

PART C – Decision under Appeal

The Decision under appeal is the Ministry of Social Development's (ministry) Reconsideration Decision, dated March 6, 2013, which denied the Appellant's request to exempt funds received as unearned income. The Ministry received information that the Appellant was in receipt of funds, including three payments from Dec. 2012 to Feb. 2013, described as employment training wages, which the ministry determined was unearned income. Sec. 1 of the Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR) requires unearned income to be deducted from the monthly disability the Appellant was receiving, pursuant to sec. 24 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR - Employment and Assistance for Persons with Disabilities Regulation,
Sec. 1-Definitions, Sec. 24.

PART E – Summary of Facts

The evidence before the ministry was that the Appellant was a single recipient of disability assistance, (DA), effective Dec. 2012. On Feb. 15, 2013 the appellant provided information to the ministry that she was in receipt of \$4144.00, of which \$2400.00, \$800.00 per month for Dec., Jan. and Feb., was described as employment training wages. The documentation provided was entitled "Direction of Tuition/Funding Agreement" and showed the Appellant was taking a software skills certification program, from Dec 3 to March 18. The Ministry determined that the monthly training wages were unearned income and, except for \$100.00 per month as allowable transportation costs, the balance, \$700.00 per month, was to be deducted under the provisions of the Regulations. The Direction of Tuition/Funding Agreement also included a note from the Appellant stating that she had not received the employment training wages Feb. cheque.

The Appellant requested reconsideration and stated in that request that she only received the training wages twice, in Dec. and Jan., and received none for Feb. She knew she was allowed to earn \$800.00 per month after deductions. As such, she did not think there was any problem with receiving \$800.00 per month in training wages while she was in training. When she learned of ministry policy changes at the end of Jan., beginning of Feb., she immediately stopped the process of receiving any further \$800.00 payments since she was only allowed \$100.00. The last \$800.00 cheque received, was on Jan. 21 for expenses for Feb. and had been spent. Suddenly deducting \$700.00 from her DA left her with no money for rent due March 1, or for other bills and food. The Appellant believes the decision is unfair and penalizes her after the fact when the monies were already received.

Prior to the hearing the Appellant forwarded a letter to the tribunal, dated March 14, 2013, from the Federal program coordinator who was funding the appellants' training. This letter states, among other things, that the Appellant is in an employment program and that she received employment training wages of \$800.00 in Dec. and Jan., and \$100.00 in Feb. The letter further stated that the Appellant and the program were not aware of a "new policy" of the ministry which did not recognize the top up offered to DA recipients as employment income. When advised of the change they immediately reduced the amount the appellant was receiving to \$100.00 for the month of February.

At the Hearing the appellant also provided a letter from the same program, dated Apr. 4, 2013, which confirmed her sponsorship in the program, that she was receiving training in the use of certain software, and that she would benefit if she could concentrate on her studies and job search.

The Ministry did not object to the letters forming part of the evidence on the hearing. The panel finds the documents are admissible under Section 22(4)(b) of the *Employment and Assistance Act* which states that a panel may admit as evidence written testimony in support of the information and records referred to that were before the minister when the decision being appealed was made. It is clear these documents provide further evidence of the material that was before the ministry on reconsideration.

At the hearing the appellant gave evidence that she is over 60 years old, has a disability and is pursuing training so she can work. When she was initially granted DA she was told she can earn \$800.00 per month, after taxes, and that it would not be deducted from her DA. She was accepted by the federally funded program to obtain some training so that she could find work. She was told by the Federal program that they could pay her \$800.00 per month while she received her training and this would not affect her DA. She did not think that she even had to report the \$800 payments to the ministry as she believed it was exempt.

She was advised by the Federal program that there was a problem with the money she received for Dec. and Jan. because the ministry now had a new policy and these funds were not exempt and would be taken off her cheque. As such, she reported the funds received in Dec. and Jan. to the ministry. She received \$800.00 for each of the months Dec. and Jan. She did not receive \$800.00 for Feb., only \$100.00 as she and the program

were now aware of the problem and the ministry was now saying she could receive \$100.00 as transportation expenses.

When asked by the panel, the Appellant confirmed that while she was training she was not working and that the monies received in Dec. and Jan. were not for wages. Her Advocate confirmed that they were not submitting that the funds received were for wages but only arguing that it was procedurally unfair to deduct the funds. When asked, the Appellant and the Advocate stated that they were relying on the belief that there had been a change in ministry policy based on what they had been told by the Federal Program Coordinator.

The Appellant further submitted that there was a mistake in the Direction of Tuition/Funding Agreement and that she did not receive \$800.00 per month for three months; she had only received the \$800.00 for Dec. and Jan. This was confirmed by the March 14 letter from the program. They provided only \$100 to the Appellant for Feb. when it was learned that there was a new policy no longer allowing the income exemption.

The ministry stated that in its view, the employment training wage was a training allowance and as such unearned income. At the hearing, the ministry relied on the information contained in the Reconsideration Decision. When asked by the panel, one of the ministry representatives stated that she had been with the ministry for five years and was not aware of any policy change with regard to training allowances. The legislation may have been different a number of years ago and more recently the exemption for "earned income" had been raised from \$500.00 to \$800.00.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably determined that the funds received by the appellant were unearned income under the EAPWDR.

The Legislation states the following;

Employment and Assistance for Persons with Disabilities Regulation

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,

...

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

...

(q) education or training allowances, grants, loans, bursaries or scholarships;

...

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 B

Minister's discretion to exempt education related unearned income

8 (1) In this section:

...

"education costs" means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of

(a) a training allowance,

(b) student financial assistance, and

(c) student grants, bursaries, scholarships or disbursements from a registered education savings plan received for the semester.

On March 6 the ministry rendered its Reconsideration Decision. The ministry determined that under the EAPWDR, unearned income is defined as any income that is not earned income, and includes, without limitation, education or training allowances, grants, loans, bursaries or scholarships. Schedule B of the EAPWDR did not exempt training allowances and stipends, except for an amount allowed for education costs. The ministry determined that "education training wages" met the definition of unearned income as a training allowance, and as such was not exempt. No evidence had been presented to show that the funds received were from employment. Therefore, they could not be treated as earned income. However, \$100.00 per month would be eligible for exemption under education costs as reasonable transportation costs. As such, the appellant's unearned income of \$700.00 per month for the three months would be deducted from the Appellant's DA.

The advocate, who had provided a written submission prior to the hearing, argued that the Appellant had been caught in a clumsy interface between a federal and provincial program. The Appellant had accepted the monies in good faith and on the understanding that the funds received would be exempt from deduction from her DA. The Federal programs knew the Appellant had financial pressures and that the funds were a way to boost her income so that she could concentrate on studies and avoid situations such as waiting all day in the line at the food bank. The Appellant was faced with severe hardship when she cheque received at the end of Feb. was reduced by \$700.00. The Appellant submitted that the ministry should exempt the \$800.00 received for Dec. and Jan. on the grounds of procedural fairness and out of respect for the ministry's mandate to assist people to achieve their social and economic potential. The appellant stated in her appeal notice it was unreasonable to identify the "employment training wages" as unearned income.

The first issue that arises is what monies the Appellant actually received from the program. The initial Direction of Tuition/Funding Agreement document provided by the Appellant indicated she would receive \$800.00 per month for three months. There is a note on the document, which appears to be from a "Post-it" note, signed by the Appellant, stating that she had not received funds for Feb. The letter of March 14, 2013 from the program confirms that the Appellant received only \$100.00 for Feb., and the appellant testified, unchallenged, that she received only \$100.00 in Feb., once she learned that only \$100 per month was exempt. The Panel finds the Appellant received \$800.00 in each month of Dec. and Jan. and only \$100.00 in Feb.

It is undisputed, and the panel finds, that the Appellant was eligible for DA as of the date of the reconsideration decision. It is also undisputed that the Appellant received funds from the Federal Program. The question is how are those benefits to be defined? Under the EAPWDR, "earned income" means any money or value received in exchange for work or the provision of a service and "unearned income" means any income that is

not earned income, and includes without limitation a training allowance.

It is clear from the evidence, and the Appellant's Advocate confirmed that they were not arguing the funds received were for wages. The appellant instead argues that it was procedurally unfair to deduct the amounts from her DA. The Panel finds that the funds received in Dec. and Jan. were a training allowance and were not wages or "earned income" as defined in the EAPWDR. The ministry did exempt \$100.00 per month as reasonable transportation costs, as they have discretion to do under sec. 8 of Schedule B. As such, the Appellant received \$700.00 per month in Dec. and Jan as a training allowance.

The Appellant argues that it is unfair that she was told by the Federal program she could have these funds and they would not affect her DA. She already struggles with enough issues and this only adds to the problems. Unfortunately the appellant relied on what she was told by a federally funded government agency. She was not advised by the BC Ministry of Social Development that these funds were exempt. It appears that her complaint lays with the Federal program not the ministry.

The Tribunal is bound by statute and must follow the legislation as set out in the EAPWDR. The Appellant confirmed that the funds received were not earned income; she did not earn them in exchange for work or a service. Notwithstanding that the Federal Program identified the funds as "Employment training wages," per their letter of March 14, and the Appellant confirmed they were a boost or top-up to aid in her studies, it is clear they were a training allowance. Under the EAPWDR, sec. 1, such an allowance is, without limitation, unearned income and must be deducted from the Appellant's DA. As such, a total of \$1400.00, \$700.00 per month received for Dec. and Jan., is unearned income and subject to deduction by the ministry.

The Reconsideration Decision identified \$800.00 received for each of three months and notes the Appellant's submission that the funds were only received for two months, Dec. and Jan. However, the decision does not make a specific finding as to whether the ministry accepts that the Feb. payment of \$800.00 was not received. It is not clear to the panel what findings were made here. It is clear and the panel has found that the Appellant received \$100.00 in Feb., not \$800.00. As such, the panel finds the Ministry decision is not supported in full and rescinds the Decision. Pursuant to Sec. 24(2)(b) of the Employment and Assistance Act the matter is referred back to the minister for a decision as to the amount.

The panel finds that the Ministry's Reconsideration Decision was not reasonably supported by the evidence and rescinds the Decision.