

**PART C – Decision under Appeal**

The decision being appealed is the Ministry of Social Development and Social Innovation (the “ministry”) November 3, 2014 reconsideration decision in which the ministry determined that, in accordance with the Employment and Assistance for Persons with Disabilities Regulation section 1, section 24 and Schedules A and B, the appellant’s earned income for July and August 2014 exceeded the exempt amount, and that \$267.50 must be deducted from the monthly disability assistance the appellant would otherwise be eligible for in September and October, 2014.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Sections 1, 24, 29, Schedule A and Schedule B.

## PART E – Summary of Facts

The ministry had the following evidence for its reconsideration decision:

1. Information from its records that:
  - The appellant has Persons with Disabilities status.
  - The appellant has been receiving \$1,270.56 maximum disability rate for a two person family unit less his spouse's Canada Pension Plan (CPP) income, for a total of \$1,064.09 monthly assistance until August 2014.
  - On July 24, 2014 the appellant attended an Eligibility Review appointment, and his case was referred for a compliance review due to undeclared self-employment earnings.
  - On July 28, 2014 cheque production was turned off for the appellant.
  - On September 12, 2014 the appellant completed the required ministry forms and was approved to participate in a self-employment program ("SEP").
  - On September 16, 2014 cheque production was turn back on for the appellant.
2. A copy of appellant's July 2014 banking statement indicating a deposit of \$1,267.00 on July 18, 2014.
3. A landscaping service contract dated April 1, 2014 signed by the appellant and two Strata council members confirming the terms of a one year contract for property maintenance, and indicating that the appellant would receive \$15,210.00 in twelve equal monthly payments of \$1,267.50 during the term of the contract.
4. A draft document from the appellant to his worker at the ministry sent on August 5, 2014 seeking direction on completing required reporting documents.
5. A copy of a document entitled SEP acceptance of terms and business plan, signed by the appellant on September 12, 2014, and accepted by the ministry on the same date.
6. A copy of a document entitled SEP questionnaire and acceptance of terms signed by the appellant on September 12, 2014.
7. A copy of a communication from the appellant to his worker at the ministry sent on September 15, 2014 providing details on deposits and withdrawals to his banking account.
8. A copy of the monthly report signed by the appellant on September 17, 2014 advising the ministry that he had employment income of \$1,267.00 since his last declaration to the ministry.
9. Confirmation of September 2014 monthly assistance in the amount of \$796.59.
10. Confirmation of October 2014 monthly assistance in the amount of \$796.59.
11. The appellant's October 3, 2014 request for reconsideration was accepted and his submissions are summarized within the reconsideration decision.

In the appellant's notice of appeal date stamped November 13, 2014 he wrote that the decision to reduce his income assistance is not reasonable or alternately not reasonably supported by the evidence.

The ministry did not attend the hearing and, being satisfied the ministry was notified of the date, location and time of the hearing, the hearing proceeded in the absence of the ministry under section 86(b) of the Employment and Assistance Regulation (EAR).

At the hearing, the appellant read from a prepared document. The document included the following statements: approximately 25% of the contract value in dollars must go to purchase things for the benefit of the other party; the money is not under the appellant's control for the use and benefit to the exclusion of others, contrary to the legal definition of received; the ministry failed to apply the law of

possession to the legislation, and failed to apply contract law. The panel finds that this document, containing evidence and a summary of the appellant's argument against the reasonableness of the reconsideration decision, are written submissions in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible under section 22(4) of the Employment and Assistance Act (EAA).

The appellant testified that he takes no issue with the deduction of his spouse's CPP benefits from their monthly assistance total.

The appellant testified that he obtained work as a landscape gardener and entered into a contract with a local strata company requiring that he furnish the necessary labour, materials, equipment and supplies to complete his contractual obligations.

In response to questions from the panel he confirmed that the money received arising from the contract is deposited into his personal banking account and not kept separately.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision of November 3, 2014, which held that the appellant's September 2014 assistance must be reduced by \$267.50 for his July 2014 earned income and his October 2014 assistance must be reduced by \$267.50 for his August 2014 earned income in keeping with section 24, Schedule A, and Schedule B, of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The following sections of the EAPWDR apply to the appellant's circumstances in this appeal.

### **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...

### **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's net income determined under Schedule B.

### **Schedule B Net Income Calculation**

1 When calculating the net income of a family unit for the purpose of 24(b) [amount of disability assistance] of this regulation,

- (c) All earned income must be included, except the deductions permitted under section 2 and any income exempted under sections 3, 3.1, and 4....

### **Deductions from earned income**

2. The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
  - (i) income tax,
  - (ii) employment insurance,
  - (iii) medical insurance,
  - (iv) Canada Pension Plan,
  - (v) superannuation,
  - (vii) union dues;

### **Exemption – earned income**

3.1 Subjection to subsections (2) and (2.1), the amount of earned income calculated under subsection 3 is exempt for a family unit.

- (3) The exempt amount for a family unit that qualifies under this section is 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) \$1,000.00 and
    - (ii) The family unit's total income in the calendar month of calculation;

In the ministry's absence, the November 3, 2014 reconsideration decision will be considered as representing their position.

The appellant argues that the ministry's failure to consider all of the terms of his contract with the strata council amounts to a violation of his rights under the Canadian Charter of Rights and Freedoms. The Administrative Tribunals Act, section 44, which applies to the Employment Assistance Tribunal, confirms that the tribunal does not have jurisdiction over constitutional issues, which includes a consideration of the Charter rights of the appellant.

The appellant argues that the ministry's absence from the hearing should be considered an abandonment of their position conceding his appeal. Section 86 (b) of the EAR confirms that the panel may hear an appeal in the absence of a party if the party was notified of the hearing. The ministry was provided notice of the hearing on November 19, 2014, and the panel heard the appeal in the absence of the ministry, in keeping with this legislation.

The appellant's position is that his contract to provide landscaping services with the strata company provides a monthly gross amount of money - \$1,267.00 – from which he must provide materials and supplies, as well as labour, which may be subcontracted. The appellant argues that this monthly gross amount is not earned income as the money is not available for his sole personal use, but must be managed in keeping with the terms of the contract.

In the reconsideration decision the ministry stated that the appellant has a contract outlining that the appellant will receive \$1,267.50 each month in exchange for work and provisions of services, and this meets the definition of earned income. The ministry wrote that as the small business exemption does not apply to the appellant's July and August 2014 earnings because the appellant wasn't participating in SEP until September 12, 2014, and the \$1,000.00 earnings exemption does apply, the appellant's September 2014 assistance must be reduced by \$267.50 of his July earned income and his October 2014 assistance must be reduced by \$267.50 of his August 2014 earned income.

#### The Panel's Findings and Conclusion

Section 24 of the EAPWDR provides that 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 of assistance determined under Schedule A minus the family unit's net income determined under Schedule B. Under Schedule A, the appellant's family unit is eligible for \$1,270.56 a month. Under Schedule B, section 1(c) confirms that all earned income must be included, except for deductions permitted in section 2 and 3 of Schedule B, EAPWDR.

The appellant entered into a contract effective April 1, 2014 to March 31, 2015 in the amount of \$15,210.00 which was paid at a monthly rate of \$1,267.50.

The evidence before the panel is that the appellant received a personal cheque from the Strata in the amount of \$1,267.00 in both July and August 2014 as a result of a signed service contract and this cheque was deposited into his personal bank account. The appellant was not participating in a small business program, and the money was deposited directly into his personal banking account in exchange for work and services performed and remained under his full control and discretion. This is supported by the appellant's signed monthly report of employment income equaling \$1,267.00 received by the ministry on September 17, 2014.

The panel finds that the appellants earnings of \$1,267.00 in July 2014 and \$1,267.00 in August 2014

was properly classified as earned income. There is no evidence before the panel that the appellant has any deductions at source as set out in section 2 or section 3 EAPWDR and therefore the ministry reasonably determined the funds received from the Strata must be considered as earned income.

The appellant received \$1,267.00 in both July and August 2014 as earned income. Schedule B, section 3(3)(a.1) of the EAPWDR sets out that in a family unit with two recipients, one of whom is designated as a person with disabilities, the recipient of earned income is entitled to a \$1,000.00 exemption. This was applied to the \$1,267.00 earned income, with a remaining amount of \$267.50 outside of the \$1,000.00 exemption. Therefore the panel finds that the ministry reasonably determined that Schedule B section 3(3)(a.1) was the appropriate legislation to apply in the appellant's circumstances, resulting in the deduction of \$267.50 in the appellant's assistance for the months of September and October, 2014.

The ministry's decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision.