

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated January 22, 2024, in which the Ministry determined that the Appellant was not eligible to receive income assistance in January 2024 because the Appellant received non-exempt unearned income that exceeded the rate of income assistance for a family unit of her size.

Part D – Relevant Legislation

Employment and Assistance Act (“Act”), sections 1 definitions of “applicant” and “income assistance”, 2, 4 and 22(4)

Employment and Assistance Regulation (“Regulation”):

- Sections 1 definition of “unearned income” (i), 8, 10 and 28
- Schedule A, sections 1, 2 and 4
- Schedule B, section 9

Full text of the legislation is set out in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place in person, with the Ministry attending by telephone. The Appellant attended with an interpreter, and a friend who attended as advocate and support person.

Evidence at Reconsideration:

The Appellant applied for income assistance on December 16, 2023, as a sole applicant with two dependent children. She gave the Ministry a letter she had received from Immigration Refugees and Citizenship Canada (“IRCC”) dated October 6, 2023, that stated:

- the Resettlement Assistance Program (“RAP”) of IRCC provided her with financial assistance to help with her settlement, and she would soon be receiving her last cheque from the program.
- RAP income support would end on January 22, 2024 or when she became self-sufficient, whichever occurred first.
- The final cheque would cover 22 days in January, in the amount of \$1,734.09.
- If the Appellant still needed financial assistance after RAP income support ended, she could apply for provincial social assistance.

The Ministry determined that the Appellant was not eligible to receive income assistance from the Ministry in January 2024 because the \$1,734.09 she would receive in RAP income support for January exceeded the \$1,500 rate of income assistance for her family unit size.

Additional Evidence:*Appellant:*

The Appellant provided the following documents:

- Appellant’s bank account statement dated January 31, 2024, showing entries from December 5, 2023 to January 31, 2024. The statement shows a deposit of \$1,734.09 from the Federal Government on December 22, 2023.
- Email from the Appellant dated January 23, 2024, to an immigrant services organization, stating that IRCC pays “one month up front as per the start up payment letter” and asking for clarification about when she would receive the last payment from IRCC.
- Written submission dated January 24, 2024, some of which is argument, stating:
 - She came to Canada on January 23, 2023.
 - She has been supported by IRCC for the past year.

- She received monthly payments from IRCC, deposited to her account one month in advance so that she has enough to pay rent the following month.
- Her current rent is \$2,980 per month.
- The final payment of \$1,734.09 for January 2024 was deposited in her account in December 2023.
- She did not receive any money from IRCC in January 2024.
- She would not be receiving any more financial assistance from IRCC.
- She had to borrow money from a friend to pay rent in January 2024.

Ministry:

At the hearing, in answer to questions from the Panel about the applicability of Schedule B, section 9 of the Regulation, the Ministry referred to Ministry policy, and said under Ministry policy an applicant is not eligible for income assistance if they have applied for income support from another source.

Admissibility of Additional Evidence:

Neither party objected to the admissibility of the additional evidence. The additional evidence of the Appellant provides further information about the payment of financial assistance from IRCC, and her need for income assistance. The additional evidence from the Ministry provides further information about the way the Ministry assesses the RAP payment on an initial application for income assistance. The Panel finds that the additional information is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, and therefore is admissible under section 22(4) of the Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the Appellant's circumstances. The Ministry determined that the Appellant was not eligible to receive income assistance because the RAP payment she received for January 2024 was more than the rate of income assistance for her family unit size.

Appellant's Position:

The Appellant says that she is eligible to receive income assistance from the Ministry in January 2024. She says that the letter from IRCC and her bank account statement show that, even though the final RAP payment covered 22 days in January 2024, she received the final payment in December 2023. The Appellant says that, if there was any confusion about what period the payment covered, or when it was paid, the Ministry should have contacted IRCC for clarification, because the government agencies are in direct communication with each other.

The Appellant also argues that the reconsideration decision contravenes Article 22 of the United Nations Declaration of Human Rights. She maintains that the Article gives the right to social security, which means that, if the Appellant is facing hardship, she should receive financial support from the government. She also argues that the amount of income assistance is not enough to meet her monthly support needs.

Ministry's Position:

The Ministry says that, when they receive an application for income assistance, they determine eligibility based on the income the applicant is currently receiving and what they expect to receive. The Appellant was not eligible to receive income assistance from the Ministry in January 2024 because she received RAP support from IRCC for December 2023 and January 2024, and the amount of the monthly RAP payment was more than the monthly income assistance rate for her family size. They point out that, according to the letter from IRCC, the RAP payment of \$1,734.09 covers 22 days in January 2024, and therefore they consider that payment to be January 2024 income.

The Ministry says that they assess net income differently on intake from a new applicant, than they do when the person is already receiving income assistance. They said that, for a new applicant, the Ministry would consider the income the new applicant received the month they applied, and also what the applicant expected to receive in the following month. As the Appellant was receiving income support for 22 days in January 2024, the

Ministry considered those funds to be income the Appellant expected to receive for January 2024.

At the hearing, the Ministry said that they could not comment about whether the reconsideration decision would have been different if the Ministry had been given the bank statement that the Appellant submitted on appeal, showing the final payment of monthly financial support from IRCC on December 22, 2023.

Panel Decision:

The Panel finds that the Ministry's decision that the Appellant was not eligible for income assistance in January 2024 because her net income was more than the income assistance rate for her family size was not a reasonable application of the legislation in the Appellant's circumstances.

Calculation of Net Income:

In its letter to the Appellant, IRCC stated that the monthly RAP income support payment of \$1,734.09 covered the first 22 days of January 2024, and therefore the Ministry attributed that income to January 2024. The Ministry determined that the Appellant's net income for January 2024 exceeded the \$1,500 monthly income assistance rate for her family size, and therefore she was not eligible for income assistance.

Under section 10 of the Regulation, a family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B (Net Income Calculation) equals or exceeds the amount of income assistance determined under Schedule A (Income Assistance Rates). Net income under Schedule B includes earned and unearned income as defined in the Regulation, subject to allowable exemptions and deductions. Under section 1(1) of the Regulation, "unearned income" includes financial assistance provided by another province or jurisdiction. Therefore, the RAP income support the Appellant received from IRCC is unearned income that must be included in the calculation of net income under Schedule B.

When the Appellant applied for income assistance on December 16, 2023, she provided the letter from IRCC, which does not indicate the date of payment of the monthly RAP income support. The letter said that the final cheque would cover 22 days in January and would be in the amount of \$1,734.09. Based on that letter, the Ministry reasonably determined that the Appellant would receive \$1,734.09 in January 2024.

However, the Appellant has now provided her bank statement showing that she received \$1,734.09 from the federal government on December 22, 2023, which is consistent with one year of monthly income support, paid each month starting from January 23, 2023, the date the Appellant arrived in Canada. The letter from IRCC says that, because the Appellant arrived in Canada on January 23, 2023, her monthly RAP income support would end on January 22, 2024. Like the Ministry, IRCC pays monthly income support in advance, so the final payment, for the period ending January 22, 2024, was deposited in the Appellant's account on December 22, 2023.

Under Schedule B, section 9 of the Regulation, net income is calculated according to the calendar month in which the income is actually received, not according to the period for which the income is payable. As the Appellant received the RAP payment on December 22, 2023, the RAP payment is December 2023 income, even though it covers part of January 2024.

The Ministry maintains that the Appellant was not eligible to receive income assistance in January 2024 because the RAP income support of \$1,734.09, received in December 2023, covered 22 days in January 2024. However, the Ministry does not have the option, when calculating net income under the legislation, to allocate a portion of the Appellant's net income to a month other than the month it was actually received. If the Appellant received the RAP income support funds in December, the whole amount is December income, no matter the period for which it is payable.

At the hearing, the Ministry explained that, when it considers an application for income assistance, it looks at the income an applicant receives in the month they apply, and also the income they expect to receive the next month, suggesting that the portion of RAP income support that covered January 1 to 22, 2024 was income the Appellant expected to receive for January. When determining eligibility for income assistance on a new application, the Panel finds that it is reasonable for the Ministry to consider income the Appellant expects to receive in January 2024. However, the Panel finds that the Appellant received the funds in December 2023; she did not expect to receive (and she did not receive) funds in January 2024. It is clear from the IRCC letter that the Appellant will not receive any more RAP income support payments from IRCC.

The Ministry did not mention Schedule B, section 9 of the Regulation in the reconsideration decision, and it does not appear that the Ministry considered that section when determining whether the Appellant's net income made her ineligible to receive income assistance in January 2024. Therefore, the Panel finds that the Ministry's

reconsideration decision was not a reasonable application of the legislation in the Appellant's circumstances.

At the hearing, when asked about the application of Schedule B, section 9 of the Regulation, the Ministry referred to Ministry policy stating that individuals are not eligible to receive income assistance if they have applied elsewhere for support. While the Ministry referred to this statement as "policy", the Panel notes that it appears to be a reference to section 8(2) of the Regulation. However, the Panel finds that section 8(2) of the Regulation is not relevant, as the Appellant had received the final RAP income support payment, and there is no evidence that she had applied for income from another source.

If the Appellant is otherwise eligible for income assistance, the result is an overlap in income assistance from the Ministry and the federal government for at least part of January 2024, which is probably not the outcome that the two governments intended. However, the Panel finds that the Regulation is clear about calculation of net income based on when the income is actually received, not the period for which the income is payable.

The Panel's decision is limited to the question of whether the RAP income support the Appellant received in December 2023 made her ineligible to receive income assistance for January 2024. Overall eligibility, including determination of the source of other funds deposited to the Appellant's bank account in January 2024, is beyond the scope of this appeal.

Additional Arguments:

The Appellant also raised arguments based on the United Nations Declaration of Human Rights, and the adequacy of the Ministry's income assistance rates to meet her monthly expenses. The UN Declaration of Human Rights is outside the scope of the Tribunal's jurisdiction, which is to determine compliance with the legislated benefits scheme. Income assistance rates are determined by the Act and Regulation, and the Panel does not have jurisdiction to consider whether those rates are sufficient.

Conclusion:

The Panel finds that the Ministry's reconsideration decision is not a reasonable application of the legislation in the Appellant's circumstances, because it failed to consider Schedule B, section 9 of the Regulation, and it treated unearned income received in December 2023,

as January 2024 income. The Panel rescinds the reconsideration decision. The Appellant is successful in the appeal.

Schedule of Legislation

Employment and Assistance Act

Interpretation

s. 1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

Eligibility of family unit

s. 2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

Income assistance and supplements

s. 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.

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Employment and Assistance Regulation

Definitions

s. 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:

- (i) financial assistance provided under the Employment and Assistance for Persons with Disabilities Act or provided by another province or jurisdiction;

Effect of applying for other sources of income

s. 8 (1) For the purposes of subsection (2), "income" does not include

- (a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or
- (b) income exempt under section 1 of Schedule B.

(2) A family unit is not eligible for income assistance if an applicant in the family unit has applied for income from another source.

Limits on income

s. 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

s. 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

s. 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

s. 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
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$710.00

Monthly shelter allowance

s. 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 other than a family unit described in section 15.2 (1) of the Act is the greater of

- (a) the minimum set out in the following table for the family unit, and

(b) the lesser of

(i) the family unit's actual shelter costs, and

(ii) the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
3	3 persons	\$200	\$790

Schedule B

Net Income Calculation

Application of deductions and exemptions

s. 9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

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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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2024/02/16

Print Name
Kulwant Bal

Signature of Member

Date (Year/Month/Day)
2024/02/16

Print Name
Daniel Chow

Signature of Member

Date (Year/Month/Day)
2024/02/21