

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (the "Ministry") February 7, 2013 reconsideration decision in which the Ministry determined that the Appellant, who was designated as a Person with Disabilities ("PWD") in January 2013, was not eligible for any deduction for employment income or for an earnings exemption for the month of February 2013, because she did not meet the eligibility requirements in section 23 and Schedule B section 3 of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Sections 1, 23 and Schedule B Section 3.

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry records indicating that:

- The Appellant was under the care of the Ministry of Children and Family Development and was receiving money from their program while she applied for PWD designation. She was not receiving income assistance or disability assistance from the Ministry during this time.
- On January 14, 2013, the Appellant was approved for PWD designation.
- On December 19, 2012, the Appellant informed the Ministry she was 8 months pregnant and had moved in with the father of the child in October 2012.
- In December 2012, the Appellant advised the Ministry that her boyfriend was working and making about \$2,000 a month.
- On January 21, 2013, the Appellant's boyfriend was added to her assistance file as her spouse.
- The Appellant's boyfriend does not have PWD designation and was not receiving assistance from the Ministry in December 2012 or January 2013.

2. Appellant's January 31, 2013 request for reconsideration with a letter from a social worker dated January 30, 2013. In that request, the Appellant wrote that her boyfriend's pay varies depending on how busy the place where he works is and her baby is due before February 8, 2013.

The social worker wrote that the Appellant and her community social worker were not aware that the Ministry would disallow the \$1,000 exemption if she was living with her boyfriend, otherwise she would not have moved in with him. The Appellant's initial application for PWD designation was denied in December 2012. Also, the Appellant was advised that she did not qualify for income assistance from the Ministry in December 2012 because she had applied for disability assistance. The Appellant and her social worker also submitted that if she had been approved for PWD designation in December, she would have been eligible for the earnings exemption. She needed the PWD assistance to support herself. If the exemption was allowed the Appellant and her boyfriend would have enough money to pay rent and continue to live at their present location.

In her notice of appeal, dated February 19, 2013, the Appellant wrote that she gave birth in February 2013 so that her family unit now consists of 3 people, changing her assistance rate. The Appellant also stated that her boyfriend worked a lot of hours last year, but he has not worked since about February 7, 2013. The Appellant submitted that they will be well under the monthly eligibility rate and will need to pay the rent. The Appellant wrote that she needs her boyfriend home to help care for her and their baby. The Appellant also submitted copies of her boyfriend's employment income statements for December 11, 2012 to December 24, 2012, for December 25, 2012 to January 7, 2013 and for February 5, 2013 to February 18, 2013, as well as copies of a bank account statement showing pay deposits.

For this appeal, the Appellant's advocate submitted a statement from a health authority indicating the date of birth of the Appellant's child. She also provided a statement showing that for the month of February, the boyfriend earned about \$205 net. The Ministry pointed out that the information in these documents relate to events not considered by the Ministry in its reconsideration decision and which would not have affected its reconsideration decision.

At the hearing, the Appellant's advocate reviewed the Appellant's history of filing applications with and providing information to the Ministry, until she was designated as a PWD. She submitted that

information about eligibility and exemptions was not clearly given to the Appellant. The Appellant did confirm that she was designated as a PWD on January 14, 2013 and that was the first time she was designated and became eligible for disability assistance. She also confirmed that she and her boyfriend went to the Ministry office on January 21, 2013 to have him added to her family unit.

The Panel finds that the Appellant's testimony regarding her family unit, PWD designation and her boyfriend's income before February 2013 provides confirmation of the information that was before the Ministry when it made its reconsideration decision. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits that testimony as being in support of the evidence that was before the Ministry at reconsideration. As for the information in the notice of appeal, in the written submissions for this appeal and in the hearing testimony regarding events in February 2013, the Panel finds that to be new information that is not in support of the evidence that was before the Ministry at reconsideration. Therefore, the Panel does not admit those into evidence.

At the hearing, the Ministry confirmed the Appellant's efforts to get PWD designation and it confirmed her designation date. The Ministry noted that on January 21, 2013 the Appellant and her boyfriend advised the Ministry that they were living together and that he had earned over \$1,000 to that point in January. The Ministry also explained how it assesses how much disability assistance someone is eligible for. In this case, in January 2013, the Appellant's family unit had 2 persons and one earned income. The Ministry also confirmed that neither the Appellant nor her boyfriend received income assistance or disability assistance in January 2013.

The Panel makes the following findings of fact:

1. On January 14, 2013, the Appellant was approved for a PWD designation for the first time.
2. On January 21, 2013, the Appellant's boyfriend was added to her assistance file as her spouse.
3. In January 2013, neither the Appellant nor her boyfriend received income assistance or disability assistance.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant, who received her PWD designation in January 2013, was not eligible for any deduction for employment income or for an earnings exemption for the month of February 2013 because she did not meet the eligibility requirements in section 23 and Schedule B section 3 of the EAPWDR.

### Applicable Legislation

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

#### *Definitions*

1 In this regulation:..."earned income" means (a) any money or value received in exchange for work or the provision of a service.

#### *Effective date of eligibility*

23(1) Subject to subsection (1.1), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

#### *Schedule B Net Income Calculation*

##### *Exemption – Earned Income*

3(1) Subject to subsections (2) and (2.1), 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.

### The Parties' Positions

The Ministry's position is that because the Appellant was approved for a PWD designation on January 14, 2013, she then became eligible for disability assistance effective February 1, 2013 in accordance with the provisions of section 23 of the EAPWDR. The Ministry also determined that the Appellant's spouse's employment income is considered to be earned income as defined by section 1 of the EAPWDR. Further, the Ministry found that the spouse was not receiving income assistance in January 2013 and the Appellant was not a former recipient of disability assistance. Therefore, the Ministry determined that the Appellant's family unit was ineligible for the monthly earnings exemption or for any deduction for employment income for February 2013 in accordance with Schedule B section 3 of the EAPWDR.

The Appellant's position is that she was not aware that she would not be eligible for these exemptions when she added her boyfriend to her family unit. Also, her circumstances have changed. Her family unit now has 3 people in it and her boyfriend stopped working at the beginning of February.

Therefore, she should be eligible for the exemptions.

### The Panel's Findings

Section 23(1)(a) of the EAPWDR provides that a family unit is not eligible for disability assistance until the first day of the month after the month in which the Minister designates the applicant as a person with disabilities. The Panel finds that there is no dispute that the Appellant was approved for PWD designation for the first time in January 2013. Therefore, the Panel finds that, in accordance with section 23(1)(a), the Ministry reasonably determined that the Appellant first became eligible for disability assistance starting on February 1, 2013.

With respect to the issue of eligibility for exemptions for earned income, Section 3 of Schedule B provides that, in certain circumstances, some earned income (including employment income) can be exempt when the Ministry calculates how much assistance a person designated as a PWD is eligible for. However, section 3(2) states that a family unit may not claim an exemption in relation to the first calendar month for which the family unit becomes eligible for disability assistance unless:

- a member of that unit, who is designated as a person with disabilities previously received disability assistance, or
- a member of that unit received income assistance for the calendar month immediately preceding that first calendar month.

As noted in the preceding paragraph, the first calendar month that the Appellant was eligible for disability assistance, was February 2013. The Panel finds that there is no dispute that the Appellant did not receive disability assistance before her PWD designation and specifically not in January 2013. In addition, there is no dispute that neither the Appellant nor her boyfriend received income assistance in January 2013. Therefore, the Panel finds that, based on the evidence, the Ministry reasonably determined that the Appellant was not eligible for an earned income exemption or employment income deduction for the month of February 2013.

In conclusion, the Panel confirms the Ministry's reconsideration decision because it finds that it was reasonably supported by the evidence and was a reasonable application of the applicable enactments.