

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (ministry) reconsideration decision dated January 14, 2013, in which the ministry determined that the Appellant was eligible for a \$800 earnings exemption on the appellant's file from October 1 through December 31, 2012, pursuant to the *Employment and Assistance for Persons with Disabilities Regulations* (EAPWDR), Schedule B, section 3(3), but not eligible for the increased earnings exemption which came into effect January 1, 2013.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Schedule B, section 3

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of the appellant's Request for Reconsideration (RFR) dated December 27, 2012 with attached sample letter (the Sample Letter) from the ministry regarding the Annual Earnings Exemption (AEE). In the RFR, the appellant states that he did not receive the proper income exemption and that the ministry owes him \$583 for October, November and December 2012. The appellant states that he received a letter from the ministry inviting him to participate in the AEE program and that the letter indicates that the current earning exemption for a person in his position was \$1,000 per month. The appellant states as current means "now", "a happening", or "being used now", the \$1,000 exemption must apply. The appellant also states that the letter is a legal document and the ministry must adhere to it.

In his Notice of Appeal, the appellant states that he disagrees with the ministry's decision because it made no mention, nor did the ministry give an explanation of the word "current" and why it was present in the letter sent to him. The appellant states "also it says allows keeping".

Admissibility of New Information

For purposes of the appeal hearing, the appellant provided a letter from the ministry to him, undated, with a handwritten note indicating that he received the letter on December 6, 2012 (the AEE Letter). The appellant stated that the AEE Letter was the same as the Sample Letter attached to the RFR but that it was the actual letter addressed and sent to him regarding the AEE. The appellant also provided a ministry bulletin, undated containing information introducing the changes to income assistance policies that would take effect October 1, 2012 (the Bulletin). At the appeal hearing, the appellant gave oral testimony which provided more detail with respect to his receipt of the Sample Letter, AEE Letter and the Bulletin and his understanding of those documents.

The ministry did not object to the AEE Letter or the Bulletin. The panel has admitted the oral testimony, AEE Letter, and the Bulletin into evidence as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry provided a written submission (3 pages) and a Cumulative B.C. Regulations Bulletin ("Regulations Bulletin") that did not contain any evidence and were argument and legislative reference, respectively.

At the hearing, the appellant stated that he received the Bulletin from the ministry in approximately July or August 2012 advising him that the \$500 earning exemption for a couple where only one person has PWD designation would increase to \$800 as of October 1, 2012. The appellant stated that approximately one month later, he received the AEE Letter which, on the second page, under the heading "[w]hat is different under AEE?" states that the current monthly earnings exemption allows clients to keep up to \$1,000 for couples where only one adult has the Persons with Disabilities (PWD) designation.

The appellant stated that while he does not dispute that the legislative changes are effective January 1, 2013, he stated that the fact that the AEE Letter uses the word "current" at the top of it, which means "ongoing", means that it was effective as of the date he was sent the AEE Letter. The appellant stated that he has contacted several people about it and no one has told him why "current" was put in this letter, and he stated that he does not know what to make of the AEE Letter wording.

The appellant stated that "current" means "happening", "being used", or "done now" which means that it is already in effect.

The appellant stated that in the reconsideration decision, the ministry apologizes for any confusion the AEE Letter caused, but the appellant questions the basis of the confusion and if the ministry means that the confusion is that the \$1,000 exemption is left out of the October 1, 2012 legislation. The appellant stated that it appears that there is confusion between the Sample Letter and the EAPWDR. The appellant stated that between October 1, 2012 and January 1, 2013, it appears to him that something was lost in the EAPWDR, or that perhaps the ministry forgot to add the \$1,000 earnings exemption in the October 1, 2012 EAPWDR changes.

The appellant also stated that "allow" means "permit someone to do something" and by applying the ordinary definitions of current and allow, he is entitled to the \$1,000 earnings exemption as of the date he received the AEE Letter.

The Ministry relied on its reconsideration decision, stating that the appellant has PWD designation and a spouse who worked in 2012 who does not have PWD designation. The ministry stated that on December 6, 2012, the appellant was sent a letter inviting the appellant to participate in the AEE option that would start in the 2013 calendar year. The ministry representative stated that although the AEE Letter states that the current monthly earnings exemption for a couple where only one adult has the PWD designation is \$1,000, the AEE Letter is clear that the AEE option was applicable starting January 1, 2013 and would impact benefit months from March 2013 to February 2014.

The ministry also stated that legislature did not forget to include the \$1,000 earnings exemption in the October 1, 2012 and referred to the Regulations Bulletin to show the difference between regulation 197/2012 effective October 1, 2012 and regulation 332/2012 effective January 1, 2013. The ministry points out that regulation 332/2012, which was effective January 1, 2013, contained the increase in the earnings exemption to \$1,000 for a couple where one person has the PWD designation.

The ministry stated that the appellant received the \$800 earnings exemption for a family unit with one PWD person as provided under EAPWDR Schedule B, section 3(3), which was effective as of October 1, 2012.

PART F – Reasons for Panel Decision

The issue on appeal is whether the Ministry reasonably concluded that the appellant was eligible for an \$800 earnings exemption for the months of October through December 2012, pursuant to EAPWDR Schedule B, section 3(3) rather than a \$1,000 earnings exemption.

The relevant sections of the EAPWDR are as follows:

Exemption - earned income – Schedule B, section 3

3 (1) Subject to subsections (2) the amount of earned income calculated under subsection (3) is exempt for a family unit.

(2) If an application for disability assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for disability assistance unless

(a) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, or

(b) a member of the family unit received income assistance under the *Employment and Assistance Act* for the calendar month immediately preceding that first calendar month.

(3) The exempt amount for a family unit that qualifies under this section is to be calculated as follows:

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

(i) \$800, and

(ii) the family unit's total earned income in the calendar month of calculation;

(b) in the case of a family unit that includes two recipients who are designated as persons with disabilities, the exempt amount is calculated as the lesser of

(i) \$1 600, and

(ii) the family unit's total earned income in the calendar month of calculation.

(B.C. Reg. 265/2002) (B.C. Reg 117/2003) (B.C Reg. 43/2006) (B.C. Reg 197/2012)

The appellant's position is that he received the AEE Letter inviting him to participate in the AEE program. The appellant states that the AEE Letter clearly uses the word current in advising that the earnings exemption for a PWD with a spouse who is not PWD is \$1,000. The appellant agrees that although the legislation does not provide for an earnings exemption of \$1,000 until 2013, he states that as the AEE uses the word current, this indicates that that the \$1,000 earnings exemption was in effect or happening presently such that he was entitled to a \$1,000 earnings exemption from October through December 2012. The appellant states that the ministry must apply the \$1,000 earnings exemption from October through December 2012, so the ministry owes him \$583. The appellant states that the AEE Letter uses the word "current" means now", "a happening", or "being used now", and the \$1,000 exemption

must apply at the time the AEE Letter was sent to him in December 2012. The appellant also states that the letter is a legal document and the ministry must adhere to it and disagrees with the ministry's characterization of the AEE Letter.

The ministry's position is that the appellant received the \$800 earnings exemption for a family unit with one PWD person as provided under EAPWDR Schedule B, section 3(3), which was effective as of October 1, 2012. The ministry argues that the AEE Letter was provided to the appellant to advise him of the upcoming changes to the AEE and to invite him to participate in the AEE program but that the AEE Letter is quite clear that the increased earning exemption would not apply until January 2013.

The ministry argues that while the front of the AEE Letter can be considered a legal document because it is an invitation to the client and request a signature if the client wants to participate in the AEE option, the back of the AEE Letter is not a legal document and simply provides information regarding the changes to the AEE that will take effect as of January 2013.

Panel Decision

The panel finds that while the appellant may have been confused by the Sample Letter and the AEE Letter given the use of the word "current", both the Sample Letter and the AEE Letter clearly indicate that the AEE program would take effect in January 2013 impacting benefits from March 2013 to February 2014. The panel finds that as the EAPWDR Schedule B, section 3(3) states that the earnings exemption for a couple where only one person has PWD designation was \$800 from October through December 2012 as per regulation 197/2012, the ministry's decision to apply an \$800 earnings exemption was reasonable based on the evidence and is a reasonable application of the legislation in the appellant's circumstances.

Therefore, the panel confirms the ministry's decision.