

PART C – Decision under Appeal

In a reconsideration decision dated 06 January 2012, the Ministry denied the Appellant's request not to deduct monthly family assistance payments from her disability assistance (DA) because the EAPWDR defines maintenance as "unearned income" which is not exempted or deducted from the calculation of monthly income and as such the Ministry is obligated to include the income in the calculation of eligible assistance at the earliest opportunity as set out in Section 24 and 29 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance Persons with Disabilities Regulation, Section 1, "unearned income"
Employment and Assistance Persons with Disabilities Regulation, Section 24
Employment and Assistance Persons with Disabilities Regulation, Section 29
Employment and Assistance Persons with Disabilities Regulation (EAPWDR), Schedule B

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included:

- A 2 page reasons for reconsideration from the Appellant,
- A copy of a bank transaction record dated November 2, 2011 showing a cash deposit of \$80.04, with a notation by the Appellant that states this is proof of a transfer of the child support payment to her son's account,
- A copy of a court order dated July 12, 1993.

The Appellant declares her son is not living with her and he is no longer on her file with the Ministry. She concludes the EAPWDR is no longer valid for him.

The Appellant refers to the court order that states "support for the child" and states it does not say anything about maintenance. She states that the Ministry does not have jurisdiction over the court and the order states that it is support money for the child. She concludes her son no longer has an active file with the Ministry and the Ministry is stealing money from her son.

The Ministry states Section 1(p) of the regulation defines "unearned income" as any income that is not earned income and includes without limitation, money or value received from maintenance under a court order, a separation agreement, or other agreement. Furthermore because her son does not have persons with disability (PWD) designation and is not 19 years or older, the income is not exempt and must be deducted from her monthly assistance.

At the hearing the Appellant states that she is currently designated as a single person with the Ministry and that her son, now 18 years old, is not residing with her. She declared that the legislation does not apply to her as a single recipient of disability assistance with the designation of PWD.

At the hearing the Ministry referred to its family maintenance policy that specifies family maintenance payments are unearned income and that the only exception is the "adult pass through maintenance income". This income is maintenance for an adult child that is defined as an individual 18 years of age or older who is designated as a PWD or an individual aged 19 years of age or older.

From the information presented, the Panel finds:

- the Appellant is designated as single person on PWD,
- the Appellant's son is 18 years old and does not live with the Appellant,
- the Appellant received a monthly family maintenance payment.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the Ministry to deny the Appellant's request not to deduct monthly family assistance payments from her disability assistance (DA) because the EAPWDR defines maintenance as "unearned income" which is not exempted or deducted from the calculation of monthly income and as such the Ministry is obligated to include the income in the calculation of eligible assistance at the earliest opportunity as set out in Section 24 and 29 of the EAPWDR. The relevant legislation in the EAPWDR is as follows: copy

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:

(p) maintenance under a court order, a separation agreement or other agreement;

24 Disability 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.

29 For the purposes of section 11 (1) (a) [reporting obligations] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient.

Schedule B Section 1 When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,

(a) the following are exempt from income:

(xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;

The Ministry argues the legislation demands that maintenance received by the Appellant must be used in the calculation of disability assistance. The Appellant argues the maintenance is her son's and she does not benefit from it. Furthermore she is designated as a single person with the Ministry and her son is not included in her file with the Ministry.

The Panel recognizes that the Appellant is currently living on her own and is designated as a single person and she states that she does not benefit from maintenance payments meant for her son. However the Panel finds the legislation does not recognize an exemption from the calculation of net income for the purposes of Appellant's DA for a child under 19 not on PWD. The Panel finds the Ministry reasonably found that in this case the exemption under Schedule B, Section 1(a) (xxviii) does not apply and the Appellant's request did not meet the applicable legislation.

Furthermore, the EAPWDR, Section 1(p) specifies maintenance under a court order as unearned income. These benefits do not fall into any category of excluded unearned income under EAPWDR, Schedule B, therefore the legislation specifies in EAPWDR, Section 24 that the maintenance must be subtracted from the Appellant's eligible monthly DA.

Based on the legislation, the Panel finds the Ministry made a reasonable decision to include the Appellant's maintenance payments in the calculation of eligible DA. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.