



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 6, 2016 which found that the appellant is not eligible for disability assistance for the month of July 2016 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 May 2016, pursuant to Section 9 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

### PART D – Relevant Legislation

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

## PART E – Summary of Facts

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

- 1) Copy of a credit card in the appellant's name;
- 2) Undated information for business centre services and fees;
- 3) Receipts from a professional organization dated August 11, 2015 (\$210) and September 18, 2015 (\$420);
- 4) Copies of emails for the period November 23, 2015 to May 30, 2016 between the appellant and a moving and storage company;
- 5) Copies of emails for the period November 30, 2015 to January 22, 2016 between the appellant and the professional organization;
- 6) Invoice from a moving and storage company dated January 4, 2015, August 21, 2015, September 1, 2015, October 2 and 27, 2015, December 1, 2015, and January 27, 2016, February 29, 2016 for monthly storage fees of \$312;
- 7) Statement of Income for the period January 1, 2016 to May 20, 2016;
- 8) Letter dated May 5, 2016 to the ministry representative for the self-employment program, in which the appellant wrote that she is providing the materials requested and that:
  - Her only revenue in 2016 is part-time employment income.
  - She has been using her employment income to start up her business.
  - She enclosed receipts for storage (\$2,190.30) and for fees of the professional organization (\$1,580.75).
  - Regarding her business plan, she plans to work from home and will obtain an identity package. The next step is to get her membership with the professional organization reinstated. She has designated a bank account for business use only;
- 9) Self-Employment Program Client Monthly Report for the month ended May 5, 2016 indicating \$2,146.99 in revenue received and \$3,781.05 expended on claimed business expenditures, for a net loss of \$1,634.06;
- 10) Print out of ministry Annualized Earnings Exemption report for the appellant dated June 17, 2016; and,
- 11) Request for Reconsideration dated June 21, 2016.

In her Request for Reconsideration, the appellant wrote that:

- She was designated as a Person With Disabilities (PWD) due to a mild traumatic brain injury (MTBI) in 2008.
- In the fall of 2013 she was also diagnosed by a rheumatologist with systemic lupus erythematosus.
- She lost her business in foreclosure in May 2015 and, at the demand of the professional organization, has used all of her only remaining funds to pay for the moving and storage of the business files.
- When the funds were gone, she used almost all her part-time employment income to pay the 2016 expenses associated with her small business, including fees and assessments for the professional organization, which have amounted to \$1,586.75.
- These payments are a personal loan from her to her business. She has reported the expenses to the "SEPP Program" and they are tax deductible expenses.
- Her plan is to get her business up and running again on a part-time basis to supplement her PWD benefits as her current part-time employment involves walking several kilometers per day and the lupus is making her feet too painful to walk on.

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- If her PWD benefits are cut off, she will lose her shelter as she has put every spare penny into getting her small business started.
  - Pending the decision on reconsideration, she has not paid the storage company the \$312 per month storage fees for June 2016 and the storage company threatened to take the materials to the dump. The professional organization became involved and, if they take custody of the files, she will be assessed further fees.

***Additional Information submitted after reconsideration***

In her Notice of Appeal dated July 15, 2016 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that: 1) she is lending her sole proprietorship funds for self-employment income and, 2) she has received notice of possible termination of her part-time job (employment income), which she is grieving through her union.

At the hearing, the appellant submitted the following additional documents:

- 1) Undated resume for the appellant;
- 2) Letter dated June 24, 2016 to the appellant from her employer;
- 3) Sick note dated August 6, 2016 and covering the period August 7 to August 13, 2016.

At the hearing, the appellant stated that:

- She has volunteered her time in her field of expertise and has a thick folder filled with her notes. The professional organization has approved her volunteer work.
- She is still employed part-time with her current employer but the letter of June 24, 2016 explains that a failure to improve performance in identified areas will result in further administrative or disciplinary action, up to and including termination. The point she wants to make is that her future income is uncertain.
- She was involved in a personal injury trial regarding her injury in 2008, which was successful.
- An eventual award of court costs against her by the disability insurer resulted in the depletion of her savings.
- She started losing clients because of her injury since she was sleeping and making mistakes.
- The disability insurer unilaterally suspended her disability benefits and she ended up losing her house and all the contents in 2015. She had turned her home into an office from which to run her business. She has 450 banker boxes full of files and the professional organization required that she maintain them in storage. She has to pay \$312 per month to store these files.
- The only way she can pay the expenses associated with getting her business going again, by storing the files and paying the required fees to the professional organization, is by using the funds she receives from her current part-time employment.
- Instead of saving her employment income to cover her shelter expense when she was no longer eligible for disability assistance, she had to spend her income on business expenses.
- She considers the money paid by her for storage and fees and expenses of the professional organization (approximately \$5,600) was a loan to her business. She could not get a loan from any other source. She tried the bank and Money Mart and they turned her down.
- She has not paid \$312 for storage for July 2016 pending this appeal and the professional organization has threatened to take over management of her files, and there will be further charges that she thinks may be as much as \$10,000.
- The amount of her employment income reported by the ministry is accurate.

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- She has been talking to the ministry about starting a business. She has difficulty learning new things but she has worked in her field of expertise for most of her career and she can do this well. The ministry representative from the small business, “SEPP” program, told her that there was a problem because the income reported is not from clients of her business. She wanted the ministry to consider this income as a personal loan from her to her business.
  - She met with the ministry SEPP representative who gave her the forms to fill out and they are included in the appeal record. The ministry telephoned her and said the ministry does not accept employment income is a loan to the business.
  - She believes that she was accepted into the SEPP business program but she acknowledges that she did not receive a letter from the ministry confirming her participation in the program. However, she also did not receive a letter from the ministry stating that she was not accepted into the program.

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

- The appellant has had Persons With Disabilities (PWD) designation since 2014. She has been receiving disability assistance as a sole recipient at the rate of \$906.42.
- The appellant has been declaring employment income since January 2016. The appellant was eligible for the earnings exemption for her earned income from January through April 2016, and a partial exemption available for May 2016.

At the hearing, the ministry clarified that:

- When an applicant is accepted into the small business program, the ministry sends a confirming letter similar to that sent when a person is approved for PWD designation. The program has strict requirements and regulations.
- There are no pages missing from the appeal record. There was a typographical error in the reconsideration decision as the ministry has determined that the appellant’s July assistance must be reduced by the amount of her income and not “February” assistance.

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional documents provided by the appellant. The panel considered the oral testimony of the appellant and the additional documents as corroborating the previous information from the appellant regarding her personal income and her expenses. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for disability assistance for the month of July 2016, pursuant to Section 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.

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.

Sections 1 and 2 of Schedule B of the EAPWDR provide 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.

### **Deductions from earned income**

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for

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- (i) income tax,
  - (ii) employment insurance,
  - (iii) medical insurance,
  - (iv) Canada Pension Plan,
  - (v) superannuation,
  - (vi) company pension plan, and
  - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Sections 3 and 4 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;

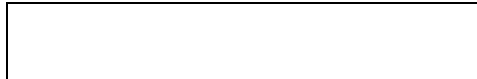
"recognized family unit", in respect of a calendar year, means a family unit that

- (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).

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- (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
    - (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.

### **Small business exemption**

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is
  - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
  - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
  - (i) the person participating, or
  - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs
  - (i) or (ii) of paragraph (h) unless
  - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
  - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.

(2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if

- (a) the recipient is participating in a self-employment program, and
- (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
  - (i) is used for permitted operating expenses of the small business, or
  - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
    - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and

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(B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or

(iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

### *Ministry's position*

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for disability assistance for the month of July 2016 because her family unit's net income (\$1,968.63) in May 2016 exceeded her assistance rate of \$906.42. 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 one-person family unit, is a maximum of \$9,600 for a calendar year. The ministry stated that as of April 2016 the appellant had earned net pay of \$9,412.95 for 2016, which leaves an exemption of \$187.05 to apply to the appellant's earned income of \$2,155.68 for May 2016. The ministry wrote that since the non-exemptible portion of the appellant's income for May 2016 (\$1,968.63) exceeded the amount of her monthly assistance (\$906.42), the appellant is not eligible for disability assistance for the month of July 2016, pursuant to Section 9 of the EAPWDR. At the hearing, the ministry added that the appellant has not been accepted into the self-employment program, which has strict requirements, and the small business exemption in Section 4 of Schedule B of the EAPWDR is therefore not available to her.

### *Appellant's position*

The appellant does not dispute the amount of employment income received but argued that she applied to participate in the self-employment program with the ministry and the expenses she has incurred to get her business going should be deducted from the employment income she received since she considered the payments a personal loan to her business. In her Notice of Appeal and in her submissions at the hearing, the appellant stated that she lent her sole proprietorship funds for self-employment income and she has received notice of possible termination of her part-time job and her future employment income is uncertain. The appellant argued that she tried to borrow money from other sources for her business expenses but her request was declined. In her Request for Reconsideration and in her submissions at the hearing, the appellant stated that if her PWD benefits are cut off, she will lose her shelter as she has put every spare penny into getting her small business started.

### *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 one-person family unit of a maximum of \$9,600 for the calendar year.

The appellant does not dispute the amount of employment income received by her in 2016, as reported by the ministry. As of April 2016 the appellant had earned net pay of \$9,412.95 for 2016, which leaves an exemption of \$187.05 to apply to the appellant's earned income of \$2,155.68 for May 2016. Since the non-exempt portion of the appellant's income for May 2016 (\$1,968.63) exceeded the amount of her monthly assistance (\$906.42), the ministry found that the appellant is not eligible for disability assistance for the month of July 2016, pursuant to Section 9 of the EAPWDR.

The appellant argued that she is entitled to take advantage of the small business exemption to deduct her legitimate business expenses from her employment income, but she also acknowledged that she did not receive a letter from the ministry confirming her participation in the self-employment program and she admitted that the ministry had advised her verbally that it is not acceptable to the ministry to characterize employment income as a loan to the business. The panel notes that Section 4(2) of Schedule B of the EAPWDR stipulates that earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if the recipient is participating in a self-employment program and the earned income is derived from operating a small business under the self-employment program in which the recipient is participating. As the appellant has not established that she is participating in a self-employment program and she acknowledged that the earned income is not derived from operating her small business under the self-employment program, but rather from her provision of work to an employer, the panel finds that the ministry was reasonable to not also apply the small business exemption.

As the non-exempt portion of the appellant's income for May 2016 (\$1,968.63) exceeded the amount of her monthly assistance (\$906.42), the panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance for the month of July 2016, 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*. The appellant's appeal, therefore, is not successful.