

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 17, 2013 which found that the appellant is not eligible for disability assistance for the month of April 2013 due to the appellant's net income being in excess of the rate of disability assistance for which the appellant would otherwise be eligible, pursuant to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1,9,24 and Schedules A and B.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act- Section 5  
Employment and Assistance for Persons with Disabilities Regulation- Sections 1,9,24; Schedule A-  
Sections 1,2,4,5; Schedule B- Sections 1,6,7,7.1,8

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- Appellant's bank deposit account history for months of January, February and March 2013 showing a payment of \$1284.48 from the Family Maintenance Enforcement Program (FMEP) on February 01, 2013 and a payment of \$1175.04 from the FMEP on February 15, 2013 for a total of \$2459.52 with both cheques deposited directly to the appellant's bank account.
- Letter from the appellant dated April 03, 2013 to an advocacy organization stating that the money from the FMEP was in relation to support for the appellant's daughter who is now an adult and the appellant was informed by the ministry that she would not have to claim this FMEP money to the ministry.
- February 18, 2013 letter to the appellant from the ministry requesting the appellant to submit bank statements and to call the ministry to discuss possible overpayment on the appellant's file related to undeclared child support.
- On March 27, 2013 the appellant was advised by the ministry that she was not eligible for disability assistance for April, 2013.
- Request for Reconsideration dated April 17, 2013.

In the appellant's notice of appeal dated April 23, 2013 she states that she believes the ministry was unreasonable to discontinue her disability cheque for the month of April.

At the hearing the appellant stated that she does not dispute that she received \$2459.52 in FMEP payments in February 2013. The appellant stated that she did not declare her FMEP income as a ministry worker told her that she was not required to do so. She stated that she was told by a ministry worker in 2009 that if the money related to a support payment for a minor child she would not have to claim this income. The appellant states that there is a note on her file about a conversation she had with a ministry worker regarding the ministry worker stating that the appellant did not have to declare the FMEP income and the income would not be deducted from the appellant's disability benefits. In 2005 the appellant received a small amount of money from the FMEP and she kept the money at that time. The appellant stated that no one in the ministry informed her that she needed to claim the money she received and she did not know until March 27, 2013 when a ministry worker told her she was not eligible for disability assistance for April due to an overpayment from the FMEP. The appellant further stated that she did everything she was told to do by the ministry and the ministry didn't do anything to help her in this situation.

The appellant stated that she has difficulty in making ends meet, raises her grandson, goes to a foodbank to get through the month financially and feels that the FMEP income should go to her as she supports her family.

The appellant's advocate said that the appellant received misinformation from the ministry as she thought the FMEP income was unearned income and was not told by the ministry that she needed to provide evidence to show that the income was passed on to her adult daughter. The advocate stated that ethically the appellant is entitled to the FMEP income and if the ministry was clear on the documentation the appellant needed to provide none of this would have happened. The advocate stated that the ministry did not take any steps to inform the appellant that she needed to provide evidence showing that the FMEP income passed to her daughter.

At the hearing the ministry relied on its reconsideration decision of April 17, 2013 which denied the appellant disability assistance for April 2013 due to the appellant having net income in excess of the rate of disability assistance for which the appellant would otherwise be eligible. The ministry stated that they asked the appellant for her bank statements, but the bank statements did not show that the FMEP income passed on to the appellant's daughter. The ministry added although the FMEP income passing on to an adult daughter under a court order is considered exempt income, the ministry needed to see some confirmation the FMEP income was passed on to the appellant's daughter. Since the ministry did not receive this confirmation the exemption did not apply. The ministry stated that they would have needed to see a letter or bank statement confirming the FMEP income was passed on to the appellant's daughter. The appellant stated that she did not pass on the money to her daughter.

The panel makes the following findings of facts:

- The appellant is a person with disabilities with one dependant who receives \$1242.08 a month in disability assistance. (one single person with one dependant child)
- The appellant received \$2459.52 income from the FMEP for the benefit month of February 2013.
- The appellant did not pass on the \$2459.52 in income from the FMEP to her daughter.

**PART F – Reasons for Panel Decision**

The issue on appeal is whether the reconsideration decision of the ministry dated April 17, 2013, in which the ministry determined that the appellant received an overpayment of her disability assistance for the month of April 2013 due to the appellant receiving \$2459.52 from the Family Maintenance Enforcement Program in February 2013, was reasonably supported by the evidence of a reasonable application of the legislation.

Pursuant to Section 1(p) of the Employment and Assistance with Persons with Disabilities Regulation (EAPWDR) “unearned income” includes “maintenance under a court order, a separation agreement or other agreement.”

**EAPWDR-Section 9 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.

**Section 24, 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 Disability Assistance Rates**

**Maximum amount of disability assistance before deduction of net income**

1(1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

**Monthly support allowance**

2(1) A monthly support allowance for the purpose of section 1(a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsection (2) to (4) for each dependent child in the family unit.

Item	Column 1	Column 2	Column 3
	Family Unit Composition	Age or status of applicant	Amount of Support

2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08
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Monthly shelter allowance

4(1) For the purposes of this section:

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply 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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

How actual shelter costs are calculated

5(1) For the purposes of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal;
- (f) rental of one basic residential single-line telephone;

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

- (a) rent for the family unit's place of residence;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged out over the periods

- (a) beginning on October 1 and ending on March 31, and
- (b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by

- (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
- (ii) multiplying the result by the number of persons in that one family unit, and
- (c) the amount declared by the family unit as the shelter costs for that family unit.

#### EAPWDR Schedule B

##### Deduction and Exemption rules

1. When calculating the net income of a family unit for the purposes of section 24(b) of this regulation,
  - (a) the following in part are exempt from income (xxviii), that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court.
  - (d) states that all unearned income must be included, except the deductions permitted under section 6 (income tax from employment insurance benefits and essential operating costs of renting self-contained suites) and any income exempted under sections 7, 7.1 and 8 (interest from a mortgage, Veterans Affairs payment, criminal injury compensation, payment from a trust, annuity settlement or settlement agreement, tax refund, Canada Pension Plan benefits, compensation from Workers Compensation, or educational related costs).

The appellant states that she received misinformation from the ministry regarding the income from the FMEP and was not told by the ministry that she had to show documentation that she passed the FMEP income on to her daughter.

The ministry states that there was no confirmation provided that the FMEP income was passed on to the appellant's daughter.

The panel finds that the appellant received \$2459.52 FMEP income which is defined as unearned income as defined in Section 1 of EAPWDR in February 2013 which was to be reported in March and impacts April assistance. Section 9 of the EAPWDR explains that a person is not eligible for disability assistance if his or her net income under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A. Thus the \$2459.52 maintenance income the appellant received exceeds the amount of disability assistance to which the appellant is eligible determined under Schedule A (\$1242.08 for a single person with one dependent child) and is therefore not eligible for April 2013 disability assistance under Section 9 of the EAPWDR.

As well the panel finds that under Schedule B, section 1(a) xxviii that portion of the FMEP paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court is considered exempt income. The appellant stated that the maintenance in question was money owed to her in regards to her daughter who is now an adult. However the panel could not find any evidence to show that any portion of the maintenance payment was passed on to the appellant's daughter therefore this exemption cannot be applied. As well there are no other deductions or exemptions from maintenance income permitted under Schedule B.

Therefore the panel finds that the ministry was reasonable to conclude that the appellant is not eligible for disability assistance for the month of April 2013 as her net income under Schedule B exceeds the amount of disability assistance determined under Schedule A.

APPEAL #

Accordingly the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision.