

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 4 February 2016 determined that under section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), the appellant was not eligible for disability assistance for the months of January and February 2016 because his net income in November and December 2015 determined under Schedule B of the EAPWDR exceeded the assistance rate for his family unit determined under Schedule A of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, s. 1, 9, 24 and 29.  
EAPWDR, Schedule A, s. 2 and 4.  
EAPWDR, Schedule B, s. 1, 2 and 3.

## PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act (EAA)*.

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a sole recipient of disability assistance of \$851.42 monthly (\$531.42 support plus \$320 shelter).
- The appellant earns \$993.10 each month from a property management corporation.
- The appellant reached the annual earning exemption (AEE) limit of \$9,600 in October 2015 when only \$662.10 of his income could be exempted. This impacted his December 2015 disability assistance when the balance of \$331 was deducted.
- All of the appellant's November and December 2015 income was deducted from the appellant's assistance in the months of January and February 2016.

In his Request for Reconsideration dated 28 January 2016, the appellant indicated that nothing had changed, that he had no raise, no change of address and no different employment circumstances. He also included the following document:

- A 2-page Employee Copy of the appellant's earnings from his employer indicating a bi-weekly taxable wages and benefits of \$525.20 before deductions and net pay of \$336.55.

The ministry file included a series of documents from 2013 as follows:

- An undated Canada Revenue Agency document confirming the appellant's bi-weekly income with handwritten notes by the appellant and seemingly dated 12 February 2013 to the effect that rent is deducted from the appellant's net income.
- Two notes written by the appellant and dated 14 May 2013 indicating that the appellant's employer did not indicate the proper deductions from his payroll.
- A 2-page document from the appellant's financial institution dated 16 April 2013 indicated 2 deposits from the appellant's employer, on 28 March and 15 April 2013 for \$336.55 each.

### ***Additional submissions for the written hearing:***

In his submissions to the tribunal for this hearing, the appellant referred to his Notice of Appeal dated 11 February 2016, where he indicated that the AEE amount is prohibitive to get him out of poverty, penalizes him for working more, puts him further into poverty and is a double deduction, monthly and yearly, from his earned income.

The ministry relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision determining that the appellant was not eligible for disability assistance for the months of January and February 2016 because his net income determined under Schedule B of the EAPWDR exceeded his family unit's assistance rate determined under Schedule A of the EAPWDR was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Section 1 (1) of the EAPWDR defines earned income:

**"earned income"** means

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

The ministry argued that the appellant's wages were earned income and the appellant did not dispute that. Schedule B of the EAPWDR sets out exemptions and deductions in calculating monthly income. The appellant does not dispute his net income as calculated by the ministry after exemptions and deductions allowed by Schedule B.

And s. 9 (2) of the EAPWDR imposes limits on eligibility for disability assistance based on net income:

**9. (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.

The appellant did not dispute that his total net income as of October 2015 had reached the limit under the EAA of \$9,600 under s. 3, Schedule B of the EAPWDR and that his November and December 2015 income exceeded the monthly disability assistance he was eligible for under Schedule A of the EAPWDR.

The appellant argued that the AEE amount allowed by the legislation is too low and the consequences for him are prohibitive, not helping him out of poverty and does not encourage him to work for an income. He also took issue with his employer who "keeps 'forgetting' to take the proper deductions from his new payroll", back in 2013, in the documentation submitted.

The ministry's position in the reconsideration decision is to the effect that the legislation does not allow any flexibility when an individual's income, such as the appellant's earned income after deductions and exemptions, reaches the annual maximum allowed by the legislation, here \$9,600, and thereafter exceeds the monthly disability assistance rate.

### ***Panel decision:***

At the outset, it appears that the appellant had an issue with the deductions taken from his bi-weekly

pay by his employer but that dates back to 2013 and he did not provide further documentation as to whether this issue is still alive for 2015 or evidence of inaccurate deductions for this appeal.

As well, the panel notes that the appellant did not dispute that his earned income (after deductions and exemptions) reached the annual maximum allowed under s. 3, Schedule B of the EAPWDR in October 2015 and that any further income exceeded the monthly disability assistance rate that applies to his family unit for the months of November and December 2015. Rather, he argued that the legislation is not appropriate for him as it tends to keep him in poverty and discourage him from working. This argument cannot succeed as the panel's jurisdiction is determined by s. 24 of the EAA:

- 24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,
- (a) reasonably supported by the evidence, or
  - (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

In other words, the panel does not have the jurisdiction to determine whether the legislation and regulations of the government are fair or should be changed; the panel can only determine whether the ministry's reconsideration decision is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The appellant also did not take issue with the ministry's determination of the monthly disability assistance of \$851.42 established according to s. 2 and 4, Schedule A of the EAPWDR and the panel finds that such determination was reasonable in the circumstances of the appellant.

Consequently, the panel finds that the ministry reasonably determined that since the appellant's income exceeded his AEE in October 2015, the appellant's monthly income of \$993.10 for the months of November and December 2015 exceeded his monthly disability assistance of \$851.42 for those months. As a result, since the income for these months is to be reported by the 5th day of the following month and since it affects the disability assistance for the month after the report, the panel concludes that the ministry reasonably determined that under s. 9 (2) of the EAPWDR, the appellant was not eligible for assistance for the months of January and February.

**Conclusion:**

For all of these reasons and taking into account the evidence presented, the panel finds that the ministry's reconsideration decision determining that the appellant was not eligible for disability assistance for the months of January and February 2016 under s. 9 (2) of the EAPWDR is a reasonable application of the legislation in the circumstances of the appellant and confirms the ministry's decision.