



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of November 12, 2015 wherein the ministry denied the appellant's request for reimbursement of money received for kilometers travelled as part of the duties of her employment. The ministry found that money received as travel kilometres is earned income as per Sections 1, 9 and 24 and Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and determined that it did not qualify for an exemption.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Sections 1, 9, 24 and Schedule B

## PART E – Summary of Facts

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

- The appellant is a sole recipient of disability assistance; her file was reopened on April 7, 2015.
- The appellant's annual earnings exemption base amount is \$800 per month as a sole recipient.
- The appellant received the full amount of \$906.42 for disability assistance for September 2015 as she had not reached her annual exemption limit.
- The appellant is employed and her July pay was \$1,401.42 which included a retroactive payment of \$334.67 for travel time and \$62.86 for travel kilometers (km) for the month.
- September 18, 2015 – The appellant was informed that the ministry had determined that the money received from her employer for travel km does not qualify for an exemption of a deduction.
- October 16, 2015 – The appellant submitted a Request for Reconsideration dated September 29, 2015, requesting an extension to October 30, 2015 in order to review and submit further medical information.
- October 30, 2015 – The appellant's advocate submitted further information including:
  - The appellant is employed and is a person with PWD designation.
  - In May of 2015 the appellant approached her union and requested that she be paid for her time while transporting children to supervised visitations. This is part of her employment duties.
  - The union agreed and paid the appellant the transportation time, and agreed to pay it retroactively which is reflected on her pay stubs and included with the submission.
  - Three pay stubs, one of which shows retroactive pay in the amount of \$334.67 which, the appellant states is money received for her time and there is a handwritten note to the effect that total travel km as of September 15, 2015 was \$542.80.
  - A vehicle Repair Order dated July 30, 2015 in the appellant's name for repairs totaling \$4,131.45.
  - The issue is described as twofold:
    - That the appellant submitted documentation for a reimbursement that included 'paid' time that was submitted with a travel km cheque. The time was for her as the driver transporting children to supervised visitation.
    - That the ministry deemed this to be travel km and stated it is not an allowable exemption of her unearned income.
  - The money deducted from the appellant was "unearned" income but what the appellant states is that the money is from her actual "work" and that the union is paying her 15 minutes on transport before and after the children's supervised visits that she does. She indicates that the employer includes this on the cheque but draws to the ministry's attention that the pay stubs show the amount as "retroactive" combining both her work and her travel.
  - The appellant uses a large part of her travel km money to pay for vehicle maintenance.
  - By not taking into consideration that the money is used for vehicle maintenance, the ministry will make it impossible for her to keep her employment.

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- Gasoline and the wear and tear on her vehicle are needed in order for her to continue her employment and she suggests they are therefore business related expenses, and the retroactive pay was for time she was paid for through her employment and is an allowable exemption.
  - The retroactive pay was for travel time she was paid through her employment and is an allowable exemption.

On November 12, 2015 the ministry completed its reconsideration. The ministry stated that the appellant received full disability assistance in the amount of \$906.42 for September 2015 as she had not reached her annual exemption limit. However, the appellant wishes to have the ministry decision for September benefits reconsidered because the ministry treated the amount the appellant received for travel km as earned income and determined that it did not qualify for an exemption.

As the appellant's request is specific to treatment of the travel pay and she received full assistance for September, the ministry did not include a review of the appellant's year-to-date earnings and annual exemption as part of the reconsideration decision.

As defined in the EAPDWR, "earned income" means any money or value received in exchange for work or the provision of a service. Because the appellant receives money from her employer for travel km as part of the duties of her employment, the ministry concluded that this money must be treated as earned income; it was received in exchange for work or the provision of a service. As per Schedule B, all earned income must be included except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of the EAPWDR.

As per Schedule B section 2, the appellant is an employee of a company and paid an hourly wage and vacation pay and thus is subject to source deductions including income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues.

Section 3 relates to the annual earnings exemption limit which is not under review at this time.

Section 4 is specific to available exemptions for permitted operating costs of running a small business. As the appellant is employed and not operating a small business under the self-employment program the ministry is unable to allow deductions for operating expenses the appellant may have related to her vehicle.

The appellant filed a Notice of Appeal which was received by the Employment and Assistance Appeal Tribunal on November 19, 2015. In the appeal dated November 17, 2015 the appellant's advocate states that "The client disagrees that the travel km is income and therefore should be deducted."

The appeal hearing was scheduled for December 9, 2015. The appellant contacted the Tribunal and requested that the hearing be adjourned and rescheduled twice at the appellant's request. The hearing was held by teleconference on January 12, 2016.

The ministry did not appear at the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulations.

At the hearing, the appellant's advocate held to the information provided with the Request for Reconsideration. The advocate stated that the legislation sets out earned income under section 1(1) of the EAPWDR and compared it to a dictionary definition as being money paid for sale of goods, labour or service provided. The advocate argued that the money paid to the appellant was not for work or for service but for travel expenses; it is money paid to her for wear and tear on her vehicle and for gas.

The advocate referenced her reconsideration submission document, stating that the EAPWDR programs encourage clients according to policy to pursue, accept and use all the other income to support themselves before receiving assistance. The advocate argued that if the ministry continues to deduct this money from the appellant she may not be able to remain employed which goes against the reasonableness of the ministry's decision. The advocate argued that the position of the appellant is that the money received for travel km is not earned or unearned income; it is a benefit from the union.

The appellant testified that she does not have an issue with the ministry's determination regarding payment for travel time; she disagrees with the ministry's position that money received for travel km is considered to be earned income. She explained that the money she receives for travel km is necessary to keep her car running.

The appellant explained that her primary duty is driving – sometimes as much as 150 km a day. In order to do the job she is doing, she must have her own vehicle and it must be in safe working condition with a full tank of gas because she never knows how many km she will have to drive in any given day. She transports seniors to appointments or takes them on errands and she transports children to supervised visits with parents. She also provides companionship and home care for elderly, supervises family visits and writes reports, but her main role is to transport clients.

The appellant explained that she has worked for her employer for 9 years. For years she paid for gas and vehicle maintenance without any assistance from her employer. However, two years ago she realized how much that was costing her – she estimates approximately \$800/year; it felt like she was paying to have her job. She went to the union and now receives money for travel km. However, the impact has been that because the ministry treats that money as earned income, she reaches her maximum allowable yearly earnings exemptions early and her disability assistance is cut off before year end which makes it very difficult for her to live. She has had to borrow money from her family to pay for extensive vehicle repairs.

The panel finds that the information provided by the appellant in her Notice of Appeal and in her testimony at the hearing is in support of the information before the ministry at reconsideration as it provides more information on the issue and corroborates the information at reconsideration. The panel therefore admits this information as evidence under section 22(4) of the Employment and Assistance Act.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision denying the appellant's request for reimbursement of money received for kilometers travelled as part of the duties of her employment, was reasonably supported by the evidence or a reasonable application of the legislation. The ministry found that money received as travel km is earned income as per Sections 1, 9 and 24 and Schedule B of the (EAPWDR) and determined that it did not qualify for an exemption.

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

### **Employment and Assistance for Persons with Disabilities Regulation**

**1** (1) In this regulation:

"**earned income**" means

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

#### (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.

#### (A) 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 - Net Income Calculation (section 24 (b))**

#### (B) Deduction and exemption rules

**1** 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.

## **(C) 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,

(vi) company pension plan, and

(vii) union dues;

## **(D) Application of deductions and exemptions**

**9** (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

(a) the date the income is payable;

(b) the period for which the income is payable;

(c) the date the income is reported to the minister;

(d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject

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to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

### *Ministry's Position*

The ministry indicated that as defined in the EAPWDR, "earned income" means any money or value received in exchange for work or the provision of a service. Because the appellant receives money from her employer for travel km as part of the duties of her employment, the ministry argued that this money must be treated as earned income; it was received in exchange for work or the provision of a service. As per Schedule B, all earned income must be included except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 or the EAPWDR.

As per Schedule B section 2, the appellant is an employee of a company and paid an hourly wage and vacation pay and is thus subject to source deductions including income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues; those are the only deductions permitted from earned income.

### *Appellant's Position*

The advocate stated that the legislation sets out earned income under section 1(1) of the EAPWDR and compared it to a dictionary definition as being money paid for sale of goods, labour or service provided. The appellant's position is that the money she receives for travel km is not earned income; it is a benefit from the union and in fact should not even be considered as "income". It is not payment for work done or service provided. The money she receives for travel km is to pay for vehicle maintenance and gas. She needs to have a vehicle for her job that is safe and well maintained, and because she can sometimes have to drive extensively in any one day, she needs to keep a full tank of gas.

The advocate referenced her reconsideration submission document, stating that the EAPWDR programs encourage clients according to policy to pursue, accept and use all the other income to support themselves before receiving assistance. The advocate argued that if the ministry continues to deduct this money from the appellant she may not be able to remain employed which goes against the reasonableness of the ministry's decision.

The appellant argues that the ministry's interpretation of the legislated definition of earned income is unfair. There is nothing in the legislation that defines work or the provision of a service so there is nothing to say that payment for travel km is either work or service. The appellant acknowledges that the money she is paid for her travel time is earned income but money for vehicle maintenance and gas is not; it is a benefit from the employer.

*Panel Decision*

The appellant argues that the issue is one of interpretation of the meaning of earned income. It is the ministry's position that travel is a requirement of the appellant's job and therefore any money paid by her employer in relation to the travel is earned income. It is the appellant's position that money she is paid by her employer for travel km is not earned income but a union benefit.

The panel notes that for the purposes of the Canada Revenue Agency, when money is paid to an employee for travel km as part of an employment contract, that money is not considered to be earned income. Under CRA rules, if employees receive an allowance from their employer for using their own vehicle in connection with or in the course of their employment, without having to account for the use of the vehicle, that money is considered to be in addition to their salary and is taxable. For instance, if employees are paid based on a per km rate for using their own vehicle, like in the case of the appellant, that money is not considered as an "income" to be added to their salary and is not taxable.

The appellant is employed and is paid a salary and she is paid for the time she spends travelling, all of which the panel agrees is earned income as per the definition, "money paid for work done or services performed." However, the panel does not agree that money paid for travel km constitutes payment for work or service; it is reimbursement for the cost of operating the vehicle for purposes of work.

The essence of this appeal is the definition of earned income and whether it applies to travel km. The panel does not agree with the ministry's interpretation of earned income in that it includes travel km.

The panel finds the ministry was not reasonable in its determination that money received by the appellant for travel km is earned income and as a result, does not qualify for an exemption or deduction as per the EAPWDR sections 1, 9, and 24 and Schedule B.

*Conclusion*

The panel finds that the ministry's decision that determined the money the appellant received as travel km is not earned income is not reasonably supported by the evidence and is not a reasonable application of the legislation. The panel rescinds the decision.