

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated March 6, 2014 in which the Ministry determined that the Appellant is not eligible for an earnings exemption of \$1,109.25 from her February disability assistance. The Ministry held that the Appellant exceeded the earnings exemption to which she was entitled by \$309.50 in the month of December 2013, and as a result that amount was deducted from her February 2014 disability assistance. The Ministry found that the Appellant had not applied and been accepted for the annualized earnings exemption program provided for under section 3.1 of Schedule B, EAPWDR, and as a result was limited to a monthly earnings exemption of \$800.00.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 24; Schedule B, sections 1, 2, 3, 3.1, 4

PART E – Summary of Facts

The Appellant and the Ministry did not attend the hearing. After confirming that both were notified of the hearing date and time, the hearing proceeded in the absence of the parties under section 86(b) of the *Employment and Assistance Regulation*.

Information before the Ministry at Reconsideration included:

- Copies of the Appellant's bank account activity for the period December 2 to 31, 2013.
- A copy of the Appellant's monthly report form to the Ministry, dated January 14, 2014, showing \$1,109.50 in employment income.
- The Appellant's Request for Reconsideration, dated January 27, 2014, in which she stated that she was not given notice that the annualized earning exemption was made into a regulation in December, 2013, however not all of her correspondence had been received. She stated that an advocate had advised her that she could earn \$9,600 for the year before she would have any deduction from her disability assistance, and that she is still unclear how to apply for the program.

The Appellant is a designated person with disabilities ("PWD") under the EAPWDA and receives monthly disability assistance.

The Appellant, in her Notice of Appeal, stated that she was not informed of the changes that were made to PWD earnings guidelines, and that her file was closed in September, 2013, then reopened.

The Ministry, in the Reconsideration Decision, stated that the Appellant did not supply written notice to participate in the earnings exemption program prior to or on January 14, 2013, as required under section 3.1 of Schedule B, EAPWDR, and is therefore only entitled to an \$800 per month earnings exemption.

The Panel makes the following findings of fact:

- The Appellant earned \$1,109.50 in the month of December, 2013.
- The Appellant did not supply written notice to the Ministry.
- The Appellant is entitled to an \$800 monthly earnings deduction.
- The Appellant is not participating in the self-employment program.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's determination that the Appellant is not eligible for an earnings exemption of \$1,109.25 from her February disability assistance was reasonably supported by the evidence, or was a reasonable interpretation of the legislation in the circumstances of the appellant. The Ministry held that the Appellant exceeded the earnings exemption to which she was entitled by \$309.50 in the month of December, 2013, and as a result that amount was deducted from her February 2014 disability assistance. The Ministry found that the Appellant had not applied and been accepted for the annualized earnings exemption program provided for under section 3.1 of Schedule B, EAPWDR, and as a result was limited to a monthly earnings exemption of \$800.00.

Legislation

EAPWDA

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;

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

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:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;

- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (xxvi) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
- (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
 - (A) Autism Funding: Under Age 6 Program, or
 - (B) Autism Funding: Ages 6 — 18 Program;
- (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;
- (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxx) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;
- (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiv) money withdrawn from a registered disability savings plan;
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3, 3.1 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

Deductions from earned income

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Calendar month exemption — earned income

3 (1) Subject to subsections (2) and (2.1), the amount of earned income calculated under subsection (3) is exempt for a family unit.

(2) If an application for disability assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for disability assistance unless

- (a) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, or
- (b) a member of the family unit received income assistance under the *Employment and Assistance Act* for the calendar month immediately preceding that first calendar month.

(2.1) A new family unit described in section 3.1 (3) (b), (4) (b), (10) (b) or (11) (b) that does not provide written notice to the minister in accordance with section 3.1 (3) (c), (4) (c), (10) (c) or (11) (c), as applicable, may claim an exemption under this section except in relation to the calendar month in which the new family unit forms.

- (3) The exempt amount for a family unit that qualifies under this section is to be calculated as follows:
- (a) in the case of a family unit that includes only one recipient who is designated as a person with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$800, and
 - (ii) the family unit's total earned income in the calendar month of calculation;

Calendar year exemption — earned income

- 3.1 (1) Despite section 3 but subject to this section, the amount of earned income in a calendar year calculated under subsection (2) of this section is exempt for a family unit
- (a) if
 - (i) the family unit provides written notice to the minister on or before January 14 of the calendar year that the exemption under this section applies to the family unit's earned income in the calendar year,
 - (ii) a recipient in the family unit
 - (A) is designated as a person with disabilities for the consecutive 12 calendar month period, or longer, immediately preceding the calendar month in which the family unit provides notice in accordance with paragraph (a) (i), and
 - (B) is a recipient of disability assistance for the 2 calendar months, or longer, immediately preceding the calendar month in which the family unit provides notice in accordance with paragraph (a) (i), and
 - (iii) for at least one calendar month in the 12 calendar month period immediately preceding the calendar month in which the family unit provides notice in accordance with paragraph (a) (i), the family unit reported, under section 29, earned income in an amount that exceeded
 - (A) \$500, in the case of a family unit that includes only one recipient who is designated as a person with disabilities, or
 - (B) \$750, in the case of a family unit that includes two recipients who are designated as persons with disabilities, or
 - (b) if
 - (i) the family unit provides written notice to the minister on or before January 14 of the calendar year that the exemption under this section applies to the family unit's earned income in the calendar year, and
 - (ii) an exemption under this section applied to the family unit's earned income in the immediately preceding calendar year.
- (2) Subject to subsections (3) to (16), the exempt amount for a family unit that qualifies for an exemption under this section is calculated as follows:
- (a) in the case of a family unit that includes only one recipient who is designated as a person with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$9 600, and
 - (ii) the family unit's total earned income in the calendar year of calculation;

The Appellant's position is that she was not informed of the changes made to the earnings exemption requirements in the Regulations, and that she was told by an advocate that she was entitled to a \$9,600

exemption for the 2013 year, and asserts that the Ministry should not have deducted the \$309.50 in excess earnings from her February disability assistance.

The Ministry's position is that the Appellant did not apply for a calendar year earnings exemption program by providing written notice to the minister on or before January 14, 2013 as required by the legislation, and therefore her monthly earnings exemption is capped at \$800 and the excess \$309.50 is properly deducted from her monthly disability assistance.

The Panel notes that section 3.1(1) of Schedule B, EAPWDR requires that a recipient must provide written notice to the minister on or before January 14 of the calendar year in order to qualify for a calendar year exemption. As the Appellant did not provide this written notice, which is agreed by both parties, the Panel finds that the Ministry reasonably applied the calendar month exempt amount stated in section 3(1)(a) of Schedule B, EAPWDR, which in the case of the Appellant's family unit, is the lesser of \$800 and the family unit's total earned income in that calendar month and determined that the Appellant exceeded the earnings exemption to which she was entitled by \$309.50 in the month of December, 2013.

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.