to verify that she was eligible for both IA and the Canada Emergency Response Benefit (CERB);
  - The Ministry told her that current IA recipients could not claim both provincial and federal benefits “*so (her) IA file was put on hold/closed from May 2020 to October 2020*”;
  - In November 2020 she learned that if she was receiving IA benefits in April 2020, she was entitled to both the provincial and federal payments, so she “*re-opened (her) file for November 2020*”;
  - After re-applying she began receiving benefits and was re-evaluated for March and April 2020 to determine her eligibility for that period;
  - Between May 2020 and October 2020, she did not receive IA benefits including the top ups “*because of the confusion of what I was eligible for in being a current IA recipient in April 2020*”; and,
  - As a result, she is requesting to be back paid for IA for the period from May 2020 through October 2020 inclusive.
- A screen Print of part of a web page with a section circled and the word “*Returned*” hand-written on the page;
- A screen print of part of a web search results page with a section circled containing the words “*\_\_da Emergency Response Benefit to Launch on April 6 ... \_\_2020 – Applications will be accepted starting April 6, 2020. There is no waiting period \_\_ct deposit payments will be delivered into accounts within three business days of \_\_ts being eligible to receive it, and cheques within 10 days.*”;
- Canada Revenue Account Overview dated September 11, 2020 in the name of the Appellant providing information about COVID-19 support and details regarding Canada Emergency Response Benefits (CERB) of \$2,000 each, made to the Appellant on April 8, 2020, May 7, 2020, May 22, 2020, June 16, 2020, July 6, 2020, August 3, 2020 and August 31, 2020 (7 payments totalling \$14,000);
- Record of Employment (ROE) in the name of the Appellant identifying a “First Day Worked” of March 12, 2020, a “Last Day For Which Paid” of March 24, 2020 and a “Final Period Ending Date” of March 28, 2020. The ROE also shows \$41.76 in insurable earnings for 2.75 hours the pay period ending March 14, 2020 and \$151.84 in insurable earnings for 10.00 hours the pay period ending March 28, 2020;

- Six partially completed Ministry monthly reports (the Monthly Reports) in the name of the Appellant, dated May 20, 2021, with \$2,000 entered in a box labelled “All Over Monthly Income Received” in each of the 6 monthly reports, and “... PERIOD (1 through 6) CERB BENEFIT ...” entered in the box labelled “Please explain all changes including income” on each of the Monthly Reports.

### **Additional Information and Admissibility**

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), dated May 28, 2021, the Appellant wrote that she was appealing the Ministry’s RD because there was a miscommunication between the Ministry and the Appellant on closing her IA file at the time that the COVID pandemic began, and due to “*incorrect dates*” the Appellant missed payments for “*5 days May – Sept*” and when she asked to have her benefits reinstated on August 24, 2020, her first payment of benefits “*was for October*”.

At the hearing, the Ministry stated that the Appellant’s first IA application date was November 17, 2017 and the Appellant stated that she had been receiving IA benefits prior to her employment period in March 2020.

The Panel considered the written information in the NOA to be argument. The Panel considered the new verbal evidence provided at the hearing that the Appellant’s first IA application date was November 17, 2017 and that she was receiving IA benefits before her employment period in March 2020 to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted this information in accordance with Section 22(4) of the EAA.

At the hearing, the Appellant stated that she had applied for back-dated IA covering the period from May to November 2020 in April 2021 because the Ministry had initially informed her in May 2020 that CERB and employment insurance benefits (EI) would result in her income exceeding the monthly support and shelter allowance amounts. She said that she tried to “*take (herself) off*” IA by telling the Ministry on May 13, 2020 to close her file because she was collecting EI and was not aware that she was in fact entitled to receive both EI and Covid-related benefits without any impact on the IA shelter or support allowances to which she would otherwise have been eligible. The Appellant stated that the Ministry worker she spoke to on May 13, 2020 did not let her know of this when she tried to take herself off IA benefits on that day. In addition, the Appellant said that she didn’t understand the distinction between closing a file and putting her benefits on hold. In November 2020, the Appellant said that she was told by a different Ministry worker that she should have been told that she would be eligible for monthly IA benefits despite her also receiving CERB and EI. As a result, in April 2021 the Appellant asked to have her file re-opened. The Appellant stated that she believed that the Ministry had originally given her the

wrong information, adding “*somebody (from the Ministry) should have approached me to confirm the dates*”.

When asked by the Panel when she had first applied for IA, the Appellant said that when she first came to British Columbia she had “*worked for a bit*” but that she was receiving IA benefits before starting her most recent job in March 2020, from which she was laid off due to the COVID pandemic in late March 2020 after working for only a few weeks.

The Ministry relied on the RD. In response to a question from the Panel about what information the Appellant might have received from the Ministry in April and May 2020 about CERB, EI and IA eligibility, the Ministry said that Ministry staff were aware in advance of the income deductibility changes made in April 2020 (i.e. that for an indefinite period, CERB and EI would no longer be deducted from income for the purpose of determining IA benefits). The Ministry also said ministry staff are updated weekly on administrative and policy changes, a process that was described by the Ministry as “*Standard Operating Procedure (SOP)*”. The Ministry also said that staff underwent extensive training on the new rules relating to the pandemic benefit payments but acknowledged that it was possible that shortly after the changes were made individual front-line ministry staff might have got the information wrong.

In response to a question from the Panel, the Ministry said that the Appellant first applied for IA on November 10, 2017. The Panel also asked the Ministry how the Appellant would have communicated with Ministry staff on May 13, 2020 regarding the impact of CERB and EI on eligibility for IA, and how the Ministry could be sure that the Appellant insisted on having her file closed. The Ministry said that staff and the Appellant would have had a conversation by telephone which the worker would have recorded by typing notes as they spoke, referring to the process as a “type and talk”. When asked why the “type and talk” transcript was not included in the appeal materials and whether it could be accessed and read to the Panel at the hearing, the Ministry agreed that it would have been a good idea to have included the “type and talk” transcript in the appeal materials and that the transcript of the conversation was not immediately available to be read.

In response to another question from the Panel, the Ministry also confirmed that, if her file had been kept open, the Appellant would have been able to receive benefits from June 2020 through August 23, 2020, provided her net income after allowable deductions did not exceed the shelter and support allowance amounts.

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

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for back-dated IA for the period from June 2020 through August 23, 2020, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the Appellant is not entitled to IA for the period between June 1, 2020 and August 23, 2020 because her file was closed on May 13, 2020 at her request or for any other reason?

### **The Appellant's Position**

The Appellant's position is that there was a miscommunication between the Ministry and the Appellant. This miscommunication resulted both in confusion about the meaning of "file closure" as opposed to "putting a file on hold", and what IA benefit amount, if any, she was eligible for after she began receiving the CERB benefit.

### **The Ministry's Position**

The Ministry's position is that it closed the Appellant's file on May 13, 2020 at the Appellant's verbal request and that the Appellant did not provide any reasons for asking to have her file closed. When the Appellant asked to be reinstated as a client on August 24, 2020, the effective date of eligibility for IA was August 24, 2020 because her file had been closed on May 13, 2020. IA benefits were provided to the Appellant as a new client, effective August 24, 2020, based on the eligibility requirements for IA shelter and support allowances as set out in the legislation.

### **Panel Decision**

The available evidence includes the Ministry's summary of a verbal conversation between the Ministry and the Appellant but does not include the actual typed notes from that conversation as recorded by the Ministry in the "talk and text" record. The summary of the conversation between the Appellant and the Ministry appearing in the RD is the Ministry's version of what was said, and the details of the conversation are challenged by the Appellant. The Panel notes that the "talk and text" record of that conversation was not included in the written evidence provided by the Ministry in the appeal materials and could not be entered into evidence by the Ministry at the hearing. Therefore, there is reasonable doubt that the Appellant understood the distinction between an account "hold" or an account "closure", assuming a distinction exists.

The Panel notes that it was the Appellant who approached the Ministry at a time when there might reasonably have been general confusion about whether either CERB or employment assistance benefits would be considered exempt income. EAR Section 2.1 came into effect on May 11, 2020, only 2 business days before the Appellant approached the Ministry about her eligibility for continued benefits. At the hearing, the Ministry said that all Ministry staff were advised of the changes in IA eligibility for clients receiving CERB and EI benefits before the changes went into effect and received extensive

training on how to interpret the changes and how to communicate them to clients, but acknowledged that the Appellant “*may have run into a worker who didn’t know*”.

Regardless of whether the Appellant was told by the Ministry on May 13, 2020 that CERB and EI benefits were exempt from her monthly income calculation, the Panel notes that EAR Section 2.1 states that the provisions of that section only apply to a person who was in a family unit that was eligible for IA on April 2, 2020. In its RD, the Ministry wrote “*On March 6, 2020 the ministry determined you were not eligible for April income assistance because your employment insurance was more than your rate of assistance*” (emphasis added). Income reported in a February Monthly Report must be reported to the Ministry by the 5<sup>th</sup> day of the following month (March 5 in this case) and determines IA eligibility for the month of April. Therefore, if the Ministry determined that the Appellant was ineligible for April 2020 IA, the Appellant must have reported February 2020 non-exempt income in excess of her monthly IA amount of \$760.

As no evidence has been presented to indicate that the Appellant *did* receive IA in April 2020, the Appellant was not eligible for IA on April 2, 2020 and therefore EAR Section 2.1 does not apply in the circumstances of the Appellant. In other words, the CERB and EI benefits that the Appellant received starting in May 2020 are not exempt from income in the Appellant’s circumstances.

The available evidence includes the Appellant’s Monthly Reports over a six month period and a Canada Revenue Account Overview confirming that the Appellant received 7 CERB payments of \$2,000 each on April 8, 2020, May 7, 2020, May 22, 2020, June 16, 2020, July 6, 2020, August 3, 2020 and August 31, 2020. As noted above, the legislation does not permit these payments to be deducted from monthly income in the Appellant’ circumstances as she was not eligible for IA on April 2, 2020.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry’s RD, which determined that the Appellant was not eligible for IA between June 1, 2020 and August 23, 2020, was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the Appellant, and therefore confirms the decision. The Appellant’s appeal, therefore, is not successful.

**APPENDIX A - LEGISLATION**

**EMPLOYMENT AND ASSISTANCE ACT**

**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 ...

**EMPLOYMENT AND ASSISTANCE REGULATION**

**Part 1 — Interpretation**

**Definitions**

**1 (1)** In this regulation:

**"income assistance application date"** means the date of an applicant's submission of

- (a) an application for income assistance (part 2) form, or
- (b) an alternate application for income assistance form;

**Modifications in relation to COVID-19 emergency — certain payments**

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

(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.

(7) In this section:

**"COVID-19 emergency"** means the emergency that is the subject of

(a) the notice provided on March 17, 2020 by the provincial health officer under section 52 (2) of the *Public Health Act*, and

(b) the declaration of a state of emergency made on March 18, 2020, and any extension of that declaration, under section 9 of the *Emergency Program Act* ...

## **Part 2 — Eligibility for Income Assistance**

### **Division 1 — Applications and Applicant Requirements**

#### **Process for assessment of eligibility for income assistance**

**4** (1) The eligibility of a family unit for income assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.

(2) Despite subsection (1), the eligibility of a family unit for income assistance may, at the minister's discretion, be assessed on the basis of the process set out in section 4.21, if income assistance or disability assistance has been provided to or for a person in the family unit in at least one of the 6 calendar months immediately preceding the calendar month for which the eligibility of that family unit is being assessed.

#### **Application for income assistance — stage 1**

**4.1** (1) The first stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for income assistance is fulfilling the requirements of subsection (2) of this section.

(2) The applicants for income assistance in a family unit

(a) must complete and submit to the minister an application for income assistance (part 1) form ...

#### **Application for income assistance — stage 2**

**4.2** (2) The second stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for income assistance is fulfilling the requirements of subsection (3) of this section.

(3) ... on completion of the first stage process provided for in section 4.1, the applicants for income assistance in the family unit must complete and submit to the minister an application for income assistance (part 2) form ...



### **Streamlined application for income assistance**

**4.21** (1) The process for assessing the eligibility of a family unit referred to in section 4 (2) for income assistance is fulfilling the requirements of subsection (2) of this section.

(2) The applicants for income assistance in a family unit must complete and submit to the minister a report using the same form as in section 33 [monthly reporting requirement].

### **Effective date of eligibility**

**26** (1) Except as provided in subsection (2), ... a family unit is not eligible for income assistance ... in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance ...

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the income assistance application date,

(b) for a shelter allowance under (section) 4 ... of Schedule A on the first day of the calendar month that includes the income assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission ...

(5) ... a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

### **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 ...

(b) the information required is ... as requested in the monthly report form specified by the minister ...

## **Schedule A**

### **Income Assistance Rates**

#### **Maximum amount of income assistance before deduction of net income**

1 (1) Subject to this section ... 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
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$385.00

**Prorating of support allowance**

3 In the calendar month that includes the income assistance application date, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission.

**Monthly shelter allowance**

4 ... (2) The monthly shelter allowance ... 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
1	1 person	\$375

## 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 ...

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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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/25

PRINT NAME

Elaine Jeffery

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/25

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/25