

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") June 4, 2013 reconsideration decision which determined that the Appellant, who has Persons with Disabilities designation, was not eligible for disability assistance for June 2013 in accordance with section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation, because in April 2013 she received superannuation income of \$5,373.02 which exceeded her monthly disability assistance rate of \$1,242.08.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR")
Sections 1, 9, 24 and Schedule B Sections 1, 2, 6 and 7.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that the Appellant:

- receives disability assistance as a single parent with one dependent child, and she is eligible for \$1,242.08 in monthly assistance; that is, \$672.08 as monthly support allowance and \$570 as monthly shelter allowance.
- submitted the required monthly reporting stub on May 3, 2013 reporting the following money received in April 2013: \$350 maintenance, \$298.49 child tax benefit, and \$5,373.02 in pension funds after income tax was deducted.
- confirmed that the pension funds were received from a union pension plan based on letter.

2. Appellant's request for reconsideration with a letter from the Appellant dated May 21, 2013. The Appellant wrote that it is her understanding that she is entitled to receive additional income of \$800 a month or \$9,600 a year in addition to her monthly benefits. She wants to have her income of \$5373.02 calculated on a yearly basis instead of monthly so that she will qualify for assistance and an additional earning allowance of \$4,226.98 for this year. The Appellant also disagreed that this money is unearned income. She wrote that she worked a full time job and paid the appropriate taxes on this income; therefore, it is her understanding that it was an earned income. The Appellant attached copies of dictionary definitions for unearned, income, income tax and pension.

For this appeal, the Appellant submitted:

- a copy of part of section 1 of the EAPWDR noting the definitions of "asset" and "cash asset".
- a copy of the Ministry's BC Employment and Assistance Rate Tables setting out asset exemptions and asset levels
- a copy of the Ministry's Annualized Earnings Exemption for individuals on disability assistance effective January 1, 2013, and applicable to individuals or families who replied by the invitation deadline of January 14, 2013.

At the hearing, the Appellant submitted oral argument which is summarized in Part F of this decision and she referred to the documents she submitted for this appeal. The Panel finds that the documents that the Appellant submitted support her argument and accepts them as references for her argument.

The Appellant also explained that the funds she received were from a union pension fund from when she worked. She did not know about the money until she received a letter asking whether she wanted to receive a lump sum payout or a monthly payment of about \$92 a month. The Appellant said she chose the lump sum to take care of debts. The Appellant also said she did not receive a Ministry invitation to participate in the January 2013 earnings exemption and did not meet the January 14, 2013 deadline. The Panel admits the Appellant's testimony pursuant to section 22(4) of the Employment and Assistance Act, as providing further detail about the payment the Appellant received and as being in support of information that was before the Ministry at reconsideration.

At the hearing, the Ministry reviewed sections of the EAPWDR, including the definitions of "earned" and "unearned income", and relied on its reconsideration decision.

The Panel makes the following findings of fact which are not in dispute:

1. The Appellant is eligible for monthly disability assistance in the amount of \$1,242.08
2. In April 2013, the Appellant received a lump sum payout of \$5,373.02 from a pension fund, which she reported to the Ministry in May 2013.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for disability assistance for June 2013 in accordance with section 9(2) of the EAPWDR, because in April 2013 she received superannuation income of \$5,373.02 which exceeded her monthly disability assistance rate of \$1,242.08.

The following sections of the EAPWDR apply to this appeal:

Definitions

1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"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;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;
- (w) tax refunds.

Limits on income

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

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

Deduction and exemption rules

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

Deductions from earned income – 2

Earned income exemptions - 3

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.

Exemptions — unearned income – section 7

The Parties' Positions

The Ministry's position is that the \$5,373.02 that the Appellant received from a pension fund in April 2013 is a superannuation benefit and such benefits are included in the definition of "unearned income" in section 1 of the EAPWDR. As unearned income, the Ministry considered the \$5,373.02 in its calculation of the Appellant's net income as required by Schedule B of that regulation. The Ministry determined that the \$5,373.02 superannuation received in April 2013 and reported in May 2013 exceeded the Appellant's disability assistance rate of \$1,242.08 and therefore she is not eligible for assistance in June 2013.

The Appellant argued that there are conflicting definitions of what "earned income" is and what "unearned income" is. She disagrees with the Ministry's position that the \$5,373.02 is "unearned income" because she argues that it is not a "superannuation" benefit. She submitted that she worked a full time job, paid taxes on this income and earned this \$5,373.02. Therefore it should be considered "earned income". The Appellant cited section 2 in Schedule B which provides that superannuation and pension plan payments can be deducted from earned income. The Appellant also argued that she is entitled to receive other income in addition to her monthly assistance benefits; therefore, the \$5,373.02 should be calculated over a year instead of just in the month it was received. The Appellant alternatively argued that the \$5,373.02 should be considered a "cash asset" and the \$5,000 exemption for such assets should be applied to her circumstances. The pension funds were held by a third party and should be considered an asset.

The Panel's Findings

Section 24 of the EAPWDR states that disability assistance may be provided for a calendar month based on the amount determined under Schedule A minus the net income determined under Schedule B. In this case, there is no dispute that the monthly assistance that the Appellant is eligible for under Schedule A is \$1,242.08. There is also no dispute that the Appellant received a lump sum payout of \$5,373.02 from a pension fund in April 2013, which she then reported in May 2013.

The Panel finds that section 1 of the EAPWDR specifically sets out the definitions which apply to that regulation. Section 1 distinguishes between what is considered "earned income" and what is

considered "unearned income" for the purposes of calculating the amount of disability assistance that someone in the Appellant's circumstances is eligible for. The only type of pension plan contributions in the "earned income" definition are those refunded because of insufficient contributions, which the Panel finds is not the case here. The definition of "unearned income" includes different types of pension benefits, such as Canada Pension Plan benefits, war disability and military pensions and superannuation benefits. Based on the evidence in the record about the source and payout of the \$5,373.02 to the Appellant, the Panel finds that the Ministry reasonably determined that this lump sum amount is a superannuation benefit and therefore is "unearned income" for the purposes of applying the requirements of the EAPWDR. Also, because it is "unearned income", any deductions or exemptions for "earned income" in the regulations do not apply.

The Appellant also argued that this sum should be considered a cash asset because it was held by a third party until paid out to her. The Panel finds that the Appellant did not dispute that the \$5,373.02 was paid to her as a payout of a pension fund. Therefore, the Panel finds that the Ministry reasonably determined that the \$5,373.02 payout does not fall within the definition of a cash asset in section 1 of the EAPWDR, but rather must be treated as type of pension payout, or superannuation benefit for the purposes of that regulation.

Section 9(2) of the EAPWDR provides that 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. Schedule B sets out how net income is calculated, section 1 of that schedule lists what amounts are exempt from income for the purposes of calculating net income and section 6 sets out eligible deductions from unearned income. The Panel finds that no type of pension monies or funds are listed in either section 1 or 6. Therefore, the Ministry reasonably determined that the exemptions and deductions in sections 1 and 6 do not apply in the Appellant's circumstances.

Section 7 of Schedule B sets out exemptions to "unearned income" and the Panel finds that no pension monies or funds are listed except for certain portions of Canada Pension Plan benefits based on the formula in section 7(e) and calculations under the *Income Tax Act* (Canada). The Panel finds that the Appellant received the pension payout from a union pension fund and not from Canada Pension Plan benefits. Therefore, the Panel finds that Ministry reasonably determined that the pension fund payout received by the Appellant in April 2013 is not exempt under section 7 of Schedule B. Based on the evidence, the Panel further finds that the Ministry reasonably determined that the Appellant's unearned income of \$5,723.02 in April 2013 exceeded the \$1,242.08 in disability assistance she is eligible for, and therefore she was not eligible for assistance in June 2013.

Conclusion

Having considered all of the evidence and applicable enactments, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the legislation. Therefore, the Panel confirms that decision.