

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated September 13, 2012 which found that the appellant is not eligible for assistance under Section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for the month of September 2012 as the net monthly income of her family unit exceeded the amount of assistance payable due to a tax refund received in July 2012.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1 and 9 and Schedules A and B

PART E – Summary of Facts

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

- 1) Notice of Assessment from the Canada Revenue Agency for the appellant dated July 6, 2012 and indicating a refund of \$2,145.54;
- 2) Monthly report dated July 27, 2012 for the appellant declaring total income of \$2,145.54 for an income tax refund;
- 3) Letter dated August 13, 2012 from the ministry to the appellant stating in part that the Notice of Assessment is required to avoid a delay in her assistance;
- 4) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant stated that she was not informed that income tax refunds would be considered as income and it would result in no assistance for two months. The appellant stated that she should have been given notice verbally or by mail when she submitted her tax return statement that she would not be eligible for disability assistance for September and October.

In her Request for Reconsideration, the appellant stated that when she completed her stub on July 27, 2012, the ministry asked her for a copy of the return but she was not informed that her tax refund of \$2,145.54 would count as income. The appellant stated that she returned to the ministry office on July 31, 2012 with the paperwork which the ministry copied. Again the ministry did not tell her that the tax refund would be considered as income and that she would not receive a cheque for September 2012. The appellant stated that she received the letter dated August 13, 2012 even though she had already provided the requested documentation to the ministry. The appellant stated that she called the ministry and was told that the flag on her file would be removed and she could expect payment on August 29, 2012. The appellant stated that she was misinformed and was not given notice or a warning that she would not be receiving an assistance cheque for September 2012. The appellant stated that if she had known, she would not have paid off bills, repaired and insured her car, purchased a bicycle, or made payments on her student loan in July 2012. She would have saved money and applied for a fee reduction on her student loan payments. The appellant stated that she found out when she went to the ministry office on August 30, 2012 that her tax refund was considered income and she was not getting a cheque. Until that time, she did not have any written or verbal communication that she would not get a cheque in September 2012. This has put her in a stressful situation and her disability has gotten worse as a result of the stress.

At the hearing, the appellant stated that she had no idea that the tax refund would count as income since the ministry did not tell her and she was completely unprepared when she did not get a cheque. The appellant stated that she called the ministry when she received the August 13, 2012 letter and she was told to expect payment on August 29, 2012, and she assumed that the cheque was coming. In response to a question, the appellant clarified that she thought that she was not getting assistance for October 2012 as well and she realizes now that the ministry's position is that she is not eligible for assistance only for the month of September 2012.

The ministry relied on its reconsideration decision. At the hearing, the ministry clarified that the ministry's usual practice is to provide notice that assistance will be impacted by income received by the client and apologized that it does not appear to have occurred in the appellant's case.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant is not eligible for assistance under Section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for the month of September 2012 as the net monthly income of her family unit exceeded the amount of assistance payable due to a tax refund received in July 2012.

Section 9 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) provides:

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.

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 the EAPWDR defines "earned income" to mean

- (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;

Schedule B of the EAR lists eligible exemptions from net income, including:

- a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit], or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia) [Section 1(a)(vii)]
- working income tax benefit provided under the *Income Tax Act* (Canada) [Section 1(a)(xxxv)]
- the climate action dividend under section 13.02 of the *Income Tax Act* [Section 1(a)(xxxvii)]
- a tax refund received because of a tax liability incurred participating in the Forest Worker Transition Program [Section 1(a)(xvi)]

Section 3(2)(a) of Schedule B sets out an exempt amount for a family unit that is composed of one recipient who is designated as a person with disabilities of the lesser of \$500 and the family unit's total earned income in the calendar month of the calculation

The ministry's position is that the appellant is not eligible for disability assistance for September 2012 since her net income determined under Schedule B exceeds the amount of disability assistance determined under Schedule A for a family unit matching her family unit, or \$906.42 per month. The ministry argues that in determining net income under Schedule B, all earned income must be included, which has been defined in Section 1 of the EAPWDR to include tax refunds. The ministry acknowledges that an exemption from earned income is set out in Section 3(2)(a) of Schedule B of the EAPWDR for \$500 and this amount, therefore, was deducted from the calculation of the appellant's income. The ministry also acknowledges that exemptions from income are set out in Section 1 of Schedule B of the EAPWDR for specific items that may be included in a tax refund but argues that the appellant's tax refund does not meet any of the tax refund exemption criteria. The

ministry argues that the total net amount of the appellant's income calculated under Schedule B is \$1,645.54, which exceeds the amount of the appellant's support and shelter allowance determined under Schedule A, which is \$906.42 and, therefore, the appellant is not eligible for assistance for September 2012.

The appellant acknowledges that she was in receipt of an income tax refund in July 2012 and she does not deny that a tax refund is specifically included in the definition of "earned income" in Section 1 of the EAPWDR as it was prior to October 1, 2012. However, the appellant argues that the ministry did not provide either verbal or written notice that her tax refund would be included in her income and that she would not be eligible for assistance for September 2012. The appellant argues that she used the tax refund to pay some of her expenses and, if she had known she would not receive assistance for September 2012, she could have saved some of these funds. The appellant argues that this lack of communication by the ministry put her in a stressful situation and that this had a negative impact on her disability.

The appellant admits that, in July 2012, she was in receipt of a tax refund in the total sum of \$2,145.54. Under Section 1(c) of Schedule B of the EAPWDR, all earned income must be included in the calculation of net income unless it is specifically exempted and, according to Section 1 of the EAPWDR, "earned income" is defined to mean tax refunds. The panel finds that the ministry reasonably determined that the amount of the appellant's tax refund is to be included in the calculation of her income. The panel also finds that the ministry reasonably concluded that the amount of \$500 is to be deducted from her income, as an applicable exemption from earned income as set out in Schedule B of the EAPWDR. The appellant did not dispute that the exemptions from income set out in Section 1 of Schedule B of the EAPWDR for specific items that may be included in tax refunds are not applicable to her tax refund. The panel finds that the ministry reasonably determined that the net amount of the appellant's income, or \$1,645.54, exceeds the amount of assistance determined under Schedule A for the appellant's family unit, which is \$906.42 per month and that, therefore, the appellant is not eligible for assistance for the month of September 2012, pursuant to Section 9 of the EAPWDR.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.