

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 14, 2022 which found that the appellant is not eligible for income assistance (IA) for the period of May 2022 to June 2022, pursuant to Section 9(2) of the *Employment and Assistance Regulation* (EAR), as the net monthly income of the family unit exceeded the amount of assistance payable due to unearned income received by the appellant in March 2022 and April 2022 from Employment Insurance (EI).

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR) – Sections 1, 2.1, 10 and 33.
Schedule A – Sections 1, 2 and 4.
Schedule B – Sections 1, 6, and 7.

Part E – Summary of Facts**Evidence At Reconsideration**

1. Eviction notice dated February 6, 2022 with a move out date of June 13, 2022 for failure to pay \$1950.00 on May 31, 2022.
2. Eviction notice dated May 4, 2022 with a move out date of May 14, 2022 for failure to pay \$1950.00.
3. Screenshot of an email to the appellant from her landlord with the subject line “10 Day Notice to End Tenancy for Unpaid Rent”.
4. Email to the appellant from her landlord advising eviction with an eviction notice as an email attachment.
5. Debit credit card statement (C/C statement) from April 1 – April 30, 2022 and May 1 – May 31, 2022.
6. Financial statement from a bank (bank statement) dated March 31, 2022; April 8, 2022; April 18, 2022; May 2, 2022; May 18, 2022; May 24, 2022. It shows deposits of \$1136.00 on April 12, 2022 and \$568 on April 28, 2022 from EI.
7. Letter dated May 27, 2022 from Service Canada indicating that the appellant’s EI benefits cannot be paid from May 14, 2022.
8. 2-page summary of the EI payments made to the appellant from January 16, 2022 to April 3, 2022. The total payments for March 2022 of \$2272.00 and April 2022 of \$1136.00.
9. Request for Reconsideration (RFR) dated June 14, 2022 which the appellant in part stated the following:
 - She has not received money since April 2022.
 - She has not been able to pay rent for May and June 2022.
 - She has received a 10-day eviction notice.
 - She has a young child with disabilities and a dog that she cannot provide for. There is no reason they should be denied basic needs and rent.
 - She has had to borrow money from others and now owes thousands of dollars.

Evidence At Appeal

Notice of Appeal (NOA) dated July 14, 2022. The NOA, in part stated, that the appellant received \$255.00 for June, received three eviction notices, she has a young child with disabilities, and they have been denied basic needs.

The panel finds that the appellant’s statement that she received \$255.00 for June is new information and considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. It is admitted in accordance with s. 22(4) of the *Employment and Assistance Act*.

Evidence At The Hearing

At the hearing the appellant, in part, stated the following.

- She explained the extent of her housing issues (related to eviction notices and verbal agreements that were not honoured) and the fact that she and her young disabled child are facing homelessness.
- She worked until December 2021 but had to leave work due to an illness. Her EI benefits ran out, but the ministry claims she is still receiving EI benefits.

- She has not received any income since April 2022 and did not receive EI on May14th as the ministry stated.
- Her young child has disabilities and is currently set up with support at school. She lives close to the school and moving would be detrimental to the child.
- She did not receive EI in March.
- The \$1000.00 payment received in May on the bank statement was from family to pay rent.
- She had to borrow money to pay for her grandmother's funeral so some of that money was also transferred to her account.
- EI reporting is 2 weeks behind so the dates of payments are inaccurate.

At the hearing, the ministry relied on its reconsideration decision and explained that reporting for IA is behind. Earnings reported for the past month impact the amount of IA for the following month. That is, March's earnings impact May's IA amount and April's earning impact June's IA amount.

During the hearing the appellant was served with eviction notification. This caused her emotional distress. At this point both parties had laid out their arguments. What was left were questions from one panel member and closing remarks. The chair took a break from the hearing to the contact the Tribunal. When the chair returned to the hearing, the appellant indicated that she was able to continue

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for income assistance for the period of May 2022- June 2022, pursuant to Section 10(2) of the EAR, as the net monthly income of the family unit exceeded the amount of assistance payable, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The Appellant's Position

The appellant argued that she has been denied basic needs. She has not received any money since April 2022 and is facing eviction.

The Ministry's Position

The ministry argued that appellant received EI benefits for sickness in March (\$2272.00) and April 2022 (\$1704.00). As a result, pursuant to section 10(2) of the EAR, the appellant is not eligible for IA for May and June 2022 because her EI amount exceeded the amount of IA for which she was eligible.

The Panel's Decision

The legislation states that EI benefits for sickness are unearned income and are not exempt from deductions from IA. Section 10(2) of the EAR states that a recipient is not eligible for IA if the recipient's income is equal to or exceeds the amount of IA the recipient is eligible for. The summary report of the EI payments the appellant received demonstrates that she received \$2272.00 in March 2022 and \$1136.00 April 2022. In addition, the appellant's bank statement shows an additional payment of \$568 that was deposited on April 28, 2020 from EI. This brings her total EI payments for April 2022 to \$1704.00. This amount exceeds her IA which is \$1331.20. In the circumstances of the appellant, the panel finds that the ministry's decision, which found that the appellant is not eligible for IA for the period of May 2022-June 2022 because of the EI benefits she received in March and April 2022 exceeds the eligible amount of IA, was a reasonable application of the applicable legislation and was reasonably support by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for IA for the period of May 2022-June 2022 for EI benefits received in March and April of 2022, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

The relevant legislation:

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:

(g)employment insurance;

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 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, or

(b) a family unit that is described in section 2.01 (1) (a) of the Employment and Assistance for Persons with Disabilities Regulation.

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.

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

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.

(2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(3) If

- (a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,
- (b) the family unit is found eligible for income assistance, and
- (c) support is provided for the parenting dependent child or that individual's dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*,

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

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.

Item	Column 1 Family unit composition	Column 2 Age or 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

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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

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:

(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;

Extraordinary Assistance Plan to thalidomide victims;

(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;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) 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;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) 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;

(xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlvii) gifts, other than recurring gifts;

(xlviii) compensation paid or payable under Division 5 [*Compensation in Relation to Death of Worker*] of Part 4 [*Compensation to Injured Workers and Their Dependants*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) 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*;
 - (liii)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);
 - (lvii)money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program;
 - (lviii)a rebate of all or part of a premium paid to the Insurance Corporation of British Columbia under the *Insurance (Vehicle) Act* and the plan operated under that Act;
- (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.

2022-0142

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
Neena Keram

Signature of Chair

Date: 2022/07/27

Print Name
Warren Fox

Signature of Member

Date: 2022/07/27

Print Name
Jean Lorenz

Signature of Member

Date: 2022/07/27