

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of May 5, 2014 wherein the ministry determined that the appellant was ineligible for disability assistance (“DA”) for the period May 2010 to April 2014 because during that period she received non-exempt unearned income (rent) that exceeded the DA rates for a Person with Disabilities (PWD) under Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 11 (1)

EAPWDR Sections 1, 9, 24, Schedules A and B

PART E – Summary of Facts

The appellant is a single recipient of DA who in 2002 suffered a severe traumatic brain injury as a result of a motor vehicle accident. She was not present at the hearing, but was represented by her mother (“J”) who is Committee of the appellant’s person and estate.

The appeal was originally set down to be heard on June 19, 2014 but was adjourned at the request of the ministry and with the consent of the appellant.

The following evidence was before the ministry at the time of reconsideration:

1. Supreme Court of British Columbia order dated August 23, 2005 appointing the appellant’s mother (“J”) as Committee of the person and estate of the appellant;
2. State of Title Certificate (copy) dated March 1, 2006 showing the appellant as sole registered owner of a residential property (“the property”) with attached caveat filed by J as Committee, declaring the appellant to be incapable of managing her affairs;
3. Residential tenancy agreement for the property dated May 1, 2010 at a rent of \$1,500 per month on a month to month basis;
4. 2013 BC Property Assessment Notice addressed to the appellant as registered owner of the property;
5. April 8, 2014 letter from the ministry to the appellant informing the appellant that she was no longer eligible for DA because her monthly unearned income exceeded her DA and there were no exemptions applicable;
6. April 23, 2014 request for reconsideration to which was attached a letter from J to the ministry advising that:
 - i. J is Committee of the person and estate of the appellant;
 - ii. the appellant needed to move to J’s municipality in order to be assisted with her complex developmental and physical needs;
 - iii. The property had been put on the market for 10 months but did not sell;
 - iv. The rental income from the property was used to purchase a new residence in J’s municipality;
 - v. The appellant cannot manage without her monthly PWD income.

In the appellant’s Notice of Appeal J argued that the appellant’s assets should be considered a trust, because she cannot manage her financial affairs.

At the hearing J explained that the appellant lives in her own home but requires 24 hour care given by 3 caregivers on a rotating basis. This expense is covered by the Ministry of Health and Community Living British Columbia. The appellant also receives approximately \$2000 per month paid out of a structured settlement related to the MVA litigation. This structured settlement income is not relevant to the reconsideration decision of the ministry. The property was purchased as part of the settlement.

J added that the appellant incurs significant monthly expenses as a result of her complex needs. In response to a question from the panel she admitted that the tenancy agreement and all rent cheques from the tenants of the property were made payable solely to the appellant and not to J as Committee or as a payment “in trust”.

The panel determined that J’s additional oral evidence was admissible under s. 22(4) of the EAA as evidence in support of the records before the minister at reconsideration because it clarified the

financial circumstances of the appellant and provided background information concerning the rental income arising from the property.

J also tendered a written submission in which she argued that the appellant's assets and the income from those assets should be considered to be a trust because the appellant has no control over her income or expenses. She quoted from the ministry's website which defines a trust as "*a legal relationship where someone (trustee) holds the legal interest in (legally owns) money or other assets for someone else's benefit (that person is called the "beneficiary")*". (<http://www.eia.gov.bc.ca/publicat/pdf/DisabilitiesTrusts.pdf>).

The ministry relied on its reconsideration decision and tendered a written submission at the hearing.

The panel makes the following findings of fact:

1. The appellant is the registered owner of the property.
2. During the period May 2010 to April 2014 the appellant received rental income from the property of \$1500 per month.
3. During the period May 2010 to April 2014 the appellant received DA as a single person with no dependants.
4. J. is Committee of the person and estate of the appellant.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision wherein the ministry determined that the appellant was ineligible for disability assistance ("DA") for the period May 2010 to April 2014 because during that period she received non-exempt unearned income (rent) that exceeded the DA rates for a Person with Disabilities (PWD) under Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The relevant legislation is set out in the EAPWDA and EAPWDR:

EAPWDA:

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

EAPWDR:

1 (1) In this regulation:

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

Limits on income

9 (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.

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.

The appellant's representative does not dispute that monthly rental income of \$1500 was paid to the appellant during the period May 2010 to April 2014. However, she argues that the appellant is incapable of managing her financial affairs by reason of mental incapacity and that all of the assets of the appellant should be considered as being held in trust by the appellant's Committee. She argues further that all income flowing from these assets, including the rental income received from the property, should be considered trust income and should be exempt from inclusion in the appellant's income under Schedule B.

The ministry argues that:

- The appellant was the registered owner of the property during the period May 2010 to April 2014;
- The appellant's monthly rental income of \$1500 falls within the statutory definition of unearned income found in EAPWDR Section 1(1) (n);
- Under EAPWDR Section 24 the amount of monthly DA is determined by deducting the amount of income calculated under Schedule B from the rate of shelter and support allowances calculated under Schedule A;
- In order to be eligible for DA it was the appellant's responsibility under EAPWDR Sections 11(1) and 29 to declare any changes to her income, including unearned income, by the 5th day of the calendar month following which she received this income;
- The appellant received rental income of \$1500 per month from the property which exceeded the amount of her monthly DA during the period May 2010 to April 2014;
- The appellant did not declare her rental income during the period May 2010 to April 2014 but received DA during that period;
- There are no exemptions in the legislation for rental income received from the property;
- Whether this rental income can be exempted as part of a trust is beyond the scope of the reconsideration decision.

The panel finds that the ministry reasonably determined that monthly rental income of \$1500 received by the appellant during the period May 2010 to April 2014 constitutes unearned income under EAPWDR Section 1 (1) (n) which must be included in calculating the appellant's Schedule B income. There are no exemptions or deductions in the legislation applicable to this type of unearned income. Because the appellant's Schedule B income exceeds the amount of shelter and support allowances payable to the appellant under Schedule A the ministry reasonably determined that the appellant is ineligible for DA during this period pursuant to Section 24 of the EAPWDR.

This panel also finds that the ministry reasonably determined that the issue of whether the unearned (rent) income received by the appellant constituted trust income arising from a Committeeship order was beyond the jurisdiction or scope of the reconsideration decision because the applicable legislation does not address a Committeeship relationship in the circumstances of this appeal.

In conclusion, the panel finds that the ministry's decision to deny DA to the appellant for the period May 2010 to April 2014 because during that period she received non-exempt unearned income (rent) that exceeded the disability assistance rates for a Person with Disabilities (PWD) under Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) is a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.