

**PART C – Decision under Appeal**

In a reconsideration decision dated 15 July 2013, the Ministry determined that the Appellant was ineligible for disability assistance (DA) because it determined she was in receipt of nonexempt unearned income that was in excess of the her disability assistance pursuant to Section 9 in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 1 and 9  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule A and B

## PART E – Summary of Facts

Preliminary Matter: A 5 page document from the Appellant's Advocate was received by the Panel members on April 16, 2013. After review of the document, the Panel finds no new evidence within the document and accepts it as submission only.

The evidence before the Ministry at the time of the reconsideration decision included:

- A Request of Reconsideration dated June 28, 2013 with a 3 page submission from the Appellant's Advocate.
- A letter dated April 15, 2013 from a federal employment opportunities agency (FA) notifying the Appellant that her agreement with them had been approved.
- The 6 page Contribution Agreement (the CA) between the FA and the Appellant dated April 12, 2013. The CA states that its purpose is "to provide to help you start a business and become self-employed." It defines the expression "full-time" to be a period of not less than 35 hours per week and the period of assistance to be 52 weeks. It states the Appellant's responsibilities are to work full time developing a business plan and maintain a record of the work and the hours spent on that work. The costs and amounts of financial assistance to be paid by the FA is defined as weekly living expenses at \$350 per week. Weekly basic living expenses are described as "costs incurred for your basic living expenses such as food, rent, household expenses, etc, while establishing your business."
- A 4 page brochure describing non Ministry funded employment programs and services.
- A 22 page guide of how to apply for a CA.
- Statements from the Appellant's bank account dated January 4 through April 17, 2013.
- A self employment questionnaire dated May 22, 2013.
- A hand written report by the Appellant stating 14 weeks of business plan development between January 6 and April 13, 2013.
- The Appellant's 41 page business plan with 3 letters of recommendation and approximately 30 pages of appendices and reports.

The Request for Reconsideration reports that in January, 2013 the Appellant was accepted into an opportunities fund/ self employment program and received \$658 per month for the months of January, February and March, 2013 from the FA. The Ministry determined these funds were training allowances and as such determined them as unearned income with allowable exemptions for cost of books, tuition fees, and actual training expenses. In April, the FA amended the agreement with the Appellant and agreed to subsidize the Appellant \$1,316 per month for living expenses until January 2014.

In the Reconsideration Decision, the Ministry states the Appellant was a recipient of DA until May 30, 2013 when it determined she was ineligible because she was in receipt of income in excess of the legislated limit. The Ministry states the Appellant receives \$350 per week (less deductions equals \$658 every 2 weeks) from the FA as part of the opportunities fund/ self employment program. It is the Ministry's position that the information from the CA clearly indicates the funds are financial assistance from another jurisdiction and as such as defined as unearned income and there are no exemptions or deductions that apply to this type of income.

The Ministry states as a sole recipient of DA the Appellant's monthly assistance rate as per Schedule A in \$906.42 and the Appellant receives \$1,316 per month from the FA. The Ministry concludes the

Appellant is ineligible for DA because this amount exceeds her DA rate.

At the hearing the Appellant stated that the first 10 weeks that she was accepted into the funding program with the FA she was receiving funding that the Ministry determined was training funding and took off no deductions from her DA. When the business plan was complete and the FA approved the next step and additional funding, the Ministry perceived the funding as unearned income rather than earned income that is eligible for an \$800 per month exemption. The Appellant conceded that her contract with the FA does specify the funding as living expenses, how she stated it also specifies the FA will only help to pay her weekly basic living costs for each week if she is employed in developing and implementing a plan for starting a business. Furthermore her responsibilities within the contract include working full time to develop a business plan and maintaining records of that work.

In response to a question, the Appellant stated she has earned some money from the business she is attempting to establish.

The Advocate stated the Ministry defines earned income to mean "any money or value received in exchange of work or the provision of service" and as the Appellant is actively working to establish her business, the FA funding should be defined as earned income.

At the hearing the Ministry reiterated that the FA funding is specified as help with living expenses and as such fits the definition of unearned income from another jurisdiction.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to find that the Appellant was ineligible for DA because it determined she was in receipt of nonexempt unearned income that was in excess of the her DA pursuant to Section 9 in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry argues the funding the Appellant receives from the FA (\$1,316 per month) falls under the definition of unearned income from another jurisdiction as per the EAPWDR definitions and exceeds her DA (\$906.42 per month), determining her ineligible for DA as per the EAPWDR, Section 9(2).

The Advocate argues that the Appellant is employed full time in developing and implementing a plan for starting a business with the FA therefore the Appellant is engaged in work in exchange for money, fitting the EAPWDR definition of earned income, and as such is eligible for DA plus the earning exemption of \$800 for a person with disabilities as per the EAPWDR, Schedule C, Section 3(C)(I).

The pertinent legislation is as follows:

### **EAPWDR Section 1 – Definitions**

**"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:

- (i) financial assistance provided under the Employment and Assistance Act or provided by another province or jurisdiction;

**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.

### **Schedule B, Section 3**

the exempt amount is calculated as the lesser of

(C) the sum of

- (I) \$800 multiplied by the number of calendar months remaining in the calendar year

**Schedule B Section 6**

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

- (a) any income tax deducted at source from employment insurance benefits;*

The CA has a section that defines the description of costs and amounts of financial assistance payable by the FA. It does not specify in this section that it is funding for work or services provided, only financial assistance. Furthermore, the same section specifies that the Appellant will receive "Living Expenses – financial assistance while not on claim" at the rate of \$350 per week. In the section entitled "Financial Assistance for Weekly Basic Living Costs" the CA states the FA will provide the Appellant "financial assistance to help pay your weekly basic living costs for each week you are employed in developing and implementing a plan for starting the business". The Panel also notes that any profits or monies made by the business as implemented from the plan do not impact the CA funding.

The Panel finds although the Appellant's responsibilities for receiving this funding does include working full time to develop a business plan, the sections of the CA described above define the overall intent of the CA funding as financial assistance to help with living expenses as the business plan is being implemented and as a reasonable profit from the business is not yet achieved.

The Panel finds the Ministry reasonably determined that the CA funding is defined as unearned income from another jurisdiction as per the EAPWDR, Section 1, "unearned income" (i). The legislation allows for no deductions or exemptions on this unearned income. As nonexempt unearned income, the Panel finds the Ministry reasonably determined the Appellant is not eligible for DA because her unearned income from the FA at \$1,316 exceeds her eligible DA at \$906.42 as per the EAPWDR, Section 9(2).

The Panel finds the decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.