APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 30, 2012 which found that the amount of a maintenance payment received in February 2012 must be deducted from appellant's assistance for the month of April 2012, pursuant to Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 24 and Schedules A and B

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PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) Letter dated July 27, 1992 from the ministry of Social Services to the President, Federated Anti-Poverty Groups of B.C. regarding the legislation at the time;
2) Letter dated September 13, 1993 from the appellant to the Welfare Information Network to ask if a cheque received from the Family Maintenance Enforcement Program can be exempted to put towards the appellant's allowable savings;
3) Letter dated July 22, 2011 from the Family Maintenance Enforcement Program (FMEP) to the appellant regarding enforcement being taken;
4) Notice of Deposit dated January 25, 2012 in the appellant's name for the sum of $892.58;
5) Letter dated January 25, 2012 from the FMEP to the appellant regarding enforcement being taken;
6) Letter dated March 12, 2012 from the appellant to the ministry which states in part that her situation is desperate, that her Persons With Disability (PWD) benefits are so inadequate that it is impossible for her to manage. She asks to be allowed to keep the lump sum maintenance payment received so far, and the coming payments she will receive through FMEP because she needs the funds for her personal health and care, for her household upkeep and to pay her property taxes. The appellant states that she is supposed to be allowed to have $3,000 in assets but there is no way for her to build them and the $500 earning exemption is only applicable to "earned income" which is so narrowly defined that it rarely applies to income that occurs for the disabled; that she has not been able to utilize the earning exemption because of her disability. On February 28, 2012 the sum of $710.06 in maintenance that was owing to her went into her bank account, she states even having the funds account towards her deferred property taxes would be better than the government just taking it;
7) Letter dated April 3, 2012 from the appellant to the ministry which states in part that her situation is desperate, that her PWD benefits are so inadequate that it is impossible for her to manage. She asks to be allowed to keep the lump sum maintenance payment received so far, and the coming payments she will receive through FMEP because she needs the funds for her personal health and care, for her household upkeep and to pay her property taxes. The appellant states that she is supposed to be allowed to have $3,000 in assets but there is no way for her to build them and the $500 earning exemption is only applicable to "earned income" which is so narrowly defined that it rarely applies to income that occurs for the disabled; that she has not been able to utilize the earning exemption because of her disability. On March 14, 2012, $936.80 in maintenance that was owing to her went into her bank account, and on March 29, 2012 $476.35 went into her bank account, which totals $1,413.15 that she put on her declaration, which is attached;
8) Newspaper article dated April 19, 2012 titled "Liberals Unite for Charter Party";
9) Letter dated April 24, 2012 from FMEP to the appellant enclosing Statement of Payments Disbursed for the period of August 26, 1992 to April 24, 2012;
9) Letter dated May 2, 2012 from the appellant to the ministry which states in part that she is desperate and requests to be allowed to keep her maintenance payments; and,
10) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided an additional document, namely:

1) A written submission of the appellant's Reasons for Appeal,
2) A copy of the Canadian Charter of Rights and Freedoms, and
3) A Guide to the Canadian Charter of Rights and Freedoms.

The ministry did not object to the admissibility of these documents. The panel accepted the appellant's written submission as argument but did not admit the Charter or Charter Guide documents as they are not relevant to the appeal given Section 44 of the *Administrative Tribunals Act* which stipulates that the tribunal does not have jurisdiction over constitutional questions, and this section applies to the Employment and Assistance Appeal Tribunal/ the panel, pursuant to Section 19.1 of the *Employment and Assistance Act.*

In her Request for Reconsideration, the appellant states that she has not received "maintenance" payments with any regularity since January 2008. The appellant states that it cost her many thousands of dollars to obtain the maintenance order in the B.C. Supreme Court and she signed over her rights with the FMEP under protest. The appellant states that the FMEP do not advise her of the plans for enforcement, she just receives a letter stating that action has been taken. The appellant explains that she was diagnosed in 1990 but did not apply for persons with disabilities (PWD) status until 1996. The appellant states that she always reports any income that comes to her and she even declared the $3.84 received in December 2011, the only maintenance she received in 2011. The appellant states that she had every reason to believe that she had been allowed to keep the maintenance she had received in 2012. The appellant states that she was not aware of the Special Transportation Subsidy portion as she did not receive it before 2011 even though she fully qualified for it since 1996. The appellant states that although there was an indication that the ministry deducted an amount from her assistance, her cheque was also larger by a similar amount and, as she desperately needed the funds and had asked to keep them, it looked to her as though the ministry had let her keep the maintenance. The appellant states she discovered later that this was the Transportation Subsidy that had been added.

The appellant also states in her Request that in 1993 she was allowed to keep a lump sum maintenance payment to put toward a much-needed refrigerator. The appellant states that since she has many more needs now, it was only fair to assume that in this instance the ministry let her keep the maintenance. The appellant refers to a number of items that she currently needs, including massage and chiropractic treatments, medications and other health implements, healthy foods, a car, and repairs to her bed frame, kitchen sink, garbage shed and fence, and that if she could keep the maintenance to put towards any of these items it would make a huge positive difference in her life. The appellant states that she knows the ministry can let her keep the money if they want to because they have done it twice before. The appellant states that the designation of "earned" or "unearned" income is wrong, that she does not agree with it since the idea that she cannot be allowed to benefit from any income she obtains unless she has earned it with her "broken body" is a "cruel joke." The appellant states the rule is that the maintenance payment is only deducted from assistance for the month received so if the payer were to pay it all in one month, the ministry is only allowed to deduct it once and any dollar amount more than the assistance amount she is allowed to keep, up to the $3,000 allowable asset level. The appellant states that the government is in complete control of the increments in which the payer will pay maintenance. The appellant states that between 1990 when her maintenance was first ordered and 2002, there was a $100 exemption on the maintenance which was included as part of the $200 earning exemptions she was allowed at the time and she believes this shows that there was a time when it was considered as "earned" income and she states that her earning exemption is now $500.

In her Reasons for Appeal, the appellant adds that she just received her property tax bill for 2012 and she owes $2,009.75 which will be deferred and the government will put another lien against her home. The appellant asks why her maintenance funds cannot be accredited to her deferred property taxes instead of taken from her. The appellant states that she has received $125 in maintenance in the month of May 2012 which is the BC Supreme Court ordered monthly amount and she would like to keep it for her benefit. The appellant states that if it was considered as "earned income", she could keep up to $500 each month, therefore she would be allowed to keep the $125 per month. The appellant points out the exemptions from income in Section 1 of Schedule B of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) for that portion of the maintenance paid for and passed on to a person with disabilities under a maintenance order or agreement filed with the court, under sub-section xxviii, shows an intention to make the exception and exemption for disabled persons. The appellant asks why her family maintenance is not exempt while this maintenance in sub-section xxviii is, when a disabled person is the intended recipient for both. The appellant asks why "unearned income" from a trust is exempt under the legislation, and what makes a disabled person with a trust different.

At the hearing, the appellant stated that there used to be a provision for exemption of maintenance, up to 2002 a portion of it was considered as "earned income." The appellant stated that if she received maintenance, the

first $100 of the $200 earned income exemption could come from maintenance and she could earn another $100 and be allowed to keep it as well. The appellant stated that she believes this shows there was a time when maintenance was considered as "earned" income. The appellant stated that although the exemption for earned income is now $500 and is being increased, it does not help her because she is limited from earning income as a result of her disability. The appellant stated that the BC Supreme Court ordered her maintenance payments to meet the shortfall between her assistance and what she needed to survive according to her budget but they did not realize that this amount would be deducted by the ministry. The appellant stated that the arrears in maintenance have now been paid up because of the garnishee and she should receive the sum of $125 per month according to the court order. The appellant stated that she has had no control over whether or how the FMEP takes enforcement action and that it has caused her a lot of stress over the years.

The ministry relied on the facts as set out in its reconsideration decision which included that the appellant is a single recipient of disability assistance. She receives $531.42 in support and $375 in shelter allowance, for a total monthly disability allowance of $906.42. On February 28, 2012, the appellant received a total of $710.06 in family maintenance payments for spouse support. The ministry contact the FMEP to clarify the payments and it was confirmed that the maintenance is ongoing spousal support. The appellant was advised that due to her spousal maintenance payments of $710.06 received in February 2012, there is reduction of $710.06 from her April 2012 disability assistance. At the hearing, the ministry clarified that the exemption from net income as set out in Section 1(a)(xxviii) of Schedule B of the EAPWDR covers the situation where a third party is making payments specifically to assist a disabled person and does not include family maintenance payments for spousal support.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the amount of a maintenance payment received in February 2012 must be deducted from appellant's assistance for the month of April 2012, pursuant to Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Section 24 of the EAPWDR provides that:

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 of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

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; ...

(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.

Section 1 of the EAPWDR defines "unearned income" to mean:

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

(a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(b) cooperative associations as defined in the *Real Estate Development Marketing Act*;

(c) war disability pensions, military pensions and war veterans' allowances;

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

(e) superannuation benefits;

(f) any type or class of Canada Pension Plan benefits;

(g) employment insurance;

(h) union or lodge benefits;

(i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;

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

(k) widows' or orphans' allowances;

(l) a trust or inheritance;

(m) rental of tools, vehicles or equipment;

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

(o) interest earned on a mortgage or agreement for sale;

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

(q) education or training allowances, grants, loans, bursaries or scholarships;

(r) a lottery or a game of chance;

(s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;

(t) any other financial awards or compensation;

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

(v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the Immigration and *Refugee Protection Act* (Canada) or the *Immigration Act* (Canada).

The ministry's position is that the amount of a maintenance payment received by the appellant in February 2012 must be deducted from appellant's assistance for the month of April 2012, since her net income determined under Schedule B of the EAPWDR must be deducted from the amount of disability assistance determined under Schedule A for a family unit matching her family unit. The ministry points out that as a single recipient of disability assistance, the appellant is eligible for a support allowance of $531.42 per month and a shelter allowance in the amount of $375 per month for a maximum total monthly allowance of $906.42. The ministry argues that in determining net income under Schedule B, all unearned income must be included, which has been defined in Section 1 of the EAPWDR to include, without limitation, money or value received from maintenance under a court order, a separation agreement or other agreement. The ministry points out that maintenance payments have been included in "unearned income" since 2002 because it is perceived that women are as capable of earning an income as men which, historically, has not always been the approach taken. The ministry argues that the total net amount of the appellant's income calculated under Schedule B is $710.06 in spousal maintenance payments received February 28, 2012. The ministry argues that there is no applicable income exemption available in Schedule B to reduce this income since the exemption in Section 1(a)(xxviii) of Schedule B of the EAPWDR relates to disability maintenance payments by a third party and not family maintenance payments for spousal support. The ministry points out that the appellant's non-exempt income of $710.06 must be deducted from the appellant's support and shelter allowance determined under Schedule A of $906.42 and, therefore, the amount of the appellant's disability assistance for April 2012 is reduced pursuant to sections 24 of the EAPWDR.

The appellant acknowledges that she was in receipt of spousal maintenance payments of $710.06 on February 28, 2012 as she herself reported these payments to the ministry, and it is also not disputed that she is eligible for the amount of $906.42 in disability assistance each month as a single recipient. The appellant acknowledges that maintenance payments are currently included in the definition of "unearned income" as set out in Section 1 of the EAPWDR. However, the appellant argues that, historically prior to 2002, maintenance payments were considered "earned income" which allowed for the exemption of a certain amount and that the current exemption for "earned income" is $500 per month. The appellant argues that the distinction created between "earned" and "unearned" income is wrong because she is not allowed to benefit from any income she obtains unless she has earned it with her "broken body" as a disabled person. The appellant argues that the ministry has the discretion to let her keep the amount of the maintenance payments if they want to because they have done it twice before. The appellant points out that she does not control the timing or amounts of maintenance received in a month as this is done through the FMEP office, and that if more is paid in one month she is allowed to keep the balance over her assistance amount, up to the $3,000 asset limit. The appellant argues that she has a list of needed items, including a balance outstanding for deferred property taxes, and that

the ministry could apply the maintenance amount to her outstanding taxes and this would be a positive benefit to her. The appellant argues that the existing exemptions for disability maintenance payments and for money received through a disability trust show an intention to allow support for disabled persons.

The panel finds that the appellant admits that, in February 2012, she was in receipt of a maintenance payments in the total sum of $706.10 paid pursuant to a court order. Under Section 1 of Schedule B of the EAPWDR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 1 of the EAPWDR, "unearned income" is defined to mean any income that is not earned income and includes, without limitation, money or value received from any of the following: "...maintenance under a court order, a separation agreement or other agreement." Although the appellant argues that maintenance payments have, in the past, been considered as "earned income" and eligible for the earned income exemption, the panel finds that the ministry reasonably concluded that maintenance payments under a court order are specifically included within the definition of "unearned income" under the legislation currently applicable. The panel finds that the ministry reasonably determined that the amount of the appellant's maintenance payments ($710.06) must be included in the calculation of her income received in February 2012, and that, given the directory language of the applicable provisions, it does not have the discretion to do otherwise. The appellant argues that the exemption in Section 1(1)(xxviii) of Schedule B of the EAPWDR shows an intention for payments to disabled persons to be exempt from income, however the panel finds that this sub-section does not include spousal support maintenance payments which are payable as a result of a previous spousal relationship and which have been specifically included as "unearned income." The panel finds that the ministry reasonably concluded that the net amount of the appellant's income, or $710.06, under Schedule B must be deducted from the amount of assistance determined under Schedule A for the appellant's family unit and that, therefore, the appellant's disability assistance is reduced by this amount for the month of April 2012, pursuant to Section 24 of the EAPWDR.

The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act.*