

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated November 18, 2011 which determined that the appellant is not eligible for disability assistance pursuant to s. 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for August through October 2011 because his family unit's net income for those months was in excess of the disability rate.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), s. 1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), s. 1, 9, 24,
Schedule A and Schedule B

PART E – Summary of Facts

The ministry's evidence is that from August through October 2011, the appellant's family was comprised of two persons, the appellant and his spouse, and that, at that time, the appellant was designated as a Person with Disabilities (PWD) but his spouse was not. The appellant's monthly rate of disability assistance for August through October 2011 was \$1242.08 based on a support allowance of \$672.08 and a shelter allowance of \$570.00. The appellant's spouse received on-going monthly disability pension payments of \$1318.00 from August through October 2011. The appellant's banking information for August 2011 shows deposits from the appellant's internet business comprised of \$1109.00 on August 3rd and \$100.00 on August 5th totaling \$1209.00 which when added to his spouse's disability pension results in monthly income of \$2527.00. As the monthly income from the disability pension alone is in excess of the disability rate for the appellant's family unit, the appellant is not eligible for disability assistance for August, September and October 2011.

Documentary evidence before the ministry comprised:

- A 4-page August 11, 2011 Employment and Assistance Review signed by the appellant and his spouse identifying their relationship as that of common-law spouses;
- Banking records for the appellant's spouse identifying an "infinity account" and a "companion savings account" and detailing transactions for the infinity account from January 4 – August 2, 2011. The infinity account shows deposits in the amount of \$1318.00 at the end of the months of January through July.
- An August 26, 2011 letter from an Investigative Officer to the appellant advising that his file has been converted to medical services only (MSO) status because the monthly private disability pension payment received by his dependent spouse of \$1318.00 is in excess of his monthly disability assistance rate for a two person family unit where only 1 member has PWD status of \$1305.56 (shelter \$570.00 + support \$700.56 + diet supplement \$35.00).
- A Request for Reconsideration comprised of Section 2 completed by the ministry on September 9, 2011 and a September 19, 2011 letter submitted by the appellant with attached documentation in support of his Request for Reconsideration of the ministry's August 26, 2011 decision that the appellant was living in a dependency relationship.

On appeal, the appellant submitted the following documents to the Tribunal:

- A January 29, 2012 Notice of Appeal in which the appellant writes that deposits in question are not income from a website business but instead account for \$1109.00 from his spouse for her share of the rent and \$100.00 from his step-mother as a loan for food as the appellant's youngest daughter was visiting from out-of-town and are not income from a website.
- A January 30, 2012 letter from the appellant stating that he and his spouse have never made any monies from website "A" as alleged by the ministry and further, the website no longer exists. The appellant continues that the investigation was made personal by a ministry worker and that from the beginning he and his spouse have tried to provide the requested information to the ministry. The appellant also writes that the withholding of their cheque resulted in the loss of their home in October and they are at current risk of having the electricity shut off.
- A copy of transactions for the period July 27 – August 9, 2011 for a bank account held by the appellant. The panel notes that although a copy of these transactions is not included in the

materials before the ministry at reconsideration, the ministry appears to have had this information as it is relied on its reconsideration decision as evidence of earned income received by the appellant. The bank record shows a deposit of \$100.00 identified as an internet transfer from a named person on August 5, 2011 and a deposit of \$1,109.00 identified as an internet transfer from the appellant's spouse on August 3, 2011.

- An August 10, 2011 letter from the appellant's spouse stating that she transferred funds including \$1109.00 on August 2, 2011 to the appellant to cover her portion of rent, utilities, and food.
- An August 9, 2011 letter from the person identified by the appellant as his step-mother [same person identified as transferring \$100 on August 5, 2011 by the appellant's bank transaction record] detailing loans she provided to the appellant as well as \$100.00 on August 5, 2011, the appellant's birthday.

The ministry's submission on appeal was its reconsideration summary.

The panel makes the following findings of fact:

- (1) The appellant's family unit is comprised of two persons, the appellant and his spouse.
- (2) The appellant was designated as a PWD from August through October 2011.
- (3) The appellant's spouse did not have a PWD designation from August through October 2011.
- (4) The appellant's spouse received a monthly payment of \$1318.00 from a private disability pension for August, September, and October 2011.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision that the appellant was not eligible for disability assistance pursuant to s. 24 of the EAPWDR for August through October 2011 because his family unit's net income for those months was in excess of the disability rate is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the EAPWDA are set out below.

1(1) "disability assistance" means an amount for shelter and support provided under section 5;

"supplement" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance....

The relevant sections of the EAPWDR are set out below.

1(1) "earned income" means

(a) any money or value received in exchange for work of the provision of a service

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

(d) insurance benefits, except insurance paid as compensation for a destroyed asset;

(j) workers' compensation benefits and disability payments or pensions;

9(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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.

Schedule A

1 Subject to sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24(a) 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(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 recipient described in Column 2, plus
 (b) the amount calculated in accordance with subsections (2) to (5) 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
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$700.56

4(2) The monthly shelter allowance for a family unit to which section 14.2 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
2	2 persons	\$570

Schedule B

Schedule B sets out the rules for calculating net income and section 1(d) provides that all unearned income must be included except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

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.

7 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 10 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (2) [assets held in trust for person with disabilities] of this regulation if (i) the payment is applied exclusively to or used exclusively for disability-related costs, as defined in section 12 (1) of this regulation, and (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where...

8 (1) In this section:

"education costs" means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

"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, for a semester.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of

- (a) a training allowance,
- (b) student financial assistance, and
- (c) student grants, bursaries, scholarships or disbursements from a registered education savings plan

received for the semester.

The appellant's position is that the deposits to his bank account characterized by the ministry as earned income from an internet business are in fact a payment from his spouse for her share of monthly rent, utility and food costs and a payment from his step-mother which was a loan to purchase food.

The ministry's position is that the appellant is not eligible for disability assistance for the months of August, September, and October of 2011 because the unearned income from his spouse's private disability pension received in each of those months in the amount of \$1318 exceeds his family unit's monthly disability assistance rate. The ministry further contends that, for the month of August 2011, the appellant's family unit received earned income comprised of a deposit of \$1109.00 and \$100.00, totaling \$1209.00. Together the amount of earned income and unearned income for August 2011 totals \$2527.00 which is also in excess of the rate of disability assistance for August 2011.

The panel notes a discrepancy between the disability assistance rate as stated in the reconsideration decision (\$1242.08) and that stated in the August 26, 2011 letter from the ministry to the appellant (\$1305.56). Both figures reflect a monthly shelter allowance of \$570.00. However, the reconsideration decision identifies a monthly support allowance of \$672.08 while the August 26, 2011 letter identifies a monthly support allowance of \$700.56 and also includes a monthly diet supplement amount of \$35.00 in its calculation of the monthly disability assistance rate. The panel finds that, in accordance with the definition of "disability assistance" set out in s. 1 of the EAPWDA, supplements are not included. Additionally, pursuant to the table set out in s. 2 of Schedule A of the EAPWDR, the monthly support allowance for the appellant's family unit of two, which for August through October 2011, only included one person designated as a PWD, is \$570.00. Therefore, the panel finds that the monthly disability assistance rate for the appellant's family unit for August, September, and October 2011 was \$1270.56.

With respect to the earned income that the ministry argues was received by the appellant in August 2011, the panel notes that the ministry has not provided any supporting evidence as to the nature or source of the two deposits in issue. Additionally, the panel notes that the bank statements identify the source of the August 3, 2011 internet transfer as the appellant's spouse and the August 5, 2011 internet transfer as a person identified as the appellant's step-mother. In the absence of any supporting evidence identifying the August 2011 deposits totaling \$1209.00 as being from an internet business, the panel finds that the ministry unreasonably determined that the deposits were earned income from an internet business.

With respect to the monthly payments from a private disability pension received by the appellant's spouse, the panel finds that the ministry reasonably characterized the monthly payment of \$1318.00 as unearned income as defined in s. 1 of the EAPWDR and that this income is neither exempt nor deductible under Schedule B of the EAPWDR. Therefore, as the \$1318.00 of unearned income received by the appellant's family unit in August, September, and October 2011 exceeds the family unit's disability assistance rate of \$1207.56 for those months, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance for August, September, and October of 2011.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.