

### 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 07 July 2014 that found that, pursuant to sections 9(2) and 24 of the Employment and Assistance for Persons with Disabilities Regulation, the appellant is not eligible for income or disability assistance because the net income of her family unit is in excess of the applicable assistance rate. The ministry also confirmed that, as she did not meet the initial eligibility criteria established under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*, she should not be provided a Person with Disabilities (PWD) Designation Application.

At the hearing, the ministry stated that sections 10(2) and 28 of the Employment and Assistance Regulation also apply. These sections have similar wording as those cited, except referring to “income assistance,” instead of “disability assistance.”

### 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).  
*Employment and Assistance Regulation*, sections 10(2) and 28.

## PART E – Summary of Facts

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

- The appellant's Application for Income Assistance/Disability Assistance, Part 1 and Part 2, dated 05 June 2014. The Application shows the appellant residing with her common-law spouse. The appellant reports zero monthly income. Monthly income for the spouse is shown as \$2100 in employment wages.
- Cheque stubs from the spouse's employer for three biweekly periods in March and April 2014, with net pay in the amount of \$1275 – \$1318. For the purposes of explaining the reconsideration decision, the ministry took his monthly net income to be "a minimum of \$2500." The cheque stubs also show an employer \$25 biweekly contribution to an RRSP, with a total of \$75 withheld, indicating the spouse contributes \$50 to the company pension plan biweekly.
- The appellant's Request for Reconsideration, dated 19 June 2014, to which was attached a letter giving her reasons. She writes that she understands that her spouse's monthly income for March and April 2014 is above the PWD rate by approximately \$320-\$270. It would be more than acceptable if this excess were taken off the PWD amount. She bears the burden of her disability; this is difficult enough and to add all financial responsibility onto her spouse is even more unbearable for her. The overwhelming rising costs of living, including food, monthly household repairs, water, medical prescriptions, etc. are a real hardship for two incomes let alone one. As supportive as her spouse is, they are not married and she fears that down the road her guilt and the weight of her disability will be too much to place on her spouse. She states that she is in a desperate situation and needs assistance.

In her Notice of Appeal, dated 15 July 2014, the appellant writes "Need to go over [spouse's] financial statement and taxes."

At the hearing, the appellant submitted a letter from her spouse dated 05 August 2014 stating that it was his intention to increase his RRSP contributions to \$75 per pay-cheque, an increase from \$25 per paycheck. These contributions are to the company pension plan organized by his employer. Using pay stubs from January 2014, he calculates that from total take-home pay of \$2391.61, less the \$1000 income exemption, his net income would be \$1391.61 or \$121.05 over the disability assistance rate of \$1270.56. By increasing his RRSP contribution, his income would fall close to or below the allowable rate.

The ministry representative pointed out that RRSP contributions *per se* cannot be deducted from unearned income for the purposes of calculating net income. Contributions to the company pension plan can be deducted, but only the base amount required by the plan administrator and that base amount would have to be determined.

The appellant also submitted a note from herself and her spouse stating that the spouse has been driving a vehicle for a company in which the appellant is a part owner. The letter stated that it has become apparent that the spouse did not keep very good track of vehicle expenses. She will be more vigilant in making sure receipts are not lost. Including these expenses would reduce her income from the business.

The ministry noted that her Application form did not show any other earned or unearned income from her business, or any other income for her spouse.

The ministry stood by its position at reconsideration.

The panel finds that the information provided by the appellant at the hearing regarding her spouse's intention to increase his RRSP/company pension plan contributions and her and her spouse's involvement with a small business was not before the ministry when it made its decision and is not in support of (i.e. it does not substantiate or corroborate) any information before the ministry when it made its decision. Pursuant to section 22(4) of the *Employment and Assistance Act* (set out below) the panel therefore does not admit as evidence this information. The panel notes that even if this information had been admitted as evidence, it would not have changed the panel's decision (see Part F, Reasons for Panel Decision below).

#### **Panels of the tribunal to conduct appeals**

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(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision, that found that, pursuant to section 9(2) of the EAPWDR and section 10(2) of the EAR, the appellant is not eligible for income or disability assistance because the net income of her family unit is in excess of the applicable assistance rate, was reasonably supported by the evidence or was a reasonable application of the legislation under the circumstances of the appellant. Another issue is whether the ministry was reasonable in confirming that, as she did not meet the initial eligibility criteria established under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*, she should not be provided a PWD Designation Application.

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.

Section 10 of the EAR reads the same, except referring to "income assistance."

**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.

Section 28 of the EAR reads the same, except referring to "income assistance."

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.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;

In the reconsideration decision, the ministry reviews the relevant legislation relating to income and eligibility for assistance. The ministry determined that the applicable monthly rate of income assistance for the appellant's family unit size and composition under Schedule A of the EAR is \$877.22. For disability assistance, the applicable monthly rate under Schedule A of the EAPWDR is \$1270.56. As the appellant had indicated an intention to apply for PWD designation, the ministry assessed her eligibility for disability assistance and compared her family unit's net income, determined through examination of her spouse's cheque stubs, to be a minimum of \$2500. As this amount of net income is greater than the applicable monthly disability assistance rate of \$1270.56, pursuant to section 9(2) of the EAPWDR, the position of the ministry is that the appellant is not eligible for disability assistance (or income assistance). The ministry noted that while there is a PWD earnings exemption, it is not available to applicants in the first calendar month for which the family unit becomes eligible for disability assistance, except in certain circumstances not applicable to the appellant.

The ministry also held that a PWD designation application is not to be provided as a way to obtain other programs and services other than disability assistance. As the appellant did not meet the initial financial eligibility criteria of the EAPWDR, the ministry determined that she should not be provided a

PWD designation application.

The position of the appellant is that she is in a desperate situation and needs the ministry's support. It is unfair for her to continue to expect her common law spouse to pay all financial responsibilities of her disability as well as the ever-increasing costs of maintaining a household. She has made suggestions as to how the family unit's income might be reduced to below the \$1270.56 threshold.

*Panel decision*

At the hearing, the appellant made submissions on ways her family unit's income might be reduced. These submissions were based on information that the panel has found to be inadmissible as evidence. Accordingly, the panel will not address the propositions raised in these submissions, except to note that the ministry raised significant questions as to their validity.

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. 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 form, with information including Social Insurance Number, citizenship, address, family unit size and composition, 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 a PWD designation application form.

The evidence is that the appellant's net income of at least \$2500 exceeds the applicable monthly disability rate of \$1270.56. The panel finds that the ministry was reasonable in determining that the 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. As the threshold net income for income assistance is lower than that for disability assistance, it follows that the ministry was reasonable in determining that the appellant was not eligible for income assistance.

Accordingly, the panel finds that the ministry's decision, that found the appellant not eligible for disability assistance or income assistance and to deny the appellant's request to provide her a 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.