

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 13, 2015 which found that:

- the appellant's disability assistance for the month of October 2015 must be reduced by the family unit's net income of \$872.82 received in August 2015, pursuant to Section 24 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR); and,
- the appellant is not eligible for disability assistance for the month of November 2015, pursuant to Section 9 of the EAPWDR, as the net monthly income of the family unit exceeded the amount of assistance payable due to earned income received by the family unit in September 2015.

## PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Sections 1, 9, and 24 and Schedules A and B

## PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Pay stubs for the appellant's spouse dated January 31, February 28, March 31, April 30, June 30, July 31, August 31, September 30, 2015. The August 31, 2015 stub indicated net pay of \$1,613.37 and net pay year to date of \$12,872.82. The September 30, 2015 stub indicated net pay of \$1,613.37 and net pay year to date of \$14,486.19; and,
- 2) Request for Reconsideration dated November 4, 2015.

In her Request for Reconsideration, the appellant wrote that:

- She does not understand why the ministry has stopped paying benefits.
- She is on disability benefits and her husband works a little to help them pay their bills.
- The ministry used to deduct the amount of money her husband earned over the exemption every month but now she is not getting any benefits until the end of the year.
- This is causing extreme hardship on her family.

In her Notice of Appeal dated November 23, 2015 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she needs money.

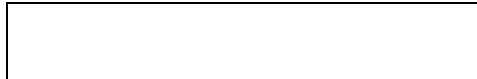
At the hearing, the appellant's husband stated that:

- The appellant has been receiving benefits and his income goes to their mortgage and maintenance costs and a loan they have for over \$5,000. They have to pay over \$200 each month to the bank for interest. There is also a bill for a roofing expense which they had to pay.
- Her assistance helps to pay for things, which are expensive. They cannot go without the additional money that the appellant receives.
- Recently, the appellant has been developing more illnesses, like being forgetful, and she leaves her cane and bag at different places.
- He takes 2 or 2 ½ days off work each week because the appellant needs his help for personal care.
- He makes about \$1,600 per month and they have been told they cannot have more than \$12,000 per year but everything is expensive. If the appellant does not receive assistance, it will be impossible for them since \$1,400 goes directly to expenses every month.

At the hearing, the appellant stated that:

- She has depression and takes medication for stress and she needs help. Recently, she has been developing more illnesses and she saw her doctor about her joints and he injected something in her knees. She has arthritis through her whole body and she needs a caregiver at home.
- If her husband is not around, she cannot do anything and she does not speak English. He will be spending less time working because he needs to care for her.
- She has to pay for medications and clothing and his income is not enough for them to live on and she has to "chip in."

The ministry relied on its reconsideration decision, with information as follows:



- The appellant has had Persons With Disabilities (PWD) designation since 2003 and her file re-opened in 2012. She has been receiving disability assistance as a two-person family unit.
- The appellant's assistance rate is \$1,270.56.
- The appellant's spouse has been declaring his employment income since prior to January 2015. The appellant was eligible for the earnings exemption for her spouse's earned income from January through July 2015.
- The appellant's spouse has net pay of \$1,613.37 per month.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant's disability assistance for the month of October 2015 must be reduced and the appellant is not eligible for disability assistance for the month of November 2015, pursuant to Sections 24 and 9 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 1 of the EAPWDR defines "earned income" as:

"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;

Section 9 of the EAPWDR provides:

### **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:

### **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.

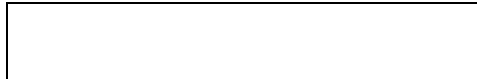
Schedule A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

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

. . .

- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income



exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Section 3 of Schedule B of the EAPWDR sets out specific exemptions from earned income as follows:

**Annual exemption — qualifying income**

3 (1) In this section:

"base amount" means

- (a) \$800, in the case of a family unit that includes only one recipient,
- (b) \$1 000, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$1 600, in the case of a family unit that includes two recipients who are designated as persons with disabilities;

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act;

"qualifying month", in respect of a family unit and a calendar year, means

- (a) the initial qualifying month for the family unit in the calendar year, and
- (b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

- (a) forms during the calendar year, and
- (b) includes at least one person who
  - (i) is designated as a person with disabilities, and
  - (ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

- (a) the qualifying income of the family unit for the qualifying month;
- (b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

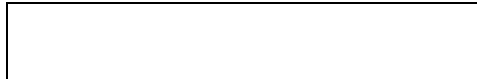
(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

- (a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);
- (b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

- (a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of

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- (i) the base amount for the family unit, and
  - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of
- (i) the base amount for the recognized family unit, and
  - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).
- (5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:
- (a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is
    - (i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if
      - (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, as a person with disabilities, 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, or
    - (ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;
  - (b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;
  - (c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is
    - (i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or
    - (ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.
- (6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:
- (a) in the case of a recipient who is not designated as a person with disabilities, the product of
    - (i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and
    - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;
  - (b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of
    - (i) nil, and
    - (ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:
      - (A) by deducting the qualifying income of that last family unit in that last qualifying month;
      - (B) by deducting the product of



(I) the amount specified in paragraph (a) of the definition of "base amount", and

(II) the number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;

(c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of

(i) the amount specified in paragraph (a) of the definition of "base amount", and

(ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

(a) nil, and

(b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:

(i) by deducting the qualifying income of the family unit in that last qualifying month;

(ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded

(A) in that last qualifying month, or

(B) in a calendar month after that last qualifying month and before the index qualifying month, by deducting the product of

(C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and

(D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;

(iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made

(A) in that last qualifying month, or

(B) in a calendar month after that last qualifying month and before the index qualifying month, by adding the product of

(C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and

(D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;

(iv) by deducting the product of

(A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and

(B) the number of calendar months after that last qualifying month and before the index qualifying month.

### *Ministry's position*

The ministry's position, as set out in the reconsideration decision, is that the amount of the appellant's disability assistance (\$1,270.56) for the month of October 2015 must be reduced by the family unit's net income of \$872.82 received in August 2015, and the appellant is not eligible for disability assistance for the month of November 2015 because her family unit's net income (\$1,613.57) in September 2015 exceeded her assistance rate. The ministry wrote that the definition of "earned income" means any money received in exchange for work or the provision of a service. The ministry

stated that, under Schedule B of the EAPWDR, all earned income must be included in the calculation of net income except the exemption allowed for earned income under Section 3 of Schedule B which, for a two-person family unit, is a maximum of \$12,000 for a calendar year. The ministry noted that whereas the \$1,000 earned income exemption would once have been applied on a monthly basis, the section was amended effective January 1, 2015 and an annual exemption now applies. The ministry stated that as of August 2015 the appellant's spouse had earned net pay of \$12,872.82 for 2015, which results in net income of \$872.82 after the maximum annual earnings exemption of \$12,000 is applied. The ministry stated that the family unit's net income must be deducted from the October 2015 assistance, under Section 24 of the EAPWDR. The ministry wrote that for the following month (September 2015) all of the net income of the appellant's spouse must be deducted from the appellant's assistance under Section 9 of the EAPWDR since there is no annual exemption remaining for her family unit in 2015.

#### *Appellant's position*

The appellant does not dispute the amount of employment income received by her husband but argued that the money has to pay for mortgage, maintenance and loan expenses. The appellant argued that she and her husband rely on her assistance and the annual exemption, resulting in no assistance until after the end of the year, is causing extreme hardship on her family. The appellant argued that she has developed new health conditions and her husband will be working less because she needs more help at home.

#### *Panel's decision*

Under Section 1(d) of Schedule B of the EAPWDR, all earned income *must* be included in the calculation of net income unless there is an allowed deduction or an amount is specifically exempted and, according to Section 1 of the EAPWDR, "earned income" is defined to mean "any money or value received in exchange for work or the provision of a service." The use of the word "must" in Schedule B of the EAR requires the ministry to include all earned income in the calculation of the net income of a family unit except for permitted deductions and applicable exemption amounts set out in the Schedule. Section 3 of Schedule B of the EAR sets out an applicable annual earnings exemption for earned income for a two-person family unit, one of whom is designated as a PWD, of a maximum of \$12,000 for the calendar year (2015).

The appellant does not dispute that her husband was in receipt of net employment income as of August 2015 in the amount of \$12,872.82, which was confirmed by the August 31, 2015 stub, and that the applicable annual earnings exemption deduction of \$12,000 yields a total net income for the month of \$872.82. The appellant also does not dispute that her disability assistance amount as two-person family unit with one person designated as a PWD is \$1,270.56 per month. The panel finds that the ministry reasonably concluded that the amount of the appellant's August 2015 net income (\$872.82) must be deducted from the amount of assistance determined under Schedule A for the appellant's family unit (\$1,270.56) for the month of October 2015, pursuant to Section 24 of the EAR.

The appellant also does not dispute that her husband was in receipt of net employment income in September 2015 in the amount of \$1,613.37, which was confirmed by the September 30, 2015 pay stub and, as the maximum annual deduction of \$12,000 had been reached in August 2015, this yields a total net income for the month of \$1,613.37. The panel finds that the ministry reasonably concluded that the amount of the appellant's September net income (\$1,613.37) exceeded the amount of assistance determined under Schedule A for the appellant's family unit (\$1,270.56) and that the



appellant is, therefore, not eligible for income assistance for the month of November 2015, pursuant to Section 9 of the EAPWDR.

*Conclusion*

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.