

PART C – Decision under Appeal

The appellant appeals the ministry's reconsideration decision dated April 23, 2012, in which the ministry determined that the appellant's disability assistance for the month of April 2012 would be reduced by \$731.38, the amount of the appellant's income tax refund (\$1231.78 less \$500 exemption) reported to the ministry in March 2012. The ministry determined that the appellant's tax refund equals "earned income" under section 1 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the ministry deducted it from the appellant's disability assistance for the month of April 2012 pursuant to s. 24 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 10, 24 and Schedule A, section 1, and Schedule B, sections 1, 2 and 3.

PART E – Summary of Facts

The information before the ministry at reconsideration included:

- The appellant's request for reconsideration, signed March 22, 2012
- The appellant's notice of reassessment for the 2010 tax year from Canada Revenue Agency dated January 23, 2012 (2 pages), showing a tax refund (credit) of \$1,231.78.

Prior to the hearing, the appellant provided the following additional documents:

- Copy of a letter from Canada Revenue Agency to the appellant dated April 25, 2012 regarding the appellant's Disability Tax Credit (DTC) (2 pages); and
- Copy of the appellant's Disability Tax Credit Certificate (DTC Certificate), Part A (1 page) completed by the appellant on March 11, 2011 and Part B (8 pages) completed by the appellant's physician (stamped by physician's office, but not dated).

The panel admitted the additional documents as written testimony in support of the information and records that were before the minister when the decision being appealed was made under section 22(4)(b) of the *Employment and Assistance Act*.

The appellant has been designated a person with disabilities and receives monthly disability assistance. The appellant told the panel that she is HIV positive and has been since 1994, and that her physician confirmed her HIV positive status in the DTC Certificate. The appellant told the panel that she reported the amount she received on her income tax refund to the ministry in March 2012.

At the hearing, the ministry said that the appellant reported the tax refund of \$1,231.78 to the ministry and that, because she is a person with disabilities, \$500 of the \$1,231.78 is exempt under section 3 of Schedule B of the EAPWDR. The ministry deducted the amount of \$731.78 (the \$1,231.78 tax refund less \$500 = \$731.78) from the appellant's income assistance for April 2012, the month following the month in which she declared the tax refund (March 2012).

The panel makes the following findings of fact:

- The appellant is a person with disabilities who receives monthly disability assistance;
- The appellant received a tax refund of \$1,231.78 in March 2012; and
- The appellant reported the tax refund amount of \$1,231.78 to the ministry in March 2012.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deduct the amount of \$731.78 as "earned income" from the appellant's monthly disability assistance for the month of April 2012 under section 24 of the EAPWDR is reasonable.

Legislation

EAPWDR

Definitions

1 (1) In this regulation:

"**earned income**" means

- (a) ...
- (b) tax refunds,
- (c) ...

Asset limits

10 (1) The following assets are exempt for the purposes of subsection (2)

.....

- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (q) individual payments granted by the Government of British Columbia to a person infected by the human immunodeficiency virus;

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or recipient has not dependent children and has assets with a total value of more than \$3,000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5,000

Amount of disability assistance

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

Disability Assistance Rates (section 24(a))

Maximum amount of disability assistance before deduction of net income

- 1 Subject to sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24(a) [amount of disability 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.

Schedule B

Net income calculation

Deduction and exemption rules

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:

(i) ...

....

(ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

(x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

...

(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,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Deductions from earned income

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

(i) income tax,

(ii) employment insurance,

(iii) medical insurance,

(iv) Canada Pension Plan,

(v) superannuation,

(vi) company pension plan, and

(vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Exemption – earned income

3(1) The amount of earned income calculated under subsection (2) is exempt for a family unit if

(a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed

- (i) disability assistance under the Act,
- (ii)

(2) The exempt amount for a family unit that qualifies under subsection (1),

(a) in the case of a family unit that is composed of one recipient who is designated as a person with disabilities, is calculated as the lesser of

- (i) \$500, and

The appellant's position is that as a person with disabilities who is HIV positive, her income tax refund should not be deducted from her monthly disability assistance because the tax refund should be considered an asset. The appellant pointed to subsection 10(1) of the EAPWDR, which exempts as assets individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by HIV (subs. (1)(p)), and individual payments granted by the government of British Columbia to a person infected with HIV (subs. (1)(q)). The appellant also says that as a person who is HIV positive, the tax refund she received should be exempt from income, the same as a payment by the government of Canada or the government of British Columbia to a person with HIV as listed under subsections 1(a)(ix) (payment under the Extraordinary Assistance Plan) and (x) (payments by the government of BC) of Schedule B of the EAPWDR.

The ministry acknowledged that the appellant is a person with disabilities who is HIV positive. The ministry stated that the appellant's income tax refund is *not* the same as payments to a person infected with HIV by the government of Canada under the Extraordinary Assistance Plan (which would be exempt from earned income under subsection 1(a)(ix) of Schedule B) or as a payment to a person infected with HIV by the government of British Columbia (which would be exempt from earned income under subsection 1(a)(x) of Schedule B). The ministry also stated that the appellant's tax refund cannot be considered an exempt asset under subsection 10(1)(p) or (q) of the EAPWDR as it is not a payment under the Extraordinary Assistance Plan for persons with HIV by the government of Canada, or a payment to a person with HIV by the province of British Columbia. The ministry said that it has no discretion regarding these items in the legislation. The ministry stated that the appellant's tax refund is "earned income" as expressly set out in the definition of "earned income" in section 1(1)(b) of the EAPWDR. The ministry stated that, other than the \$500 exemption set out in section 3(2) of Schedule B of the EAPWDR for which the appellant qualified, there is no exemption for a tax refund in calculating disability assistance. Accordingly, the ministry says that its decision to reduce the appellant's monthly disability assistance for April 2012 by the amount of the tax refund reported by the appellant in March 2012 was required by the legislation. The ministry also noted that the appellant's monthly CPP payment (\$769.56) was deducted from her disability assistance for April 2012, but the appellant did not dispute this.

The panel finds that the appellant received a tax refund in the amount of \$1,231.78 in March 2012, which she reported to the ministry, and which was confirmed by the appellant's notice of reassessment. The panel finds that appellant's tax refund is "earned income" as expressly set out in section 1(1)(b) of the EAPWDR and is deductible from her monthly disability assistance under s. 24 of the EAPWDR, less the amount of \$500 for which the appellant qualifies under section 3(2) of Schedule B of the EAPWDR. The panel finds further that, as earned income, the appellant's tax refund is not exempt under subsections 1(a)(ix) or (x) of Schedule B of the EAPWDR and is not an exempt asset under subs. 10(1)(p) or (q) of the EAPWDR. The panel concludes that the ministry's decision to reduce the appellant's income assistance for April 2012 by the amount of her tax refund, less \$500, was a reasonable application of the legislation in the circumstances. The panel therefore confirms the ministry's decision.