



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 22, that held that pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) the appellant was not eligible for disability assistance for the month of December 2015 because his net income of \$1136.89 in November 2015 exceeded his monthly disability assistance rate (“DAR”) of \$906.42; and further, that he was not eligible for disability assistance for February 2016 because his net income of \$1,051.00 in January 2016 also exceeded his monthly disability assistance rate of \$906.42.

PART D – Relevant Legislation

EAPWDR - sections 1(1), 9(2), 24 and 29.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Request for Reconsideration dated February 18, 2016 in which he stated, “Because I work in a seasonal environment the \$9600 – fiscal year allowance is used up during our busy season. After the busy season my hours are reduced but I then cannot receive the assistance I need then. The \$800 per month would allow me to have the assistance during the down time season and not need to claim during the busy season

The appellant is a sole recipient of disability assistance and is eligible to receive \$906.42 of disability assistance per month. The appellant is employed on a seasonal job and his earnings are determined on whether the time of year is “high” or “low” season. The appellant is eligible to receive a monthly annual earnings (income) exemption (“AEE”) of \$800 or \$9600 annually and the ministry records indicated that at the end of September 2015 the appellant had \$271.96 remaining for that exemption.

In October 2015 the appellant reported employment earnings of \$1,408.85 and with no other income his net income was calculated to be $\$1,408.85 - \$271.96 = \$1,136.89$ which exceeded his monthly disability assistance. Income earned in one month (October) and reported in the next month (November) affects the amount of disability assistance that he would be eligible to receive in the following month (December). Since the appellant was not eligible for any further earnings exemptions the ministry deducted his November earnings (\$759.36) and December earnings (\$1,051.00) from his January 2016 and February 2016 disability assistance. The ministry determined the appellant’s net income in November 2015 and his net income in January 2016 exceeded his monthly DAR of \$906.42 and therefore was not eligible to receive disability assistance in December 2015 or in February 2016. The ministry determined that the appellant’s net earnings of \$759.00 for November 2015 that were reported in December did not affect his eligibility and the appellant received \$147.06 in disability assistance in January 2016 - $(\$906.42 - \$759.00 = \$147.06)$.

At the hearing the appellant testified that the ministry’s current policy did not support his circumstances, that he was trying to be a contributing member of society but because the AEE is an annual exemption of \$9600 not a monthly of \$800 per month as it was in the past he finds that in the fall/winter months of November through to January when his hours of work are reduced he does not get any assistance. The appellant stated that he is barely surviving and for the last four months his meals consist of soup and rice. The appellant stated that he would like the ministry to give a person the option of either having a monthly exemption or having the yearly exemption.

At the hearing the ministry relied on the facts in the Reconsideration decision and provided no additional evidence.

The Panel makes the following finding of fact:

1. The appellant’s monthly disability assistance rate (DAR) is \$906.42.
2. The appellant’s net income for November 2015 was \$1,136.89.
3. The appellant’s net income for December 2015 was \$1759.36
3. At the end of September 2015 the appellant had \$271.96 remaining of his 2015 \$9600 AEE.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 22, 2016 that held that pursuant to section 9(2) of the EAPWDR the appellant was not eligible for disability assistance for the month of December 2015 because his net income of \$1136.89 in November 2015 exceeded his monthly DAR of \$906.42, and further that he was not eligible for disability assistance for February 2016 because his net income of \$1,051.00 in January 2016 which also exceeded his monthly DAR of \$906.42 was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The legislation considered:

Definitions

Section 1 (1) In this regulation:

"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)
- (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

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- ...
- (f) any type or class of Canada Pension Plan benefits;

...

Limits on income

Section 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.

Schedule B - Net Income Calculation (section 24 (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,

- ...
- (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 (B.C. Reg. 332/2012) (B.C. Reg. 226/2014)
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8. (B.C. Reg. 332/2012) (B.C. Reg. 123/2013) (B.C. Reg. 226/2014)

Deductions from earned income

Section 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;

...

Annual Exemption – qualifying income

Section 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;

...

Deductions from unearned income

Section 6

The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Exemptions - unearned income

A list of sources of unearned income, none of which apply to this appeal.]

Schedule A - Disability Assistance Rates (section 24 (a))

Maximum amount of disability assistance before deduction of net income

Section 1

(1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of (B.C. Reg. 197/2012)

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Monthly shelter allowance

Section 4

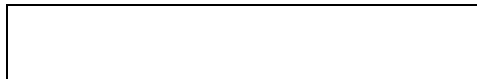
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(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Table

I t e m	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
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1	1 person	\$375
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Monthly support allowance

Table

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

Ministry's Position

The ministry's position is that as the appellant has been a sole recipient of disability assistance for all of 2015 and therefore has a base earnings exemption of \$800 per month or \$9600 annually and once he reaches this threshold any additional earnings are deducted dollar for dollar from their disability assistance. The ministry argued that income for October 2015 and reported in November affects his eligibility to receive disability assistance in December. The ministry's position is that at the end of September 2015 the appellant only had \$271.96 left for his AEE and when his net income was calculated for October 2015 it was determined to be \$1,136.89 (employment earnings - \$271.96) which resulted in his net income exceeding his monthly DAR of \$906.42. The ministry argued that since his net income in October 2015 exceeded his DAR he was not eligible for disability assistance in December 2015 as set out in section 24 EAPWDR. The ministry argued the same rational was applied for his February 2016 disability assistance; that his employment earnings of \$1,051.00 in December 2015 and reported in January 2016 exceeded his DAR for February 2016 and therefore he was not eligible to receive disability assistance.

Appellant's Position

The appellant's position is that the current legislation of applying the \$9600 earnings exemption at the start of each year does not work in his personal circumstances. The appellant argued that, a couple of years ago, he worked and the \$800 a month earning exemption, as set out in Schedule B section 3, was applied to his net income and he found it much easier to try and provide himself a reasonable living because the excess earnings would be deducted from the \$800 and he would still get some assistance. The appellant argued that today he finds that due to his seasonal employment the AEE is consumed by October when there is still one-quarter of the year remaining and he is left to struggle on soup and rice.

Panel Decision

Section 9(2) EAPWDR states that 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 panel heard the appellant's frustration with the annual earnings exemption EAPWDR legislation and the full exemption (\$9600.00 AEE) being applied to him commencing in January of each year. However, the ministry and the panel are bound by the EAPWDA and EAPWDR legislation and must apply legislation to the appellant's circumstances. The panel's jurisdiction is to determine if the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable

application of the legislation in the circumstances of the appellant and then the panel must either confirm or rescind the decision. Neither party has the authority or discretion to vary from the EAPWD Act or EAPWD Regulation legislation.

The panel has found as fact that the appellant had almost reached his maximum earnings exemption for 2015 by the end of September 2015. As a result only a portion of his October 2015 income could be exempted resulting in his net income being \$1,136.89, determined under Schedule B. This amount exceeded his December 2015 disability assistance rate of \$906.42 as determined under Schedule A and the ministry reasonably determined that he was not eligible for disability assistance in December.

Further, the panel found as fact that the appellant's net income for December 2015 of \$1,051.00 exceeded his January 2016 disability assistance rate as determined under Schedule A and the ministry reasonably determined the appellant was not eligible for disability assistance in February 2016.

Therefore, pursuant to section 9(2) of the EAPWDR, the panel finds the ministry decision that the appellant was not eligible to receive disability assistance in December 2015 and in February 2016 is reasonably supported by the evidence and confirms the decision.