

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 20, 2012 which held that the appellant is not eligible for disability assistance for the month of August pursuant to section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because she had income which exceeds the amount of disability assistance determined under Schedule A of \$ 1242.08 for a single parent which matches her family unit.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),
Section 1, definitions of "earned income" and "unearned income",
Sections 9, 24 and 29,
Schedules A and B.

PART E – Summary of Facts

The ministry did not attend. After confirming that the ministry was notified, the hearing proceeded under Section 86 (b) of the Employment and Assistance Regulation (EAR).

The evidence before the ministry at the time of reconsideration included:

(a) bank transaction records for June 2012; (b) an invoice from a client dated May 29, 2012 for \$1971.20; (c) the appellant's Request For Reconsideration dated August 3, 2012 including a 2-page submission; (d) a Self-Employment Program Client Monthly Report (SEPCMR) for June, 2012; and (e) a monthly assistance form dated July 3, 2012.

The bank records show end of June 2012 balances of -\$996.60 in a personal account and \$7228.03 in a business account.

The invoice from a client dated May 29, 2012 indicates 8 sessions of art therapy, April 10 - May 29 for \$880 and 8 sessions for summer 2012 for \$880 plus PST of 211.20 totaling \$1971.20.

The SEPCMR for June, 2012 was submitted by the appellant on July 3, 2012 indicating that; her total for business cash receipts was \$2569.99; her business expenditures were \$209.45; her personal amount retained was \$2564.66; and the amount retained in cash at the end of the month under asset position was \$7228.03.

In the prescribed monthly assistance form dated July 3, 2012, the appellant indicates that she is still in need of assistance since her last declaration and that she has not received any employment income.

Included with the appellant's Request For Reconsideration dated August 3, 2012 was a submission in which the appellant states that she has been enrolled in the self employment program (SEP) since 2002 and in 2006 or 2007, she had a series of discussions regarding her asset limits with a disabilities coordinator/supervisor. The appellant indicates that her business is not feasible with a \$5000 cash asset limit so it was then approved by the same disabilities coordinator/supervisor to have a \$10,000 limit.

The appellant reports that in September 2009, she was in a serious motor vehicle accident, while attending school and therefore her business was scaled back considerably. More recently, the appellant states that she is becoming well enough to expand her business and that the prior arrangement is critical to her current business operations. She adds that she had received an insurance settlement in the spring of 2012 and has tentatively put \$5000 in to her business account. The appellant states that she explained to the ministry that there would be more than \$7000 in the business account to cover future summer expenses, as her business earns no income during these months and she would risk losing her business space. The appellant states that she had asked for direction from the ministry as she could not afford to end up in an overpayment situation and emphasized that she had "alternative appropriate destinations" for the funds as long as she got clear and timely direction. The appellant indicates that she was left to understand that everything was fine unless she heard otherwise. The appellant states that she did not receive a cheque for April, but did

receive disability assistance for May and June.

The appellant further states that she had received a prepayment for services in June for which she submitted the paper work to the ministry; after which she learned that she was not eligible for disability assistance for the month of August. The appellant indicates that if her special consideration is revoked, she will be forced to shut down her business and the considerable cost and effort to regain her independence will be lost. The appellant adds that she cannot afford to forego August's benefits.

The ministry determined that as the appellant's monthly net income of \$2360.21 was more than the monthly disability assistance for August of \$1242.08, there was no eligibility for assistance for that month. Additionally, the ministry noted that as of the end of June 2012, the appellant's business account balance was \$7228.03 which exceeded the \$5000 legislated limit for the SEP.

In the Notice of Appeal, the appellant indicates that she was waiting for records to prove that she was told her limits were higher and that an error was made because of misinformation provided by the ministry and she should not be penalized for this.

At the hearing, the appellant stated that she had finally received the records from the ministry however they did not contain any new information. She also stated that the ministry would not provide any information about their representative, whom she believed had provided her with approval to have a \$10,000 cash asset limit.

The appellant testified that she does not dispute the dollar amounts and knew that the legislation specified a \$5000 limit but felt that concessions were made because of the nature of the business and her need for expensive computer equipment. The appellant stated that she had an outstanding balance on her credit card where she could have applied the money rather than depositing it into her business account. The appellant stated that she requested direction from a ministry supervisor as it was very important to get accurate information as the appellant never had a settlement before and could not afford to end up in an overpayment situation. The appellant understood that if she didn't hear back from the supervisor then everything was fine. When she didn't hear back from the ministry, the appellant left the money in her business account assuming that her understanding of the limits was correct and there would be no issues. In response to a question by the panel, the appellant testified that she had had over the \$5000 limit in her account in the past without any issues and that she uses her bank statements as her general ledger for accounting and follows the ministry's requests with reporting requirements.

The panel finds that the appellant's oral testimony is related to evidence that was before the ministry at the time of reconsideration and admits them as being in support of that evidence pursuant to section 22(4) of the Employment and Assistance Act.

Findings of Fact

- the appellant is a single parent with one dependent child
- the appellant is a Person With Disabilities (PWD) Status
- the appellant's monthly disability rate is \$1242.08, a combination of support \$672.08 and shelter \$570.00
- the appellant submitted a SEPCMR for June, 2012 indicating that; her total for business cash receipts was \$2569.99, her business expenditures were \$209.45, her personal amount retained was \$2564.66 and the amount retained in cash at the end of the month under asset position was \$7228.03
- the appellant's total net monthly income for July was \$2360.21
- income in a SEP business account that does not exceed \$5000 is considered exempt
- the appellant's monthly disability rate of \$1242.08 is not in dispute

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant is not eligible for disability assistance for the month of August, 2012 pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation because her net income of \$ 2360.21 from her self-employment program exceeds the amount of disability assistance determined under Schedule A of \$ 1242.08 for a single parent which matches her family unit.

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, (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: (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).

Limits on income

9 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(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.

Schedule A

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42
2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08

Schedule B

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

(a) purchase of supplies and products;(b) accounting and legal services;(c) advertising;(d) taxes, fees, licences and dues incurred in the small business;(e) business insurance;(f) charges imposed by a savings institution on an account and interest;(f.1) payments, including principal and interest, on a loan that is(i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and (ii) received and used for the purposes set out in the business plan;(g) maintenance and repairs to equipment;(h) gross wages paid to employees of the small business, but not including wages paid to(i) the person participating, or(ii) a person in the family unit of the person participating;(i) motor vehicle expenses;(j) premiums for employment insurance or workers' compensation benefits;(k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan; (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless (i) there is an increase for rent or utilities and the increase is attributable to the small business, and(ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation; (m) office expenses;(n) equipment purchases or rentals.

(2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if

- (a) the recipient is participating in a self-employment program, and

(b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and

(i) is used for permitted operating expenses of the small business, or

(ii) is deposited in a separate account, established by the recipient in a savings institution, which account

(A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and

(B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or

(iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

29. For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient.

The ministry's position is that the appellant's monthly income is in excess of the legislated limit for disability assistance of \$1242.08 for August 2012 and as such, there was no eligibility for the appellant for assistance for that month.

The appellant's position is that she understood that concessions had been made due to the nature of her business and her need for expensive computer equipment. The appellant stated that she requested direction from a ministry supervisor as to how best to deal with her settlement but did not receive it. The appellant indicated that she had an outstanding balance on her credit card where she could have applied the money rather than depositing it into her business account. The appellant understood that if she didn't hear back from the supervisor then everything was fine. When she didn't hear back from the ministry, the appellant left the money in her business account assuming that her understanding of the limits was correct and there would be no issues. The appellant declares that this is an honest mistake and she should not be penalized for this as she cannot afford to forgo the benefits from August.

The panel finds that the appellant's earned net income of \$2360.21 exceeds the appellant's monthly disability rate of \$1242.08 (a combination of support \$672.08 and shelter \$570.00) as determined under Schedule A for a family unit matching the appellant's family unit. Therefore, the panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance for August 2012 pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

The panel also finds that earned income which is defined under section 1 is not exempt under the SEP when it causes the balance in the business bank account to exceed \$5000 pursuant to section 4 of Schedule B of the Employment and Assistance for Persons with Disabilities Regulation. Therefore, the panel finds that the earned income from the appellant's self employment should have been included in the calculation of income assistance for the appellant under Section 28 of the EAPWDR.

The panel acknowledges the appellant's frustration but finds that the ministry is bound by legislation and has no discretion to vary from the provisions respecting the determination of net income and the self employment program.

Thus, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.