

APPEAL NUMBER
2021-0172

Part C – Decision Under Appeal

Under appeal is the August 26, 2021 Ministry of Social Development and Poverty Reduction's (the ministry) decision that rental income received by the appellant is unearned income that is not exempt and must be deducted from the appellant's income assistance in accordance with section 28 of the Employment and Assistance Regulation (the Regulation).

Part D – Relevant Legislation

Employment and Assistance Regulation
sections 1, 28 and 33
Schedule A, sections 2 and 4
Schedule B, sections 1, 6 and 7

Part E – Summary of Facts

Information before the ministry at reconsideration

The appellant is a sole recipient of income assistance whose file opened in February 2021. At the time the appellant's ministry file was opened, the appellant stated that he owned a property in a foreign country and the ministry noted in the appellant's file that a review of bank statements for rental income would be conducted (included in the appeal record are 6 pages of bank documentation, annotated with translation provided by the appellant).

The review was completed on July 30, 2021. The ministry concluded that the rental income from the foreign property is unearned income that must be deducted from the appellant's income assistance. Based on the foreign currency rate, the amount of \$570 CAD was deducted from the appellant's August 2021 income assistance.

On August 12, 2021 the appellant requested reconsideration of the ministry's decision. In his reconsideration submission, the appellant explained that he owns the property mortgage-free and that all the rental income goes to pay outstanding loans. The appellant also stated that he never hid the fact that he had a rental property but was told that the Monthly Report form section for rental income only applied to income acquired in Canada; therefore, the abrupt reduction in income assistance was a surprise – he was misled. The appellant also stated that his whole sustenance in Canada depends on income assistance, as he does not receive money from his parents or have any other source of income; he has exhausted all the money he and his family had, approximately \$20,000, for his living costs in Canada through January 2021. The appellant also submitted information respecting international credential evaluation of his foreign education and his efforts to obtain a federal work permit and participate in a provincial employment program for immigrants, both of which have been frustrating and unsuccessful thus far due to the misinformation provided by a myriad of government and non-government organizations. With the assistance of his immigration lawyer, the appellant is hopeful that his eligibility interview with Immigration, Refugees & Citizenship Canada (IRCC), for which he received an invitation on July 30, 2021, will happen – it is required to receive a work permit.

Information provided on appeal

Documents received from the appellant on appeal:

- 1) The appellant's Notice of Appeal dated September 3, 2021.
- 2) A September 21, 2021, 14-page submission which included copies of emails from the appellant's immigration lawyer to IRCC sent in August and September 2021 and documentation respecting the appellant's travel to Canada in 2019.
- 3) A September 22, 2021, 4-page submission which included email communication between the appellant and both a prospective employer and IRCC.

In the appellant's written appeal submissions and at the hearing, he emphasized that he never hid the fact that he had a rental apartment, that all the rental income went to two outstanding loans and that he was told by the ministry that only rental income earned in Canada needed to

be reported. Also, of consideration is that the ministry gave three different reasons for its decision, including problems with translating documents, and that the ministry was lenient regarding deducting the rental income for the first 6 months, which is confusing. He also stated that there are inconsistencies in the ministry's record, including the ministry's statement that the rental property is mortgaged despite the appellant having told the ministry that there was no mortgage. The appellant emphasized that he was told by various officials that all he needed was an offer of employment to work but was also told by prospective employers that a work permit is required before an offer of employment can be made – he has been stuck in this “catch 22” and lost 18 months “chasing the wind” applying for 1500 jobs. He has still not yet received his eligibility interview with the IRCC. He stated that he could have filed for refugee status upon arrival in Canada but found it immoral and instead chose to seek employment, only applying for income assistance when his funds were depleted as he was unable to obtain employment because of the misinformation he received. The appellant also stated that the ministry asked him to sell the rental property, which he is unable to do because of safety concerns in the foreign country, and questions why other income assistance recipients he knows have been able to hold onto multiple properties (homes and vehicles) without a reduction of their income assistance.

The ministry reviewed the reconsideration decision but did not provide additional evidence. In response to the appellant asking why his rental income, which was declared from the beginning, was not addressed at the time, the ministry explained that it needed to conduct a review to determine what effect the rental income would have on eligibility for income assistance.

The panel admitted the written and oral information provided on appeal by the appellant under section 22(4) of the Employment and Assistance Act as information required for full and fair disclosure of the matter. The information expanded upon the information previously provided by the appellant regarding the circumstances he believes should be considered when assessing his eligibility for income assistance.

Part F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry's decision that the appellant's rental income must be deducted from his income assistance is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Specifically, was the ministry reasonable in concluding that the rental income is unearned income for which there are no applicable exemptions or deductions and therefore must be included in the appellant's monthly net income and deducted from his monthly income assistance?

The ministry's position

The ministry's position is that the \$570 CAD rental income is unearned income as defined in section 1 of the Regulation (money received from renting a self-contained suite that is not your place of residence) and that none of the exemptions or deductions described in Schedule B apply. The ministry acknowledges the forcefully collected debt attached to the appellant's bank account or rental income but notes that section 1(d) of Schedule B states that the money going toward the debts is included in the appellant's monthly net income.

The appellant's position

The appellant's position is that the ministry's decision does not consider the appellant's circumstances – that he was told that he would receive full amount of income assistance, having provided the details of his real estate at the outset, and he has been unable to get a work permit and employment due to being provided with inconsistent information from multiple provincial and federal agencies.

Panel Analysis

In general terms, monthly income received must be reported and deducted from monthly income assistance unless all or part of the income is exempt or deductible. The application of the specific legislative provisions to the appellant's rental income is analysed below and excerpts from the Regulation are provided at the end of this decision.

Section 1 of the Regulation defines "unearned income" as income that is not earned income, including money or value received from rental of a self-contained suite that is not the person's place of residence. The panel finds that the ministry was reasonable when concluding that the appellant's rental income falls within this definition, noting that the Regulation does not distinguish between rental income from property in another country and rental income from Canadian property, even though the appellant may have been told otherwise.

Section 28 of the Regulation states that the amount of income assistance for which a person is eligible is determined by deducting the person's net monthly income (calculated in accordance with Schedule B) from the maximum amount of income assistance that may be provided to a person's category of family unit (set out in Schedule A). There is no dispute as to the maximum monthly amount of assistance that may be provided to the appellant's single-person family unit, which is \$935, nor the amount of rent charged for the appellant's foreign property (\$570 CAD).

Section 33 of the Regulation sets out the requirements for recipients of income assistance to report monthly earned and unearned income – income must be reported by the 5th of the month after the month it was received and is considered in determining the amount of income assistance for the following month. For example, income received in July must be reported by July 5th to determine the amount of August income assistance. The appellant states that upon asking the ministry if this rental income should be reported he was told that foreign rental income did not need to be reported. However, reporting of the rental income is not at issue as it is not a basis for the ministry's decision and the ministry fully acknowledges that the appellant disclosed the rental property when first applying for income assistance.

Whether income is included in a person's net monthly income depends on the deductions and exemptions described in Schedule B.

- Section 1(a) describes various types of earned and unearned income that are exempt when determining net income. Rental income is not included in this list of exempt income.
- Section 1(b) provides that any amount garnished, attached, seized, deducted, or set off from income is income, except for deductions permitted under sections 2 and 6. The panel finds that the ministry reasonably applied this provision when concluding that even though the rental income is taken from the appellant's bank account to service debts, it is still the appellant's income. The deductions under section 2 do not apply to the appellant as they relate to education expenses. The deductions under section 6, which are essential operating costs of renting self-contained suites, could potentially apply to the appellant's rental income; however, as the ministry notes, the appellant has not provided any information respecting such costs, such as utility costs and property taxes.
- Section 1(d) states that all unearned income is included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of Schedule B. The application of section 6 deductions was discussed above. Section 7 exemptions do not apply as they do not relate to rental income. Section 8 exemptions are also not applicable as they address education related unearned income.

Based on the above analysis, the panel finds that the ministry's decision that section 28 of the Regulation requires that the appellant's rental income be included in his monthly net income as determined under Schedule B and deducted from the maximum monthly rate of income assistance determined under Schedule A is a reasonable application of the legislation in the appellant's circumstances.

In reaching this decision, the panel acknowledges, as does the ministry in its reconsideration

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decision, that the appellant has experienced significant difficulties and delays in his effort to obtain employment in Canada. However, the panel's authority is limited to assessing the reasonableness of the ministry's reconsideration decision that the rental income be deducted in accordance with the Regulation.

The panel also notes that the ministry has advised that the appellant may contact the ministry for recalculation of his net income if he incurs essential operating costs for his rental apartment.

The appellant is not successful on appeal and the ministry's decision is confirmed.

Employment and Assistance Regulation

Definitions

1(1)

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

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

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;
- (iv) the employment and educational circumstances of recipients in the family unit;
- (v) changes in family unit membership or the marital status of a recipient;
- (vi) any warrants as described in section 15.2 (1) of the Act.

Schedule A

Monthly support allowance

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(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	\$560.00

Monthly shelter allowance

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(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
1	1 person	\$375

Schedule 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:
 - (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).....

(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

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(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) x 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.....

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

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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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

Date (Year/Month/Day)

2021/09/23

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

Date (Year/Month/Day)

2021/09/23

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

Date (Year/Month/Day)

2021/09/23