

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of July 12, 2013, which found the appellant not eligible for disability assistance according to the requirements of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry determined that the appellant's family unit currently receives \$ 1700.55 per month income which is in excess of the ministry's rate of \$ 1270.56.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 24, Schedule A and B.

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's and her husband's joint bank account statement dated April 15 2013, showing account activities between March 15 and April 5, 2013. The statement indicates deposits into this account of \$805.50 from a pension plan and \$895.05 in disability benefits from a private plan. A total of \$1700.55 per month.
- On May 11, 2013 the appellant is advised that she is no longer eligible for disability assistance due to being in receipt of unearned income in excess of ministry disability rates. The applicant's maximum disability allowance as \$ 1,270.56 – the sum of \$ 700.56 support plus \$570.00 shelter allowance.
- The appellant's Request for Reconsideration dated June 26, 2013.

In her request for reconsideration the appellant states that she sent her marriage certificate together with her stub in to the ministry July or August of 2006. During subsequent contacts with the ministry the issue of her marriage never came up, the ministry never mentioned anything about her marriage. She figured all was acceptable to the ministry as the ministry knew or she thought they knew. She and her husband had done their taxes together since they were married. The appellant states that she never hid the fact that she was married. They split up a few times in their relationship for short periods of time which had a very negative effect on their relationship and they have tried to work it out. The appellant states that they are no longer together; the house has been divided into two suites with separate entrances, bathrooms and kitchens; they no longer eat or cook together, they don't do activities together. She states she has seen a lawyer on how to separate the house which has been done. She has another appointment with a pro bono lawyer to get a divorce. The appellant states that as of this time she is separated from her husband prior to this letter. She is all alone and has nothing, and her health is getting worse rapidly. The appellant states that approximately 23-24 months ago she came to the ministry for an emergency grant to pay a damage deposit and signed a paper to pay back, which was paid back. When she picked up her check she showed her driver's license which was issued under her married name. She was asked about her last name and she told them that it was her married name and showed them her SIN card which is under the name she currently uses, and they asked no questions at the time or since. The appellant re-affirms she was not keeping any information from the ministry or anyone else.

In her Notice of Appeal the appellant adds that she has moved 3 times since 2006 and that she was not asked for an intent to rent form; the ministry has accepted hand-written notes for deposits for the last 3 places she has lived at. In May 2010 she asked for help with a damage deposit. At that time she showed her driver's license with her married name and was asked why her last name did not match. She replied that that was her married name. She then showed her SIN card with the name she currently uses as she has not legally changed her last name. As far as she knew the ministry thought she was married. She states she had a joint bank account with her spouse; they filled out income tax jointly since their marriage. They purchased a home. They are now separated. The appellant states she gets confused very easily, she has a high anxiety level, hepatitis and several other disorders. She states her case has not been reviewed for over 8 years. She did not do anything intentionally to mislead the ministry. She did not understand the regulations well enough, she thought she did everything correctly.

At the hearing the appellant remarked that she formally separated from her husband in June 2013 and that separate living arrangements had been established in the household. She reports that they had not been a couple for 2 years and he has since left. She states that before they got married she and her husband went to get information ahead of time; they asked the ministry for advice and the ministry explained that as long as her husband was not making more than \$ 1,800 they would not deduct anything. She thinks she may even have sent her marriage certificate to the ministry twice. The appellant reports that she has spoken to the ministry about her separation, but that they will not review this matter until this current appeal is resolved.

The panel admits the appellant's oral testimony as evidence in support of as well as directly related to the information and record that was before the ministry at the time the reconsideration decision was made and in accordance with section 22(4) of the Employment and Assistance Act (EAA).

The ministry relied on its reconsideration decision and added the following information: It has not seen documentation of the appellant's marriage certificate. The appellant's file is now switched to Medical Services Only and the appellant is receiving medical services. Before the ministry reviewed her file the appellant received disability assistance for a 1 person family unit. The review was based on the ministry's new understanding of the appellant's marital status.

**PART F – Reasons for Panel Decision**

The issue under appeal is whether the ministry was reasonable in denying the appellant disability assistance because the amounts her family unit received under Schedule B of the EAPWDR exceed the amount it was eligible for under Schedule A of the EAPWDR.

1 (1) In this regulation:

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

...

(e) superannuation benefits;...

(j) workers' compensation benefits and disability payments or pensions;...

**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**

*(section 24 (a) )*

**Monthly support allowance**

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$700.56

**Monthly shelter allowance**

4 2) The monthly shelter allowance for a family unit ... is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

<b>Item</b>	<b>Column 1</b> Family Unit Size	<b>Column 2</b> Maximum Monthly Shelter
2	2 persons	\$570

**Schedule B****Net Income Calculation**

(section 24 (b) )

1 When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

- (d) all unearned income must be included...

**Deductions from unearned income**

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

The appellant argues that she is eligible for disability assistance. Although there is a bank statement showing a joint account with \$1,700.55 in pre-authorized monthly deposits, she is separated from her husband and entirely on her own with no income and her health deteriorating. In 2006 she has sent a copy of her marriage certificate to the ministry and never hid the fact that she was married. She did not understand the regulations correctly and never intended to mislead the ministry.

The ministry argues that the legally married appellant currently receives \$1,700.55 net income monthly for her family unit according to Schedule B (EAPWDR) and is therefore not eligible for disability assistance under section 24 (EAPWD) because this amount exceeds \$ 1,270.56, the maximum amount of assistance her family unit would otherwise be entitled to according to Schedule A (EAPWDR). This maximum amount is calculated according to Schedule A (EAPWDR) as the sum of \$ 700.56 for support and a maximum of \$570 for shelter allowance. The appellant does not dispute these calculations.

The panel finds that the income received by the appellant's family unit in the form of pension and disability benefits amounting to \$1700.55 per month do meet the definition of " unearned income" under section 1 of the EAPDWR. Further the panel finds under the EAPWDR section 24 that this amount ( \$ 1700.55) representing the unit 2 family's income at the time the ministry made its decision exceeds the amount of disability assistance that would be payable to a family unit of that size ( \$1270.56). The panel also finds that pension and disability payments are not permitted deductions under section 6 of Schedule B in the EAPWDR.

The appellant in her oral testimony reports that she formally separated in June 2013 after the ministry advised her of her ineligibility on May 11, 2013. Despite the appellant's argument that she has never hid the fact of her marriage and that she and husband have not been a couple for 2 years and are now separated there is no legal documentation or other evidence to confirm this.

The panel finds, therefore, that the ministry was reasonable in concluding pursuant to section 9 (2) of the EAPWDR the appellant was not eligible for disability assistance. The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable regulation. Therefore the panel confirms the ministry's reconsideration decision.