

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of September 10, 2014 wherein the ministry determined that the appellant did not qualify for disability assistance, pursuant to Section 9 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), because his net family income is higher than the assistance rates for a family unit of his size.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1, 1.1, and 5  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24  
Employment and Assistance for Persons with Disabilities Regulation Schedule A (1)(2)(4)  
Employment and Assistance for Persons with Disabilities Regulation Schedule B (1)(2)(3)(3.1)(4)(7)

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Three paystubs in the name of the appellant's wife. The paystubs are each for a two-week pay period and show a net income of \$970.16 for May 30, 2014, \$1,077.03 for June 13, 2014 and \$970.16 for June 30, 2014.
- 2014 Property Assessment Notice indicating the appellant as the owner of real property;
- Various household bills including a cable bill, natural gas bill, home insurance statement, city utility bill, and home alarm bill.
- A bank statement dated August 25, 2014 showing the appellant's CPP deposit was made in the amount of \$481.72 on July 29, 2014.
- A handwritten note from the appellant dated August 25, 2014. The note outlines the household budget on the appellant and his wife. It reads that the monthly expenses are \$1913 per month not including the transportation expenses to his medical appointments. He writes he wants to contribute to the household expenses and does not want his wife to bear the majority of the household expenses.
- A letter from the appellant's nurse authorizing him to take his medication on a flight.
- A pre-operative history report in the name of the appellant dated June 13, 2014. The document confirms the appellant has multiple medical diagnoses.
- A medical information document undated that details the medications the appellant is currently taking.
- A request for reconsideration application dated August 25, 2014 completed by the appellant. He writes that he requesting reconsideration for medical and financial reasons and that he takes morphine to control the pain of his medical condition. He states the \$487.72 he receives from CPP doesn't come close to covering the \$1913 of monthly household expenses.

At the hearing the appellant submitted an additional document for the panel to consider. He submitted a letter from his doctor dated October 8, 2014. In the letter the physician writes that the appellant is permanently unable to work due to the medical conditions listed in the letter.

The panel reviewed these document and found that it could be accepted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the document provided details about the appellant's medical condition that was evidence that was before the ministry at the time of the reconsideration.

At the hearing the appellant told the panel that with his household expenses being as high as they are, he is unable to survive on his CPP pension of \$471 per month. He wants to be able to pay half of the expenses so he does not burden his wife with having to work so hard. He said he does not argue with how the ministry interpreted or applied the legislation. He added that his personal situation remains the same as when the decision was made. He still is living with his wife, she is still working, and she makes roughly the same amount every two weeks.

At the hearing the ministry stood by its reconsideration decision and explained that the appellant is currently considered a MSO (medical services only) recipient and that his designation as a person with a disability is not in question. The issue the ministry made a determination on was whether the appellant qualified for monthly disability assistance. The ministry outlined the calculation of the appellant's family income as his wife's earned income of \$2047.19 per month less the allowable

earning exemption of \$1000, plus his unearned income from CPP of \$481.72 per month. The total family income comes to \$1528.91. The ministry continued that the EAPWDR Schedule A states the disability rate for a household of two recipients where one recipient has persons with disability designation (PWD) is \$1270.56. Since the amount of the appellant's household income is higher than the amount of disability benefit the appellant does not qualify for monthly assistance.

The panel finds as fact:

- The appellant is married and lives with his wife.
- The appellant's wife has earned income of \$2047.19 per month.
- The appellant has unearned income, a CPP pension, of \$481.72 per month.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant does not qualify for disability assistance benefits because, after allowable deductions, his household income is \$1,528.91 which exceeds the legislated rate of \$1,270.56 for a family unit of his size.

The relevant legislation is as follows:

Employment and Assistance for Persons with Disabilities Act

### Interpretation

1 (1) In this Act:

"**dependant**", in relation to a person, means anyone who resides with the person and who

(a) is the spouse of the person,

"**family unit**" means an applicant or a recipient and his or her dependants;

"**supplement**" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

### Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they are married to each other, or

(b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

(a) they have resided together for at least

(i) the previous 3 consecutive months, or

(ii) 9 of the previous 12 months, and

(b) the minister is satisfied that the relationship demonstrates

(i) financial dependence or interdependence, and

(ii) social and familial interdependence,

consistent with a marriage-like relationship.

### 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.

Employment and Assistance for Persons with Disabilities Regulation

### 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;

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

(f) any type or class of Canada Pension Plan benefits;

### 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.

### Schedule B

#### 1 Deduction and exemption rules

#### 2 Deductions from Earned income

#### 3 Calendar month 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;
- 3.1 Calendar year exemption — earned income
- 4 Small business exemption
- 7 Exemptions — unearned income
- 7.1 Exemptions — workers compensation

**Schedule A**  
**Disability Assistance Rates**  
**Maximum amount of disability assistance before deduction of net income**

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

**Monthly support allowance**

2 (0.1) For the purposes of this section:

"maximum adjustment" , in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

- (a) the family unit were entitled to receive the national child benefit supplement for the calendar month,
- (b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and
- (c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act* (Canada);

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$700.56

**Monthly shelter allowance**

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570

The appellant argues that with monthly household obligations of \$1913 per month, he needs disability assistance to supplement his monthly CPP pension of \$481.72 per month. The appellant argues that it is not fair that his wife has to pay a larger portion of the expenses than he does.

It is the ministry's position that the appellant does not qualify for disability assistance benefits because, after allowable deductions, his household income is \$1,528.91 which exceeds the legislated rate of \$1,270.56 for a family unit of his size.

The panel considered the arguments and the evidence provided by both parties. Regarding the appellant's argument that he can not survive on the \$481.72 per month he receives from CPP the panel finds that it has no authority to make a determination based on the financial need of an appellant. While the panel can appreciate the appellant's argument that in order for him to meet the requirements of his household budget the appellant requires additional income the panel cannot consider an appellant's budget when making its decision.

The panel finds the new evidence that the appellant provided was not relevant to the ministry's reconsideration decision. Although the evidence confirmed the appellant's medical conditions, the panel finds that his person with disabilities status is not in question. The issue in this appeal is his ineligibility for disability assistance based on his household income being in excess of the legislated rates and this new evidence does not provide support for his argument.

The panel reviewed the legislation and finds that it is unambiguous on the definition of earned and unearned income and how income is to be calculated in determining an applicant's eligibility for disability assistance. Section 9 of the EAPWDR states that a family unit is not eligible for disability assistance if the net income of the family unit exceeds the amount of disability assistance for the family unit. The definition of "family unit" in Section 1 of the EAPWDA means an applicant and his dependants, and a "dependant" is a person who resides with the person and is the spouse of the person. The appellant admitted that he resides with his spouse and the panel finds that she is, therefore, part of the appellant's family unit. The panel finds that the appellant's household income was calculated according to the legislation and the ministry was reasonable to determine that the income after allowable deductions was in excess of the rate of disability assistance as determined for his family size under the EAPWDR Schedule A, and he is, therefore, not eligible for disability assistance, pursuant to Section 9 of the EAPWDR.

The panel finds that the ministry's decision was a reasonable application of the legislation in the appellant's circumstance and therefore confirms the ministry's decision.