

**PART C – Decision under Appeal**

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated August 8, 2012, in which the Ministry denied her disability assistance under section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), on the basis that she had earned income (as defined in section 1(1)(a) of the EAPWDR), which resulted in net income in excess of the rate of disability assistance for which she is eligible under Schedule A of the EAPWDR.

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) sections 1, 9, and 24, Schedule A, sections 1, 2 and 4, and Schedule B, sections 1, 2, 3 and 4.

## PART E – Summary of Facts

The information before the Ministry at reconsideration included:

- The appellant's request for reconsideration dated July 20, 2012, on which she had written, "I do not believe I have a beneficial interest in the company. I have received no income";
- Copy of Ministry Bank Profile form signed by the appellant and completed by her bank dated May 8, 2012;
- Copies of the appellant's credit card statements dated April 9, 2012, March 9, 2012, February 9, 2012, January 9, 2012, and December 9, 2011;
- Copy of Officers and Directors Enquiry computer printout from the appellant's bank showing the appellant as the president, owning 51%, of a certain business (the Business) (one page);
- Copy of Total Accounts Enquiry computer printout from the appellant's bank showing accounts for the Business (2 pages);
- Computer printout for the appellant's bank account showing activity from September 20, 2011 through June 8, 2012 (13 pages);
- Computer printout showing the monthly income totals for the appellant's account from September 2011 through June 2012 (2 pages);
- Computer printout showing month end asset totals for appellant's bank account (1 page);
- Copy of Total Accounts Enquiry computer printout from the appellant's bank showing the appellant's accounts (2 pages);
- Copy of Deposit Account History for the appellant's bank account from September 8, 2011 through June 5, 2012 (8 pages);
- Copy of the Notice of Articles from the Ministry of Finance for the Business showing its registered and records office as the appellant's address (2 pages);
- Copy of the Annual Report form filed August 31, 2011 for the Business showing the appellant as the CEO, President and Secretary of the Business (1 page);
- Copy of the Annual Report form filed June 1, 2012 for the Business showing the appellant as the CEO, President and Secretary of the Business (2 pages);
- Copy of a letter from the appellant's bank to the Ministry dated July 4, 2012 confirming the appellant's bank and credit card accounts and the balances; and
- Copy of the appellant's personal assessment from her bank showing her banking information.

Prior to the hearing, the appellant provided an affidavit containing a 3-page written submission, affirmed by the appellant on August 30, 2012, with the following additional documents attached as exhibits to the affidavit:

- Exhibit A - copy of the minute book of the Business, which includes the certificate of incorporation of the Business dated May 31, 2012 (1 page), the incorporation agreement of the Business dated May 31, 2010 (1 page), the articles of the Business (37 pages), the central securities register for the Business (3 pages), the register of directors of the Business (1 page), copy of consent to act as director signed by the appellant's friend on May 31, 2010 (1 page), resignation as director of the Business signed by the incorporating lawyer (1 page), notice of articles of the Business dated May 31, 2010 (2 pages), incorporation application for the Business dated May 31, 2010 (3 pages), subscription for shares forms for shares in the Business signed by the appellant for 50 Class A common voting shares and 100 Class B common non-voting shares and by the appellant's friend for 49 Class A common voting shares and 100 Class C common non-voting shares (4 pages), minutes of a shareholders meeting of the Business dated May 31, 2010 and signed by the appellant (2 pages), directors' resolutions of the Business dated June 29, 2010 (2 pages), minutes of the directors meeting of the

Business dated May 31, 2010 signed by the appellant's friend (3 pages), directors' resolutions of the Business showing transfers of shares from the incorporating lawyer to the appellant and her friend dated May 31, 2010 (2 pages), copies of share certificates – the shares issued to the appellant were not signed by her (10 pages), receipt for filing the annual report of the Business dated June 1, 2012 (1 page), copy of printout of annual report reminder 2012 (1 page), receipt for filing the annual report of the Business dated August 31, 2011 (1 page);

- Exhibit B - copy of the Business Banking and Services Agreement dated June 10, 2010 between the Business and the appellant's bank, signed by the appellant (6 pages); and
- Exhibit C – copy of the profit & loss statement for the Business for the period October 2011 through June 2012 (1 page).

The Ministry did not object to the admission of the appellant's additional documents attached to her affidavit, or to the appellant's submissions in her affidavit. The panel admitted the affidavit (all the additional documents and submissions) under sections 22(4)(a) and (b) of the *Employment and Assistance Act* as both information and records that were before the minister when the decision being appealed was made and as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

Prior to the hearing, the Ministry provided a 5-page written submission dated September 5, 2012. The appellant did not object to the admission of the Ministry's submission. The panel admitted the Ministry's submission under section 22(4)(b) of the *Employment Assistance Act* as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

The appellant applied for disability assistance in September 2011, and was designated a person with disabilities and began receiving disability assistance from the Ministry. On April 28, 2012, the Ministry started a review of the appellant's file and informed her of the review by letter dated May 2, 2012. In the letter, the Ministry advised the appellant that she was to attend a meeting on May 15, 2012 to discuss her file and she was to bring relevant financial information with her. The meeting was rescheduled and the appellant met with the Ministry on May 18, 2012, at which time she provided the Ministry with information regarding her personal bank account and credit card. Subsequent to this meeting, the Ministry contacted the appellant's bank requesting information about all bank accounts related to the appellant. On July 4, 2012, the Ministry received documents from the appellant's bank regarding the Business's bank account, which indicated that the appellant was "attached to the business account" and showed a balance in the Business's account of \$60,045.80. On July 5, 2012, the Ministry obtained information from the BC Registry Service showing the appellant's address as the mailing and delivery address for the Business, and the appellant as the CEO, President and Secretary of the Business. On July 12, 2012, the Ministry received confirmation from the appellant's bank that she is the 51% owner of the Business.

Based on the information from the appellant's bank regarding the balances in the Business's account, the Ministry calculated that the appellant had the following share of the monthly income deposited to the Business's account (which was 51% of the balances): \$4,597.02 in September 2011, \$9,033.48 in October 2011, \$8,757.30 in November 2011, \$7,839.65 in December 2011, \$7,582.02 in January 2012, \$9,620.83 in February 2012, \$7,759.33 in March 2012, \$9,012.94 in April 2012, \$7,042.36 in May 2012, and \$1,138.88 on June 6, 2012 (the end of the statement). The Ministry advised the appellant on July 17, 2012, that, "due to ongoing income in excess of the maximum rate for your

family unit you have been denied disability assistance.”

The appellant told the panel that she helped set up the Business as a favour for her friend, who is the only director of the Business, and that her friend runs the Business and only started paying himself income from the Business in the past year. The appellant said that she has never received any income from the Business, stressing that if she were to withdraw money from the Business's account, she could get into legal trouble. The appellant told the panel that she has periodically signed cheques on the Business's behalf when her friend is not available (for example, to cover the rent of the store the Business uses). The appellant agreed that her address is the mailing and records address of the Business, but she told the panel that she did not pay for the filing of the Business's annual report (the credit card number on the receipt is the credit card number of the appellant's friend). The appellant told the panel she signed the Business's banking agreement with her bank and is acting as the guarantor for the loan to the Business because she had a better credit rating than her friend.

At the hearing, the Ministry said that the appellant has a 51% ownership in the Business and the Ministry considers the income in the Business's account to be “earned income” attributable to the appellant (51% of the money in the Business account). The Ministry said that as a single recipient on disability assistance, the appellant is entitled to \$906.42 per month (\$531.42 per month disability assistance, plus \$375 per month shelter allowance). The Ministry said that the money attributable to the appellant in the Business account exceeds the appellant's monthly disability allowance and this is why the Ministry is denying her disability assistance. The Ministry said that the appellant is not registered in the Ministry's self-employment program (and the appellant agreed with this).

The panel makes the following findings of fact:

- The appellant has been receiving monthly disability assistance since September 2011 and as a single recipient, receives \$906.42 per month; and
- The appellant signed the Business's banking agreement with her bank.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant disability assistance under section 9(2) of the EAPWDR, on the basis that her net income exceeds the amount of disability assistance determined for her under Schedule A of the EAPWDR, is reasonable.

### Legislation

#### EAPWDR

#### Definitions

1 (1) In this regulation:

"earned income" means

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

....

### Limits on income

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.

### 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.

Under Schedule A, section 1, of the EAPWDR, the maximum amount of disability assistance before deduction of net income referred to in section 24(a) is the sum of the monthly support allowance under section 2 of Schedule A (following the Table amounts set out under section 2 of Schedule A, the appellant is eligible to receive \$531.42 per month) plus the shelter allowance calculated under sections 4 and 5 of Schedule A (following the Table amounts set out under section 4(2)(b) of Schedule A, the appellant is eligible to receive \$375 per month).

Schedule B, section 1 of the EAPWDR sets out deduction and exemption rules when calculating the net income of a family unit for the purposes of section 24(b) of the EAPWDR; however, none of the exemptions apply to the appellant (and she did not assert that the exemptions applied to her). Section 2 of Schedule B sets out that the following deductions are permitted from earned income: any amount deducted at source for income tax, employment insurance, medical insurance, CPP, superannuation, company pension plan and union dues (subsections 2(a)(i)-(vii)), 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 room and board (subsection 2(b)), and 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 (subsection 2(c)). Schedule

B also sets out the following in section 3 regarding the exemption for 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,  
....., and
  - (b) [Repealed]
- (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 a person with disabilities, is calculated as the lesser of
    - (i) \$500, and
    - (ii) if the family unit's total earned income in the calendar month of calculation, or
- .....

Section 4 of Schedule B sets out the "small business exemption", allowing an exemption of earned income of a recipient of disability assistance from the total income of the recipient's family unit "if the recipient is participating in a self-employment program" (subsection 4(2)(a)). The Ministry confirmed, and the appellant did not dispute, that she is not participating in a self-employment program with the Ministry and, accordingly, section 4 of Schedule B does not apply to her.

The appellant's position as expressed by her representative is that the Business is a corporation (as demonstrated through the documents contained in the Business's minute book attached as Exhibit A to the appellant's affidavit) and is separate from the appellant. Accordingly, the income of the Business should not be considered the income of the appellant. The appellant stressed that the Business is operated by her friend and she only helped set it up as a favour to her friend - she said she did not really understand the incorporation documents she signed in May 2010, noting that the share certificates issued in her name contained in the Business's minute book were not signed by her. The appellant said she has never received any income from the Business, pointing to the Business's bank account statements and her own bank account statements which do not show any transfers from the Business's account to her account. She says that the definition of "earned income" in section 1(1)(a) of the EAPWDR should not apply to her, as she has never received money for any services she has performed for the Business.

The Ministry says that the appellant has a 51% ownership in the Business and although she may not have received income directly from the Business to date, she receives the "value" of the company in exchange for the work or the provision of a service to it, fitting the definition of "earned income" under section 1(1)(a) of the EAPWDR. The Ministry does not look past the bare facts that the appellant is listed as a 51% owner of the Business and signed the Business Account agreement with the bank in determining that the appellant has access to the Business's income and that this can be attributed to the appellant as "earned income".

The panel finds that the Ministry's determination that the appellant owns 51% of the Business is reasonable in the circumstances, given the evidence that the appellant signed the Business's banking agreement and the document from the bank showing she is a 51% owner in the Business. Given the definition of "earned income" set out in section 1(1)(a) of the EAPWDR, "any money or **value** received in exchange for work or the provision of service" (emphasis by panel), the panel finds that

the appellant receives the value of the Business by virtue of her 51% ownership and that this meets the definition of "earned income" under the EAPWDR. Accordingly, the panel finds that the Ministry's determination that the appellant is not entitled to disability assistance under section 9(2) of the EAPWDR because her net income – based on the income of the Business in the business account which is "earned income" under section 1(1)(a) of the EAPWDR – exceeds the amount of the appellant's monthly disability assistance (\$906.42 per month) is reasonable based on the evidence and is a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the reconsideration decision.