

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 31, 2022 which held that the appellant was “not eligible for May [income] assistance because [the appellant’s] income [was] more than the rate of assistance for [their] family size.”

The determination whether the appellant was eligible for assistance in May was based on the appellant’s income between March 1st and March 31st, 2022.

Part D – Relevant Legislation

Employment and Assistance Act (EAA), s. 4.
Employment and Assistance Regulation (EAR), ss. 1, 10, 28, Schedule A, Schedule B

Part E – Summary of Facts

The information before the ministry at reconsideration included:

1. The appellant was a sole applicant with one or more dependent children;
2. On February 1, 2022 the appellant applied for income assistance;
3. On February 11, 2022 the ministry determined the appellant was not eligible for income assistance;
4. On February 11, 2022 the ministry offered the appellant hardship assistance for February, March and April 2022 if the appellant agreed to sign an Assignment of Benefit agreement (the “AOB”) that permitted Service Canada to pay to the ministry the amount of hardship assistance the appellant received. This payment from Service Canada would be done by deducting an equal amount from the appellant’s Employment Insurance payments;
5. On February 11, 2022 the appellant signed the AOB;
6. On April 5, 2022 the ministry was informed by Service Canada, in an “EI /MSDPR Common Claimant Report”, that the appellant was receiving Employment Insurance payments at a weekly rate of \$638.00;
7. On May 3, 2022 the ministry ceased providing the appellant with hardship income assistance because the appellant was receiving Employment Insurance payments;
8. On May 11, 2022 the ministry determined the appellant was not eligible for May income assistance because the appellant received income from Employment Insurance payments that exceeded the ministry rate for the appellant’s family unit size.

At the hearing, the appellant provided additional information which the panel determined was appropriate to admit under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

That information included:

1. The appellant received the same income in the months prior to May and they did not understand why they were denied income assistance in May;
2. The appellant’s Service Canada report shows that it was determined that they were entitled to an Employment Insurance payment on February 27, 2022 and that the last payment they would receive was March 20, 2022;
3. The appellant did not understand how long their Employment Insurance payments would be reduced because of the AOB agreement.

At the hearing, the ministry provided the following information regarding hardship assistance:

1. Hardship assistance is “paid in advance”, which means that if a person is entitled to hardship assistance for a specific month that assistance is provided before the start of the month not at the end of the month; and
2. Because hardship assistance is provided before the end of the prior month, the entitlement to hardship assistance is determined by the income of the month prior to that month (that is, entitlement to May hardship assistance is based on income received in March and the entitlement is paid on April 27).

The ministry also emphasized that when the ministry is determining the income received by an applicant, it is primarily based on the applicant's entitlement to that income and not the actual amount of money the applicant received. The legislation (section 10(1) of the *Employment and Assistance Regulation*) states that "income'...includes an amount garnished...deducted or set off from the income of an applicant."

Part F – Reasons for Panel Decision

Introduction

The issue at appeal is whether the reconsideration decision dated May 31, 2022 which held that the appellant was “not eligible for May [income] assistance because [the appellant’s] income [was] more than the rate of assistance for [their] family size” was reasonably supported by the evidence or a reasonable application of the enactment in the appellant’s circumstance.

Summary of The Relevant Legislation

Section 5 of the Employment and Assistance Act (“EAA”) permits the minister to provide income assistance to a family unit that is eligible for it.

Section 10(1) of the EAR states that income includes any amount that is garnished, attached, seized, deducted or set off from the income of an applicant.

Section 10(2) of the EAR states that a family unit is not eligible for income assistance if the net income of the family unit exceeds the amount of income assistance determined under Schedule A.

Section 28 of the EAR states that income assistance may be provided to a family unit, for a calendar month, in an amount that is not more than the entitlement determined under Schedule A minus the family unit’s net income determined under Schedule B.

Schedule A of the EAR provides detailed descriptions of how to determine the amount of income assistance a family unit is entitled to.

Schedule B of the EAR provides detailed descriptions of how the net income of a family unit is calculated.

Did the Appellant Have Income of \$2,408 in March 2022?

The Appellant’s Position

At the hearing the appellant stated that she only received \$343.00 per week as an Employment Insurance payment. The appellant questioned why they were denied a payment in May when their income did not change for that month.

The Ministry’s Position

The ministry’s position was that the appellant was entitled to an Employment Insurance payment of \$638 per week for four weeks in March (a total of \$2,552.00). The ministry stated that this amount was “unearned income” as defined in the EAR.

The ministry noted that \$36 per week was deducted for taxes. The ministry stated that taxes were 'deducted' from income under section 6(a) of Schedule B in the EAR. Consequently, for the purpose of determining the appellant's income the weekly amount of income should be reduced to \$602 per week (\$638 minus \$36). This is a total of \$2,408 for the four weeks in March.

The ministry acknowledged that the actual amount of money received by the appellant as an Employment Insurance payment was \$343. However, the ministry stated the difference between the \$602 per week (gross after taxes) and the \$343 actual payment was because \$259.00 was deducted because of the AOB.

The Panel's Decision

The panel reviewed the documents in the reconsideration package.

The "WebAOBLink" document indicated the following regarding the weeks in March:

1. The appellant's gross benefits were \$638.00;
2. Deduction #1 was \$259.00 for the reason "AOB";
3. Deduction #2 was \$36.00 for the reason "Taxes".

The "EI /MSDPR Common Claimant Report" from Service Canada indicated that the appellant received four payments of \$343 in March 2022.

The panel reviewed the relevant legislation.

Section 1 of the EAR defines "unearned income" as income from "employment insurance" (section 1(g)). The panel finds that the ministry's determination that the appellant's entitlement to \$638 of Employment Insurance payments was unearned income under the EAR was supported by the evidence before the ministry.

Schedule B of the EAR states that "any income tax deducted at source from employment insurance benefits" are permitted to be deducted from unearned income (section 6(a)). Consequently, the panel finds that the ministry's determination that the amount of \$602 per week is the proper amount for the calculation of the appellant's income was supported by the evidence and a reasonable application of the legislation.

The panel reviewed section 1 of Schedule B (Deduction and exemption rules) to confirm there was no provision that made the amount deducted for the AOB as "exempt from income". The panel also reviewed section 7 of Schedule B (Exemptions – unearned income) and did not identify any exemption for costs associated with an AOB or repayment to the ministry.

Additionally, the panel noted that section 10(1) of the EAR stated that income is not reduced by any amount that is garnished, attached, seized, deducted or set off from income supports the determination that the appellant's income should not be reduced by the deduction permitted by the AOB.

In the result, the panel confirms that the ministry's determination that the appellant received income of \$2,408 for the four weeks in March because it is supported by the evidence and calculated by the reasonable application of the enactment.

Was the Appellant's Amount of Income Assistance \$1,488.25 in March 2022?

The Appellant's Position

At the hearing and at reconsideration the appellant did not dispute that the amount of income assistance for their family unit size was \$1,488.25.

The Ministry's Position

The ministry determined that the appropriate amount of income assistance for the appellant's family unit size was \$1,488.25 based on Schedule A of the EAR.

The ministry relied on section 1(1) of Schedule A of the EAR to determine the amount of income assistance was the sum of the monthly support allowance plus the shelter allowance.

The ministry determined that the monthly support allowance for the appellant's family unit was \$710 based on the table at section 2 of Schedule A.

The ministry determined that the family unit was entitled to a \$208.25 "family bonus top up" as calculated under section 2(2) of Schedule A. The panel notes that the original decision of May 11, 2022 did not include any 'family bonus top up'.

The ministry determined that the monthly shelter allowance for the appellant's family was \$570 based on the table at section 4 of Schedule A.

The Panel's Decision

The panel reviewed section 2 of Schedule A and confirmed that the amount of support for a sole applicant and one or more dependent children (when the applicant is under 65 years of age) is \$710.

The panel reviewed section 2(2) of Schedule A and confirmed that the support allowance for the appellant's family unit should be increased by the BC child adjustment amount minus any family bonus, the Canada child benefit, and any supplements paid. The panel notes that the BC child adjustment is \$1,600 annually for the first child, \$1,000 annually for a second child and \$800 annually for each subsequent child and is received in on a monthly basis. The panel was unable to locate in the record any evidence of any family bonus, Canada child benefit or supplements received by the appellant that should be deducted from the BC child adjustment amount. The

panel did note that in the April 2022 Monthly Report the appellant noted income of “517” from Child Tax Benefits.

The panel reviewed the table at section 4(2) of Schedule A and confirmed that \$570 was the monthly shelter allowance for a family unit size of 2.

The panel determined that the ministry’s determination that the appellant’s family unit’s monthly support allowance was \$710 and that the shelter allowance was \$570 was supported by the evidence. The panel could not confirm the evidence that supported the ministry’s determination that the appellant’s family unit was entitled to a ‘family bonus top up’. However, this top up was to the benefit of the appellant and the appellant did not dispute their entitlement to that top up.

Consequently, the panel finds that the ministry’s determination that the appellant’s amount of income assistance was \$1,488.25 in March 2022 was a reasonable application of the enactment in the appellant’s circumstance.

Did the Appellant’s Income in March 2022 Exceed Their Amount of Income Assistance

As described above, the panel has confirmed the ministry’s determination that the appellant’s amount of income assistance was \$1,488.25 and the appellant’s income was \$2,408.00 in March 2022.

Section 10(2) of the EAR states “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.”

Consequently, the panel finds that the ministry’s determination that the appellant was not eligible for May income assistance because their net income exceeded the amount of their income assistance was a reasonable application of the enactment in the appellant’s circumstance.

Conclusion

The panel confirms the ministry decision.

Extracts of the Relevant Legislation

Employment and Assistance 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.

Employment and Assistance Regulation

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:

...

(g)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.

Schedule A – Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (0.1) For the purposes of this section:

Item	Column 1 Family unit composition	Column 2 Age of status of applicant or recipient	Column 3 Amount of Support
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$710.00

(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding month,

(ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and

(iii) the total amount of the supplements, if any, provided to or for the family unit under section 61 [*supplement for delayed, suspended or cancelled family bonus*] or 61.1 [*supplement for delayed, suspended or cancelled Canada child benefit*] of this regulation for the current calendar month.

Schedule B – Net Income Calculation

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.

APPEAL NUMBER 2022-0120

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

Trevor Morley

Signature of Chair

Date (Year/Month/Day)

2022/June/27

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2022/June/27

Print Name

Robert Fenske

Signature of Member

Date (Year/Month/Day)

2022/June/27