APPEAL

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 10, 2012 in which the ministry determined that the appellant's rental income was considered unearned income rather than earned income under the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Definitions. The ministry states that the appellant receives $650.00/month rent from the second unit of the duplex he and his wife own. The ministry's reconsideration decision states that the appellant is receiving rental money from "other property" which falls within the definition of unearned income and must be deducted from the appellant's January 2012 disability assistance.

PART D – Relevant Legislation

EAPWDR Employment and Assistance for Persons with Disabilities Regulation, s1(1), s 9 (1)(2), 24(a) and (b); schedules A s.1 (a) and (b) and B – s.1,2,3,6

PART E – Summary of Facts

The following records were before the ministry at the time of the reconsideration decision:

- The reconsideration decision, 2011/02/16
- A request for a reconsideration, 2012/01/24
- BC Assessment 2012 Property Assessment Notice
- A letter from District of Salmon Arm, 1996/05/23
- Request for reconsideration, 2011/12/19
- Reason for request for reconsideration, 2012/01/04
- City Annual Utilities Invoice, 2012/01/18

Pursuant to EAA 22(4) the panel accepted the following documents as evidence. An objection by the ministry to accepting new evidence was noted. The panel determined that the client's income tax returns and application for Income Assistance would not be accepted as evidence as they were not in support of the evidence before the ministry at the time of the reconsideration. The panel accepted the letter from the Director of Development Services as new evidence in support of the evidence before the ministry at the time of the reconsideration.

- A letter from the Director of Development Services, City, 4 pages, 2012/03/06
- Copies of portions of the appellant's income tax returns for the years 2010 and 2011.
- An application for income assistance, 2009/09/002

The appellant's evidence is that he lives in a house which has two living areas. The appellant and his wife live in the upper portion of the house while their tenant lives in the basement portion. According to the appellant the basement area has a bedroom, kitchen, bathroom and living area. It also has its own entrance, fridge, stove and laundry facilities. The appellant states that the two living areas are independent of each other. The only areas that are shared are a hallway and a fire escape. In her submission, the appellant's advocate writes that because the "lower duplex is a part of their residence/home, they are responsible for the maintenance and repairs of the house and are responsible for the costs of water and sewer to the entire house..."

The appellant states that his income tax returns for 2010 and 2011 show that the Federal Government allowed him to claim a portion of the maintenance expenses for the house on his income tax. The appellant and his advocate have described the rented accommodation as a duplex and not land, self-contained suite or other property. He states that rental income should be classified as earned income rather than unearned income. His concern is that if the rental income is determined to be unearned income he may have to sell his house as the reduction in his income assistance would leave him without enough money live in the house.

The ministry states that it accepts that the monies received by the appellant are for the rent of a duplex. The ministry states "As you are receiving income from 'other property' it meets the definition of 'unearned income' and therefore is deducted dollar for dollar without any exemptions allowed under the ministry's Sch. B as the exemptions listed under Sch B Sec. 6 are only for self-contained suites".

APPEAL

PART F – Reasons for Panel Decision

The issue is whether the ministry's decision to deduct from the appellant's January 2012 disability assistance from the appellant's duplex as unearned income received from other property under EAPWDR, Definitions, unearned income (n) was a reasonable application of the legislation in the appellant's circumstances or was reasonably supported by the evidence.

EAPWDR s. 1
"earned income" means
(a) any money or value received in exchange for work or the provision of a service,
(b) tax refunds,
(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
(d) money or value received from providing room and board at a person's place of residence, or
(e) money or value received from renting rooms that are common to and part of a person's place of residence;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:
n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

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 B
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.

The ministry's position is that the appellant's rental income is not considered earned income. "The ministry submits that a duplex is *not common to* and *part of* your residence. Nor can a duplex be properly defined as a 'room' as it would have a bathroom, bedroom and living areas or rooms". The ministry states that as the appellant is receiving income from 'other property' and therefore is considered unearned income.

The appellant's advocate argues that "it would be unreasonable for the ministry to apply EAPWD regulation section 1 (n) determining that the lower duplex is a self-contained suite, land, or other property as defined within that legislation". The rent money the appellant receives should be classified as earned income because the lower duplex is part of their home for which they are responsible for the repair and maintenance.

Pursuant to EAPWDR s.1(1) the panel finds that the ministry reasonably determined that the appellant's rental income was unearned income. The appellant has stated that the duplex does not share rooms or facilities. They do share part of the hallway and the fire exit. The appellant takes responsibility for the maintenance and repairs of the house and is responsible for the costs of water

and sewer to the entire house. In the definition for earned income it speaks to the rental of rooms that are "common to and part of a person's place of residence". The panel takes this to mean: the rental of room(s) where a tenant may have access to some or all house facilities, appliances or entrances etc while having a private room(s) within the home. This duplex unit does not meet the legislative requirement for the definition of 'earned income'. The ministry was reasonable in finding this was not a self contained suite therefore the deduction under Sch B s. 6 does not apply, therefore the unearned income is deducted dollar for dollar.

The panel finds that the decision of the ministry was reasonably supported by the evidence and therefore confirms the decision of the ministry pursuant to Section 24 (2)(a) of the EAA.