

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s Reconsideration Decision dated April 15, 2014 in which the ministry denied the appellant's participation in the annualized earnings exemption (AEE) for the 2014 calendar year.

The ministry's decision states that the appellant did not supply written notice of his interest to participate in the 2014 AEE prior to the January 14, 2014 deadline as set out in Schedule B, section 3.1 (1)(a)(i) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule B, sections 3(3)(a)(i)(ii) and 3.1(1)(a)(i).

PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a sole recipient of disability assistance with no dependants. On April 1, 2014 the appellant was advised by the ministry that he had been denied access to the AEE for the 2014 calendar year because he did not meet the eligibility criteria, specifically that he had not provided written notice expressing his interest in participating in AEE by the January 14, 2014 deadline. The appellant requested reconsideration of that decision on April 2, 2014.

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

- The appellant's Request for Reconsideration (RFR) dated April 2, 2014 and signed by the appellant. In Section 3 of the RFR the appellant writes, "Employment and Assistance not activated Dec 31, 2013, AEE letter (form) not received for activation? Activation eligible due to disability assistance program. Medical records have been sent in file. Local employment and assistance office not available in [appellant's home town]."

As set out in the reconsideration decision, dated April 15, 2014, the ministry states that on April 1, 2014 the appellant advised the ministry that he had attempted to register for AEE program online with the code provided, but was unable to register. Because the appellant had stated that he had attempted to register with the code provided, the ministry was not satisfied that he had not received the ministry's letter advising the appellant of his requirement to provide notice on or before January 14, 2014. Additionally, the ministry states that data from the AEE registration website does not show that the appellant had attempted to login to the site or made any partial registrations on the site. Therefore, the ministry concludes that the appellant is not eligible to participate in AEE for the 2014 calendar year because he did not supply written notice by the January 14, 2014 deadline or make attempts to do so, as required by the legislation.

The appellant submitted a signed Notice of Appeal on April 25, 2014, in which he states that he disagreed with the ministry decision because he did not receive AEE activation forms. He adds, "Monthly report received January to March 31 without receiving. At this time, contacted PWD. At this point I was informed I must put an appeal in. Did not receive Feb or March, both months were written up and sent in."

The appellant was unable to attend the teleconference hearing due to medical appointment, but evidence was provided by his advocate, who is also his brain injury worker. The evidence provided at the hearing included the following information:

- The appellant's advocate stated that the appellant had not received the letter advising him of the AEE registration or pending deadline. She noted that the appellant is usually very good about keeping all of his important paperwork organized and contacting her whenever documents are received that require responses or further action. She adds that the appellant did not contact her about receiving an AEE notification letter.
- The advocate stated that the appellant had told her that he had sent his reports in for the months of January to March, but noticed that he had not been receiving the 'top up' funds as

usual.

- The advocate stated that in March, after contacting PWD about the missing 'top up' funds, the appellant was told that he had not replied to the AEE letter and therefore his file would be closed.
- The advocate confirmed that the appellant had participated in AEE in the 2013 calendar year and there had not been a change to his mailing address within the past year.
- The advocate stated that the appellant does seasonal work, which is why participation in the AEE is important for him.

The ministry relied primarily on its reconsideration decision and confirmed that the appellant had participated in AEE in 2013 and had received assistance in November, December, 2013 and January, February 2014 and therefore a letter to register participation for 2014 AEE would have automatically been sent out. The ministry stated that the letters are sent by regular mail and the appellant's letter had not been returned to the ministry as 'undeliverable'. The ministry confirmed that the AEE registration process has not changed over the past year and added that the appellant's file had not been closed; he is still designated as PWD and entitled to an \$800/month earning exemption.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant's request to participate in the AEE for the 2014 calendar year, on the basis that he failed to meet all the component criteria, specifically that he did not supply written notice of his interest to participate in the 2014 AEE prior to the January 14, 2014 deadline as set out in Schedule B, section 3.1 (1)(a)(i) of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

Employment and Assistance for Persons with Disabilities Regulation, Schedule B, sections 3(3)(a)(i)(ii) and 3.1(1)(a)(i).

Exemption – earned income

- (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;
 - (a.1) In the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$1 000, and
 - (ii) the family unit's total earned income in the calendar month of calculation; (B.C. Reg. 332/2012)
 - (b) in the case of a family unit that includes two recipients who are designated as persons with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$1 600, and
 - (ii) the family unit's total earned income in the calendar month of calculation.
- (B.C. Reg. 265/2002) (B.C. Reg 117/2003) (B.C. Reg. 43/2006) (B.C. Reg 197/2012)

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, (B.C. Reg. 123/2013)
 - (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 (B.C. Reg. 123/2013)

(ii) an exemption under this section applied to the family unit's earned income in the immediately preceding calendar year.

Whether the appellant supplied written notice to the ministry to participate in AEE for the 2014 calendar year on or before, January 14, 2014 in order to meet the requirement of Schedule B, section 3.1(1)(a)(i).

The appellant's advocate argues that the appellant was not adequately notified as he did not receive the letter notifying him of the need to register for participation in AEE, adding that if he had, he likely would have contacted her for assistance with the appropriate and timely reply. She adds that because he had not been notified, he was not given the opportunity to supply the written notice required.

The ministry's position, as set out in the reconsideration decision, is that written notice to participate in AEE was not received by the ministry on or before January 14, 2014 and the information does not establish that the appellant had not received the notification letter. The ministry argues that the appellant participated in AEE the previous year and received disability assistance for more than the previous two consecutive calendar months, either of which would automatically generate a notification letter for participation in AEE for the 2014 calendar year.

The panel finds that although there is limited evidence to establish whether the letter notifying the appellant of the need to register for participation in AEE was actually received by the appellant, or his brain injury interfered with his ability to remember that he must notify the ministry of his interest in participating in AEE annually, the current issue under appeal remains as to whether the appellant provided the written notice by the deadline as required by EAPWDR Schedule B, section 3.1 (1)(a)(i), which he had not.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant's participation in AEE for the 2014 calendar year, because he did not meet the criteria under Schedule B, section 3.1 (1)(a)(i) of the EAPWDR was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.