

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") Reconsideration Decision dated December 30, 2014 which found as follows:

1. That the appellant's net income received in September 2014 satisfied the definition of "earned income" as provided in section 1(1) of the *Employment and Assistance for Persons With Disabilities Regulation* ("EAPWDR");
2. That the appellant received disability assistance in November 2014 in the amount of \$906.42 for which he was not eligible because his net income in September 2014 exceeded his assistance rate as provided by section 9 of the *EAPWDR*;
3. That because the appellant was not eligible for disability assistance in November 2014, the appellant was also not eligible for the monthly nutritional supplement that he received in November 2014 in the amount of \$205.00 as provided by section 7 of the *EAPWDR*; and
4. That the appellant was required to repay to the ministry the November 2014 disability assistance payment of \$906.42 and the monthly nutritional supplement of \$205.00 pursuant to section 18 of the *Employment and Assistance for Persons With Disabilities Act* ("EAPWDA").

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (*EAPWDA*) section 18
Employment and Assistance for Persons With Disabilities Regulation (*EAPWDR*) sections 1(1), 9, 24 and 67
Schedule A sections 2 and 4 and Schedule B sections 3 and 3.1

PART E – Summary of Facts

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the appellant's absence.

The evidence before the ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. An employee report dated November 4, 2014 and prepared by an employment agency setting out income earned by the appellant between September 11, 2014 and October 28, 2014 ("the Report");
2. A ministry Overpayment Chart dated November 13, 2014;
3. A letter dated November 25, 2014 addressed to the appellant from the ministry concerning the appellant's eligibility for disability assistance for the month of November 2014 ("the Ministry Letter"); and
4. The appellant's Request for Reconsideration dated December 15, 2014 ("RFR") with the following attachments:
 - Written submissions dated December 16, 2014 ("RFR Submissions");
 - A news article dated December 16, 2014 with the headline "Flexibility helps people with disabilities learn" ("the Article"); and
 - A letter from the appellant dated December 18, 2014 requesting an extension of time to provide submissions.

The appellant is a single recipient of disability assistance whose file was most recently re-opened by the ministry in 2008.

On October 22, 2014, the ministry issued disability assistance to the appellant in the amount of \$1,211.42 for the month of November 2014 ("the November payment"). This included \$375.00 for a shelter allowance, 531.42 for support, a \$100.00 community volunteer supplement and a \$205.00 monthly nutritional supplement ("MNS").

On November 7, 2014, the ministry received the Report which indicated that the appellant had earned net income of \$1,711.41 during the month of September 2014 which the appellant did not declare to the ministry as he was required to under section 29 of the *EAPWDR*.

On November 13, 2014, the ministry determined that, after applying an \$800.00 exemption against the appellant's September 2014 income as permitted by section 3 of Schedule B of the *EAPWDR*, the appellant's net income for September 2014 for the purpose of determining his disability eligibility in November 2014 was \$911.41 which exceeded the appellant's assistance rate of \$906.42. The result of this was that the appellant was found to be ineligible for disability assistance in November 2014 and he was required under section 18 of the *EAPWDA* to repay the amount received - \$906.42 – to the ministry.

Further, as the ministry determined that the appellant was not eligible for disability assistance in November 2014, it further found that pursuant to section 67 of the *EAPWDR* that he was also not eligible for the \$205.00 MNS that he received and that he was also required under section 18 of the *EAPWDA* to repay that amount to the ministry.

In the RFR Submissions, the appellant states that according to the Article, as of January 2015 "people receiving disability assistance will be able to calculate their earnings on an annual basis instead of monthly, [thereby] reducing barriers to employment." He further argues that "the very principles underlining [Ministry] case management indicate that all programs, staff, interaction with clients sequencing of activities, referrals and procedures should reflect a work-first approach."

At the hearing, the ministry re-stated the facts and chronology as set out in the Reconsideration Decision and, in response to a question from the panel, confirmed that the appellant had not declared his September 2014 earnings to the ministry.

No new evidence was submitted by the appellant or the ministry.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the December 30, 2014 Reconsideration Decision which found as follows:

1. That the appellant's net income received in September 2014 satisfied the definition of "earned income" as provided in section 1(1) of the *Employment and Assistance for Persons With Disabilities Regulation* ("EAPWDR");
2. That the appellant received disability assistance in November 2014 in the amount of \$906.42 for which he was not eligible because his net income in September 2014 exceeded his assistance rate as provided by section 9 of the *EAPWDR* as;
3. That because the appellant was not eligible for disability assistance in November 2014, the appellant was also not eligible for the monthly nutritional supplement that he received in November 2014 in the amount of \$205.00 as provided by section 7 of the *EAPWDR*; and
4. That the appellant was required to repay to the ministry the November 2014 disability assistance payment of \$906.42 and the monthly nutritional supplement of \$205.00 pursuant to section 18 of the *Employment and Assistance for Persons With Disabilities Act* ("EAPWDA").

Section 18 of the *EAPWDA* provides as follows:

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Section 1(1) of the *EAPWDR* defines "earned income" as follows:

"**earned income**" means

(a) any money or value received in exchange for work or the provision of a service;

Section 9 of the *EAPWDR* provides as follows:

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 24 of the *EAPWDR* provides as follows:

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 67 of the *EAPWDR* provides in part as follows:

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [monthly nutritional supplement] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

- (a) section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters and transition houses] of Schedule A, or
- (b) section 8 [people receiving special care] of Schedule A, if the special care facility is an alcohol or drug treatment centre,

EAPWDR Schedule A, sections 2 and 4 provide in part as follows:

Monthly support allowance

- 2...
- (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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42

Monthly shelter allowance

4 ...

- (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

EAPWDR Schedule B, sections 3 and 3.1 provide in part as follows:

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.

...

(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;

Calendar year exemption — earned income

3.1 (1) Despite section 3 but subject to this section, the amount of earned income in a calendar year calculated under subsection (2) of this section is exempt for a family unit

(a) if

(i) the family unit provides written notice to the minister on or before January 14 of the calendar year that the exemption under this section applies to the family unit's earned income in the calendar year,

Positions of the Parties

In the Notice of Appeal, the appellant argues that he was told by two different workers at a charitable support agency that he was able to earn up to \$9,600.00 in a short period and that he was never told that a provision for a test application was needed.

The ministry's position is that the appellant's income in September 2014 constituted earned income and after applying the statutory exemptions, the appellant's net income for that month exceeded his assistance rate which resulted in his being ineligible for disability assistance and the monthly nutritional supplement in November 2014. The ministry further argues that the appellant is therefore liable to repay to the government the amounts actually received for disability assistance and the monthly nutritional supplement.

Analysis**Was the appellant's net income "earned income"?**

The Report was prepared by a temporary and permanent staffing organization and indicates that in September 2014, the appellant earned as an "employee," net income in the amount of \$1,711.41. Section 1(1) of the *EAPWDR* defines "earned income" as including any money or value received in exchange for work or the provision of a service. The panel finds that the ministry reasonably determined that the appellant's September 2014 net income meets the definition of "earned income" as defined in section 1(1) of the *EAPWDR*.

Does the Annualized Earnings Exemption ("AEE") apply?

In the Reconsideration Decision, the ministry notes that the appellant did not provide notice to it that he would participate in the 2014 AEE program and that therefore the 2014 calendar year exemption does not apply against income earned by the appellant in that year. The ministry further states that as the appellant's net income in question was for September 2014, the 2015 AEE similarly does not apply.

The calendar year exemption is found in section 3.1 of Schedule B to the *EAPWDR* and provides that an amount of earned income in a calendar year is exempt for a family unit if, among other things, notice is provided to the minister on or before January 14 of the calendar year that the exemption applies.

On review of the evidence, there is nothing to suggest that the appellant provided the required notice to the minister for either the 2014 or the 2015 AEE. As such, the panel finds that the ministry reasonably determined that the 2014 AEE did not apply to the appellant's net income earned in September 2014 as the appellant did not provide notice to the ministry as required by section 3.1 of Schedule B of the *EAPWDR*. The panel further finds that the ministry reasonably determined that the 2015 AEE did not apply to the appellant's net income earned in September 2014 as that income was earned in the prior calendar year.

Was the appellant eligible for disability assistance in November 2014?

To calculate the appellant's net income in September 2014 for the purpose of determining his disability eligibility, the ministry applied the monthly exemption of \$800.00 as permitted by Schedule B, section 3(3)(a)(i) of the *EAPWDR*. This resulted in a determination that the appellant's net income for September 2014 for the purpose of determining disability eligibility was \$911.41.

Schedule A, section 2 of the *EAPWDR* provides that as a sole recipient, the appellant is eligible to receive \$906.42 in monthly disability assistance. However, section 9(2) of the *EAPWDR* provides that where net income under Schedule B exceeds or equals the assistance rate in Schedule A, an applicant will not be eligible for disability assistance.

As indicated previously, after applying the exemption in Schedule B of the *EAPWDR*, the appellant's net income for September 2014 was \$911.41 which exceeds the appellant's assistance rate of \$906.42 and on this basis, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance in November 2014.

Was the appellant eligible for a MNS in November 2014?

Section 67 of the *EAPWDR* provides the minister with discretion to provide a MNS to a person with disabilities "who receives disability assistance" under various circumstances. Given the panel's finding that the ministry reasonably determined that the appellant was not eligible for disability assistance in November 2014, the panel further finds that the ministry reasonably determined that the appellant was also not eligible for the \$205.00 MNS that he received in November 2014.

Is the appellant liable to repay the disability assistance and MNS received in November 2014?

Finally, section 18 of the *EAPWDA* provides that if disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients of the assistance or supplement are liable to repay the amount of the overpayment to the government. Given the panel's findings that the ministry reasonably determined that the appellant was not eligible for disability assistance or a MNS in November 2014, the panel further finds that the ministry reasonably determined that the appellant was liable to repay to the government the amounts he received for disability assistance and the MNS for November 2014.

Conclusion

Based on the aforementioned, the panel finds that the Reconsideration Decision was a reasonable application of the applicable enactments in the circumstances of the appellant and the panel therefore confirms the ministry's decision.