

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 09 June 2014 that denied the appellant’s request for adjudication of her persons with disabilities (PWD) designation application. The ministry determined that the appellant is not eligible for income assistance or disability assistance because she does not satisfy the initial and continuing conditions of eligibility established under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act* as her net income exceeds the applicable monthly income assistance or disability assistance rate set out in the legislation and therefore the appellant should not have been provided a PWD Designation Application.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 3.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 4, 4.1, 9 and 24: Schedule A and Schedule B, section 3.

Employment and Assistance Act (EAA).

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

- The appellant is a sole applicant of assistance with no dependants.
- The appellant's payroll records from three different employers, from which the ministry calculates that her most recent monthly earnings have been \$287.74 from Company A, \$841.56 from Company B and \$360.17 from Company C.
- The appellant's Request for Reconsideration dated 02 June 2014, to which was attached a submission. In her submission, she states that the eight hours of work with Company C is a job that she no longer has because she physically could not perform her duties there. She wants to retain a few hours of paid employment so as to give her a minimally decent standard of living. Even though she medicates herself to perform her work, she is too afraid to give up her jobs completely because then she would not have any money. She states that over-medicating is not safe for her or the people around her and that her doctor is not pleased that she is working more than four hours a day. By pushing herself as hard as she has been, she is running the risk of not being able to perform any job duties. The balance of her submission goes to argument (see Part F, Reasons for Panel Decision, below).
- As the appellant has stated that she no longer has the job with Company C, the ministry calculates that her estimated monthly net income to be a minimum of \$1129.30.
- The appellant applied for assistance on 26 February 24. At that time she was provided with a PWD Designation Application. On 22 May 2014 the appellant was advised that it was determined that her income assistance exceeded for disability assistance rate and therefore her PWD designation application was not accepted for adjudication.

In her Notice of Appeal dated 16 June 2014, the appellant gives as reasons for appeal the following:

“The summarized pay stub info is incorrect. I don't feel that all of the info is correct. I feel that I haven't adequately described that I am currently maintaining the work that I do by being heavily medicated just so I have money to live. I can't keep it up & my physician has told me the same.”

At the hearing, the appellant's advocate submitted a letter from one of her supervisors dated 24 June 2014. The letter read in part:

“I know [the appellant] to be very determined also, any suggestions on my part to take time off or to get assistance is rejected outright. She takes pride in being able to support herself and will, I fear, suffer a complete breakdown if her circumstances do not change.”

In answer to a question, the appellant indicated that her average monthly net income as calculated by the ministry of approximately \$1130 was on the low side by \$200-\$300. The balance of the presentation by the appellant and her advocate went to argument (see Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration (see Part F, Reasons for Panel Decision, below).

The panel finds that the information in the supervisor's letter submitted at the hearing is in support of the information before the ministry at reconsideration, as it was offered to substantiate the appellant's statement in her reconsideration submission that working as many hours as she does puts her health at risk. The panel therefore admits as evidence the supervisor's letter under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision, which denied the appellant's request for adjudication of her PWD designation application as she did not meet the initial and continuing conditions of eligibility for income assistance or disability assistance and that therefore she should not have been provided a PWD designation application form, was reasonably supported by the evidence or was a reasonable application of the legislation under the circumstances of the appellant..

The relevant legislation is from the EAPWDA:

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

And from the EAPWDR:

Process for assessment of eligibility for disability assistance

4 The eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.

Application for disability assistance — stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (2).

(2) The applicants for disability assistance in a family unit

(a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 6 (2) [*citizenship requirements*], and

(ii) the information, authorizations, verifications and declarations specified by the minister, as required in the application for disability assistance (part 1) form, and

Limits on income

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.

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.

From Schedule B of the EAPWDR:

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.
- (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

The position of the appellant, as explained by her advocate at the hearing, is that the appellant's situation is in a "gray area" not explicitly addressed in the legislation. The advocate noted that most people apply for disability assistance in circumstances where they are not employed and are therefore in receipt of income assistance. In her reconsideration submission, the appellant states that the whole point of her application for PWD designation is that she is losing her current ability to do physical work and will need income from disability assistance. She would be able to work some hours to top it up but she does not understand why she would have to be unemployed/underemployed to qualify first for disability assistance. She does not see the sense in completely quitting her job in order to satisfy the ministry criteria. That seems to be a complete contradiction to what the ministry wants to achieve. And if she gives up the job that she has where she can have reduced hours and who are very understanding of her situation, where will she ever get another job like that? If she quits just in order to get income assistance her position will be filled by someone else and she will be unable to find another job to top up her disability assistance.

At the hearing, the ministry representative noted that for someone in the appellant's circumstances, as a sole applicant with no dependants while still employed, a PWD designation application form would be provided and adjudicated provided the basic eligibility criteria were met. In particular, this would mean that net income for the month immediately preceding the date of application (or in the appellant's case, reapplication) would have to be less than the applicable monthly disability assistance rate of \$906.42. Net income does not have to be \$0 or less than the applicable monthly income assistance rate of \$610 in the month preceding application, as the appellant seemed to believe.

The position of the ministry, as set out in the reconsideration decision, is that section 3(a) of the EAPWDA states that a family unit is eligible for disability assistance if each person in the family unit on whose account the disability assistance is provided satisfies the initial and continuing conditions of

eligibility established under the Act and the EAPWDR. To be eligible for disability assistance under the Act a family unit must include a person with PWD designation. Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under schedule B of the EAPWDR. As a sole applicant with no dependants, the ministry determined that if the appellant had PWD designation, the appellant's disability assistance rate would be \$906.42. From this must be deducted the appellant's monthly net income, which the ministry estimates to be a minimum of \$1029.30. As her monthly net earnings are in excess of the \$906.42 for a sole recipient, the appellant would still be financially ineligible for disability assistance even if she were to receive the PWD designation. The ministry notes that there is an \$800 PWD monthly earnings exemption under section 3 of Schedule B of the EAPWDR, but this exemption is not available to applicants in the first calendar month for which the family unit becomes eligible for disability assistance except under certain circumstances which do not apply to the appellant. As the appellant did not provide any updated pay records to support that her earnings are less than those submitted previously or that her earnings are expected to drop below \$906.42 in the immediate future and as the appellant did not meet the initial financial eligibility criteria set out in the EAPWDR, the ministry confirmed that she should not have been provided with the PWD designation application.

Panel decision

The panel notes that the starting point for the administration of the ministry's income assistance and disability assistance programs under the EAA and EAPWDR is a framework of income and asset tests, depending on size and composition of the family unit. The panel also notes that, while the EAPWDA sets out the criteria that the person must meet to be designated as a "person with disabilities," no reference is made to the PWD designation application form in either the Act or the Regulation. However, section 4 of the EAPWDR states that the eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2, with the first stage being the submission of an application for disability assistance (part 1) form, with information including Social Insurance Number, citizenship, address, family unit size and composition, employment history, recent income by source, assets, etc. To the panel, it is clear that the legislation calls for eligibility to be assessed first on the basis of meeting the income and asset (and other basic) criteria before going on to provide and adjudicate a PWD designation application form.

The evidence is that the appellant's net income of at least \$1129.30 exceeds the applicable monthly disability rate of \$906.42. The panel also finds that the ministry was reasonable in determining that the \$800 monthly income exemption under section 3 of Schedule B of the EAPWDR is not available to the appellant in the first month of eligibility. The panel therefore finds that the ministry reasonably determined that, pursuant to section 9(2) of the EAPWDR, the appellant is not eligible for disability assistance as her net income determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A, and thus the appellant does not satisfy one of the initial conditions for eligibility for disability assistance as required under section 3(a) of the EAPWDA.

Accordingly, the panel finds that the ministry's decision to deny the appellant's request to adjudicate her PWD designation application is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.