

### PART C – Decision under Appeal

The ministry in its Reconsideration Decision of July 29, 2013 found the appellant not eligible for a Medical Only Services (MSO) file. The appellant had previously been found to have ceased to be eligible for disability assistance due to receiving non-exempt unearned income in the form of a federal living allowance in excess of her disability assistance rate and the ministry determined that the conditions for eligibility for MSO set out in section 61.1 of the Employment and Assistance for persons with Disabilities Regulation were not met.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5  
Employment and Assistance for Persons with Disabilities regulation (EAPWDR), section 1 and 61.1

## PART E – Summary of Facts

The ministry's evidence, at the time of reconsideration was the following:

- January 6, 2013 the appellant was accepted into a federally funded self-employment program with living expenses/financial assistance. The program would provide the appellant upon acceptance of her business plan with a financial assistance to help pay her weekly basic living costs for each week she was employed in developing and implementing her business plan. The appellant would receive the living allowance until January 4, 2014.
- May 6, 2013 the appellant declared her income for April. The appellant declared a training allowance of \$1316.00 from the federal program. The ministry treated this income as unearned income pending a review.
- May 16, 2013 the ministry notes that the appellant requested her federal training allowance be considered as earned income and exemptions applied.
- May 30, 2013 the ministry advises the appellant her income could not be exempted as it was not earned income and that she was not self-employed or being paid training allowance and was not eligible for further income assistance. The appellant was further advised she was not eligible for MSO (Medical Services Only) as she was participating in a federally funded program receiving a living allowance not earnings. The appellant requests a Request for Reconsideration of both decisions.

A seventeen page submission dated August 20, 2013 was received by the Tribunal office from the appellant's advocate. The submission reports that the ministry has determined the income the appellant receives from the federal program cannot be exempted and that she is not eligible for assistance due to income in excess of income assistance rates. The submission included documentation and argument.

At the hearing, the ministry did not object to the appellant's submission.

The documentation in the submission contained website material concerning an Opportunities Fund for Persons with Disabilities Program with the federal government whose goal is to help people with disabilities prepare for, obtain and maintain employment or self-employment, a ministry overview and policy regarding MSO and a ministry overview of its policy regarding Non-Ministry Funded Employment Programs and Services. The panel accepted these documents into evidence under Section 22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time of reconsideration.

The submission also argued:

- the federal funds received by the appellant are part of an employment program and that she receives earned income not unearned income.

- the ministry has erred in interpreting the income the appellant receives as non-employment earnings and determining the appellant ineligible for a MSO file.
- the appellant is actively employed in the success of her business.
- ministry policy supports the appellant's position that her earnings are from a funded employment program. The policy identifies the Opportunities Fund as an employment program and the ministry promotes these programs through policy to recipients of assistance and disability assistance yet appears to not interpret the employment in the appellant's case as employment earnings.
- ministry policy on MSO states: *"one of the major goals of MSO is to assist recipients with barriers to obtain and maintain employment by allowing them to retain their premium-assisted Medical Services Plan coverage as well as general health supplements as they move from income assistance or disability assistance into financial independence."*
- the appellant created a business plan and actively sought out financial opportunities that would assist her in implementing her business ; the ministry goals of MSO and purpose of the federal Opportunities Fund should be considered as her contract with this funded program is that she must actively be employed in implementing her business plan to be eligible for funding; the appellant's contract with the Opportunities Fund requires her to " work full-time" and " full time" is defined in the agreement to mean " not less than 35 hours per week".
- the income received by the appellant better fits the definition of "earned income" under the EAPWDR as it is not listed under the definition of "unearned income" in the regulations.

At the hearing, the appellant reported that when she entered the self-employment federal program she believed that it would be considered employment. By not being eligible for MSO means she is beset by other stress and difficulties. As a person attempting to get beyond social assistance there are too many barriers that restrict the intention and spirit of the program. She pointed out that if she was on Work BC self-employment program she would be eligible for MSO.

The ministry stood by the record, but noted that the appellant did not meet the legislative criteria to be eligible for MSO as the funds received from the federal opportunities fund are training allowances to cover basic living expenses such as food and shelter. It also notes the ministry cannot under the legislation treat the monies received as employment income as it is a living allowance and not earnings from a business.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's reconsideration decision dated July 29, 2013 which denied the appellant Medical Services Only (MSO) coverage under the EAPWDR because the conditions for eligibility for MSO set out in section 61.1 of the Employment and Assistance for persons with Disabilities Regulation were not met.

The relevant legislation pertaining to this appeal is as follows:

### **EAPWDA**

#### **Part 2 — Assistance**

#### **Disability assistance and supplements**

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

### **EAPWDR**

#### **Definitions**

1 (1) In this regulation

"**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;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (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.

## Division 4 — Health Supplements

### Eligibility for medical services only

**61.1** For the purposes of this Division, a person may be eligible for medical services only if

(a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

(i) employment income earned by the person or the person's spouse,

(ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or

(iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan,

(b) the person's family unit ceased to be eligible for disability assistance on the day the person became 65 years of age,

(c) the person is a person with disabilities and the person's family unit ceased to be eligible for disability assistance because of

(i) financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, or

(ii) an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse,

(d) the person is a dependant of a person referred to in paragraph (a) or (c), or

(e) the person is a dependant of a person referred to in paragraph (b), if the dependant was a dependant of the person referred to in paragraph (b) on the day that person became 65 years of age and remains a dependant of that person.

The ministry's position is that the appellant receives a living allowance through a federal opportunity self-employment program in excess of income and disability assistance rates and, as a result, does not meet the legislative criteria under sections 66.1 of the EAPWDR for Medical Services Only (MSO) coverage. As a result, it has no discretion available to open an MSO file. It also argues that eligibility for MSO is not available under the life threatening provisions of section 76 of the EAR as it is limited to medical equipment, supplies and transportation.

The appellant argues that the ministry has erred in interpreting the income she receives from the federal opportunities fund as non-employment earnings and determining her ineligible for a MSO file.

In a separate reconsideration decision dated July 15, 2013 the ministry determined that the appellant was in receipt of a federal living allowance that was deemed to be financial assistance from another jurisdiction and, therefore, unearned income to which no exemptions applied. As a result, the appellant ceased to be eligible for disability assistance.

With respect to the reconsideration decision that is the subject of this appeal, the panel finds that the appellant's cessation of disability assistance due to being in receipt of "unearned income" is not one of the eligibility criteria under section 66.1 of the EAPWDR. The panel finds, therefore, the appellant does not satisfy this criteria and does not qualify for MSO coverage.

The panel finds that the ministry's reconsideration decision dated July 29, 2013 is a reasonable application of the EAPWDR in the circumstances of the appellant and confirms the decision.