

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of January 8th, 2013 wherein the ministry determined the training allowance received by the appellant's spouse in November 2012 had to be considered as unearned income as set out in section 1(q) EAPWDR and was not exempt from calculating the family unit's net income under Schedule B EAPWDR which resulted in the appellant being denied disability assistance for January 2013.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 1, 9, 24, Schedule B

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Request for reconsideration dated December 20th, 2012.
- Monthly reporting stub for appellant and spouse dated December 5th, 2012

The appellant and his wife have been in receipt of assistance since November 2011. The appellant was approved for PWD designation on December 11th, 2012, effective January 2013. The appellant's wife attended a training program from October 2012 to December 2012 hereinafter referred to in this decision as "employment program 'A'" and received a training allowance of \$825 in October, \$1375 in November and \$550 in December 2012 for her attendance and completion of the program. On January 8th, 2013 the ministry contacted the unit hereinafter referred to in this decision as "employment services provider", to clarify if employment program 'A' was part of the ministry's Employment Program of BC (EPBC). The appellant's wife was initially referred to the employment services provider for the EPBC program but did not receive any financial support. She was then referred to another employment program, employment program 'A' by the employment services provider. Participants in employment program 'A' attend training weekly, 5 days a week for 10 weeks, and some participants move to an additional 4 weeks of employment coordinated through the program. The initial 10 week training phase provides a training allowance of \$275/week. The employment services provider confirmed to the ministry that employment program 'A' is not part of the EPBC program and also confirmed they advise that when clients move from EPBC into another type program and they are in receipt of income assistance or disability assistance they are advised to inform the Ministry to determine how their attendance may impact on their assistance. The employment services provider confirmed that the appellant's wife began the 10 weeks in employment program 'A' on October 1st, 2012 and after each week completed she received a weekly cheque of \$275, and that she completed the 10 weeks of training.

Ministry policy outlines that any financial supports, other than living supports, received from EPBC are fully exempt for recipients with PWD designation and their dependents. The policy also states that regarding government training and financial supports under EPBC and other programs (eg. ASETS), the income status is considered unearned income and is fully exempt for actual costs of books, tuition fees, child care expenses and provides \$100 per month for actual expenses (transportation); the income type being training allowance.

A ministry review of the appellant's file indicated the appellant informed the ministry on October 5th 2012 about his wife's participation in employment program 'A' and the allowances that she was receiving. The file indicated the ministry then informed the appellant that the training allowances being received were over the family assistance rate and therefore the appellant would be ineligible for assistance. At that time the appellant was in receipt of income assistance of \$864.88 per month (\$307.22 support, \$570 shelter, \$35 diet less \$123.54 CPP income and \$20 monthly repayment). The appellant declared the training allowance in October and November 2012 and the ministry determined that he was ineligible for assistance in December 2012 and January 2013.

In the background of this reconsideration decision, the ministry advised that the appellant requested a reconsideration of the ministry's decision that determined he was not eligible for income assistance for December 2012 and that reconsideration decision of December 31st, 2012 "determined that the full training allowance received in October was exempt because INEC was part of EPBC and policy allowed for a full exemption for PWD recipients and their dependents".

The appellant did receive, as per ministry policy, a \$100 exemption per month for actual costs to assist with transportation to and from the program. The appellant declared the \$1375 training allowance for November in December which impacts on the disability assistance for January 2013. Since \$100 is exempt from unearned income and the appellant receives \$123.54 in CPP benefits a total of \$1,398.54 must be deducted from the appellant's disability assistance. As a PWD, for January 2013 the appellant was eligible to receive \$1,305.56 in disability assistance.

At 10:10am, the panel being satisfied that the ministry was notified of the hearing, the chair commenced the hearing under the authority of section 86 (b) Employment and Assistance Regulation. At 10:30am the ministry representative arrived and the hearing continued.

Neither party called any witnesses.

Prior to the hearing commencing the appellant submitted the following documents for consideration:

- A. Letter from ministry to appellant regarding a reconsideration decision dated December 31st, 2012 wherein the minister has determined that the income the appellant received from the employment services provider is exempt.
- B. Certificate of Completion in name of appellant's wife for successfully completing the employment program 'A' was issued January 18th, 2013.
- B1. Cheque stub dated November 2nd, 2012 issued to appellant's wife date under TIOU 1 – CB4.
- C. Info sheet from internet on Targeted Initiative for Older Workers (TIOU).
- C2. Employment Program of BC (EPBC) – Contractors, Service Providers and Service Locations. Under #5 it lists as a Satellite Office, the employment services provider.
- C3. TIOU – Programs and Contact Information sheet lists the employment services provider as the agency and Project Name of employment program 'A'.
- D. 3 pages – Labour Market Development Agreement (LMDA) Funding and Programs British Columbia information. The correspondence states that "The EPBC was launched on April 2nd, 2012. The new EPBC replaces six programs funded under LMDA as well as four provincially funded employment programs. All of the EI Part II programs and measures have been integrated into the new program. EPBC services and programs include training to upgrade skills, support and expertise for starting a business, The new one-stop Work-BC Employment Services Centers (in 73 locations) provides full suite of services offered by the Ministry. There are two types of services: TIOU is listed under BC Labor Market Programs Inventory (page 2).
- E. Internet printout of EPBC web page providing overview of program.
- E1. Internet printout of BC Labour Market Programs Inventory – same as listed in D (p. 2 above).

The ministry did not raise an objection to these documents being received by the panel but did state that normally these submissions are made prior to the day of the hearing.

The panel finds these documents, numbered A to E1 above, contain information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The appellant testified that the training allowance from employment program 'A' should be exempt from unearned income because the program is an EPBC program. The appellant testified that at the bottom of the certificate his wife received (see "B" above) there is a statement that "Funding is provided through the Canada-British Columbia Labour Market Agreement and that this agreement lists TIOU on the programs inventory. The appellant stated that on the cheque stub his wife received in November from the employment services provider for attending employment program 'A', the stub references TIOU 1 – CB4 and the amount of \$275.00 and that under the WorkBC blog information is provided on the TIOU program; how it works and locations and contacts. The appellant testified that on the TIOU site under Programs and Contact information the employment services provider is listed as an agency and the project name is employment program 'A'. The appellant also testified that under the EPBC website the employment services provider is listed under Contractors, Service Providers and Service Locations. The appellant also testified that the ministry informed his wife, not him, that the training allowance was over the family assistance rate and that he did not agree with this decision.

The ministry testified they could not comment on the ministry's reconsideration decision of December 31st,

2012. The ministry relied on the facts in the reconsideration decision and reiterated that employment program 'A' is not an EPBC program; that the training allowances received by the appellant's wife is considered, under EAPWDR legislation, unearned income and not exempted by ministry policy; that the employment services provider is not a program but is an agency utilized by the ministry to provide employment service programs; that all programs listed in the LMA inventory are not exempted by the ministry from being considered as unearned income.

The panel makes the following finding of fact:

1. The appellant's wife received \$1,375.00 in October 2012 for attending employment program 'A'.
2. The funds received from attending the employment program 'A' is a training allowance.
3. The appellant's family unit received \$123.54 in CPP in October 2012.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of January 8th, 2013 wherein the ministry determined the training allowance received by the appellant's spouse in November 2012 had to be considered as unearned income as set out in section 1(q) EAPWDR and was not exempt from calculating the family unit's net income under Schedule B EAPWDR which resulted in the appellant being denied disability assistance for January 2013.

The legislation considered: EAPWDR

Definitions

Section 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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- ...
- (q) education or training allowances, grants, loans, bursaries or scholarships; ...

Limits on income

Section 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.

Amount of disability assistance

Section 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 Net Income Calculation (section 24 (b)) - Deduction and exemption rules

Section 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, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1 and 8.

Minister's discretion to exempt education related unearned income

Section 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;

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit, 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.

Ministry policy:

The ministry policy sets out that government training and financial supports under EPBC or other programs (eg ASETS) under the heading of "Description", "Income status", "Treatment" and "Income Type".

Description	Income Status	Treatment	Income Type
EPBC financial supports other than living supports	Unearned	Fully exempt for recipients with PWD designation and their dependants	PWD and their dependents - 4D Training-Exempt
EPBC living supports	Unearned	Living supports are not exempt for any clients	Use 29 – other, Unearned for all clients
Government training and financial supports under the EPBC and other programs (eg. ASETS)	Unearned	Fully exempt for actual cost of books, tuition fees, child care \$100 per month for actual expenses	13 – training allowance

Note: Exemptions may be applied up to the sum of the student's education costs and daycare costs for the semester for:

- Dependent children
- Clients with Persons with Disabilities designation and their dependants
- Clients who are temporarily excused from expectation to seek work (such as single parents with a child under three years) in part-time studies.

The following expenses are considered when determining educational costs:

- Tuition, Compulsory Student Fees, Books and Supplies
- Reasonable transportation costs
- Daycare Costs

The ministry argued that the training allowance from the employment program 'A' program is not exempt income and must be considered as unearned income, as defined in section 1(q) EAPWDR, and included in the calculation of the family's net income for the month of January 2013. The ministry argued that the appellant was eligible to receive \$1,305.56 in disability assistance for the month of January and since the net income of the family unit was \$1,398.54 he (the family unit) was not eligible for disability assistance. The net income was comprised of the \$1,375 training allowance less \$100 exemption for costs allowed under section 8 of schedule B EAPWDR and \$123.54 CPP. The ministry argued that on January 8th, 2013, after the reconsideration decision of December 31st, 2012, the ministry confirmed with the employment services provider that the employment program 'A' that his wife attended was not an EPBC program. The ministry also argued that on October 5th, 2012 the appellant was informed that the training allowance(s) was over the family's assistance rate and therefore the appellant would not be ineligible for assistance.

The appellant argued that the reconsideration decision of December 31st, 2012 supports his position that the

training allowance received by his wife in November should be exempt as stated in the ministry policy and that the December 2012 reconsideration decision stated that the INEC program is part of EPBC and the training allowance received by his wife in October (which is the same allowance received in November 2012) is exempt from calculation of his monthly income. The appellant argued that the documents submitted to the panel clearly support his position that employment program 'A' is an EPBC program; that the program his wife attended is funded by a federal/provincial LMDA; that the EPBC launched on April 2nd, 2012 replaces six programs funded under LMDA as well as four provincially funded employment programs; that the pay stub his wife received refers to TIOW which is a program referenced on the EPBC program website under LMDA inventory of programs; and, that employment program 'A' is another name for the TIOW program which he considers to be an EPBC program.

Section 1(q) EAPWDR defines education or training allowances, grants, loans, bursaries or scholarships as unearned income. Training allowances are not set out in section 6 EAPWDR as a deduction from unearned income; nor set out in section 7 EAPWDR as an exemption to unearned income.

Section 8 EAPWDR sets out the minister's discretion to exempt education related unearned income and defines education costs as "means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester". In section 8(2) EAPWDR states "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 training allowance".

The evidence before the panel is that the appellant's wife attended an employment training program referred to as employment program 'A' and provided through a contract service provider; that she received a training allowance of \$1,375.00 for the month of November 2012 which the appellant reported to the ministry in December 2012. The ministry considered this training allowance as unearned income. The panel accepts the ministry's evidence that the employment services provider confirmed that employment program 'A' is not an EPBC program.

The panel finds that there is insufficient evidence to support the appellant's position that employment program 'A' is an EPBC program because the cheque stub received by the appellant's wife makes reference to TIOW – CB4 and TIOW is a program listed in the program inventory on the LMDA website and the EPBC website. The panel finds that the Certificate of Completion received by the appellant's wife for successfully completing employment program 'A' provided by employment services provider only indicates funding for this program was provided through the LMDA and does not state the program completed by his wife is an EPBC program.

The panel finds the evidence supports that the ministry reasonably determined the training allowance received by the appellant's wife is defined under section 1(q) EAPWDR and must be considered as unearned income as set out in Schedule B, section 1(d) EAPWDR.

The panel finds that a "training allowance" is not set out in Schedule B EAPWDR section 6 - deduction from unearned income; or section 7 – exemptions – unearned income.

The panel finds that Schedule B, section 8 EAPWDR, which is set out above, states that the students education costs and day care costs may be authorized to be deducted from a "training allowance". The panel notes that education costs include student tuition fees, cost of books, compulsory student fees and reasonable transportation costs for a semester. There is no evidence before the panel that the appellant's wife had to pay any tuition fees for the program, purchase any books or pay any compulsory student fees.

In accordance with section 8 of Schedule B EAPWDR the panel notes that the ministry policy permits a \$100 exemption for actual expenses for programs and the evidence before the panel is that the ministry provided an exemption of \$100 to cover the appellant's transportation costs. The panel finds the ministry decision to provide the exemption of \$100 was a reasonable application of the legislation.

Section 9(2) EAPWDR states that a family unit is not eligible for disability assistance if the net income of the family unit equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit (two adults with no dependents).

The panel finds the family unit had a net income of \$1,398.54 ($\$1,375 + 123.54 - \100 exemption) determined under Schedule B EAPWDR. The appellant and his wife have no dependents and therefore under Schedule A EAPWDR are eligible to receive ($\$700.56$ assistance + $\$570$ shelter + $\$35$ for diet supplement) $\$1,305.56$ in disability assistance.

The panel finds that the ministry reasonably determined that the net income of the family unit as determined under Schedule B EAPWDR exceeded the amount of disability assistance as determined under Schedule A EAPWDR and therefore the ministry's decision to deny the appellant disability assistance for the month of December 2012 was reasonable.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.