

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 7, 2016 which denied the appellant’s disability assistance request for October 2016 pursuant to section 9.2 of the EAPWDR on the basis the appellant received income in excess of her rate of assistance as determined under Schedule A.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 10 and 11.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 9, 24, 29.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedules A, B.

## PART E – Summary of Facts

The appellant is a single parent in receipt of Employment and Assistance for Persons with Disabilities benefits.

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

- Loan Agreement dated October 21, 2016.
- Loan Payment Agreement with photocopied attached Teller information.
- Bank chequing account activity dated October 21, 2016. Rent cheque for \$614 dated October 21, 2016.
- Monthly report from appellant dated October 20, 2016 showing Employment Income of \$272.86; Work Safe BC Financial Support-\$1293.07; and Child Tax Benefits- \$1938.00.
- View Entitlement- Wage loss document with payments dated from 2015/12/20 to 2016/07/10.
- Letter to the Ministry from the appellant re: verification of income dated October 19, 2016. In the letter the appellant notes:
  - Work Safe BC Wage loss benefits from Jan. 05, 2016 to Sept. 26, 2016 equals \$15942.06
  - Told in March 2016 she did not need to submit her stub if income had not changed.
  - Payments from Work Safe BC were the same from March 06, 2016 to July 24, 2016 of \$780.70 biweekly, this was the reason she did not submit a stub as her income did not change.
  - Attended Brain Injury Clinic June-July 2016 which was stressful and confusing.
  - Checked records and did not receive a letter from the ministry stating she had reached 75% of her exemption limit.
  - She has struggles with memory, organization, bill payments and confusion since Dec. 15, 2015; this is the main reason why she did not keep records of the payments from Work Safe BC.
- Letter from Work Safe BC dated October 7, 2016 noting the appellant's wage loss ends September 18, 2016.
- Worker injury claims form with payment dates 2016/09/04 to 2016/06/12.
- Monthly Report from appellant dated September 13, 2016 showing Employment Income of \$272.86; Other income-\$1293.07; and Child Tax Benefits- \$1938.33
- Worker injury claims form with payment dates 2016/09/04 to 2016/06/12.
- Pay slip for pay period of 08/11/2016 for a balance of \$272.86.
- Letter from Interior Community Services re: Tenant Rent Report. Effective Oct. 01, 2016 to March 31, 2017 Tenant rent contribution- \$614.00; Rent Subsidy-\$119.00; Next income Review-April 01, 2017.

In the appellant's Notice of Appeal, she wrote she has:

- a number of loans have been paid,
- applied for Employment Insurance,
- struggled with confusion, headaches, dizziness, neck pain and vision issues since her concussion on December 15, 2015
- other issues she is dealing with at this time such as the loss of her grandfather and brother as well as her daughter's miscarriage.

At the hearing, the appellant stated she:

- was working until she fell and suffered a concussion on December 15, 2015,
- is currently appealing the decision of Work Safe BC which stopped her benefits in September 2016,
- has been too stressed with the head injury and family issues and has asked for help from many other agencies,
- has been attending counselling and as a result has a safety plan in place for her and her children as she has considered suicide,
- has applied for hardship assistance,
- wants to be more aware of the legislation and procedures which are to be followed.

At the hearing, the appellant was asked questions which she responded to.

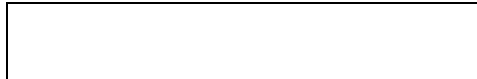
- Question: (panel member)
  - Was she (the appellant) aware of the annual exemption amount of \$9600?
- Response:
  - Yes, she was aware of the annual amount but she was not informed by the ministry that she was at 75% of the total.
- Question: (Ministry Rep)
  - Did she (the appellant) declare Work Safe BC income from January to June?
- Response:
  - No as she had been informed by a ministry employee (twice) that if the amount did not change each month she did not have to send in the “stub”.

At the hearing, the ministry stated:

- work Safe BC payments are considered earned income and are to be reported monthly,
- as September’s income had exceed the allowable amount, the appellant was not eligible for October assistance,

At the hearing, the ministry representative was asked questions which she responded to.

- Question: (Appellant)
  - Was the ministry aware the appellant had suffered a concussion?
- Response:
  - The ministry appreciates the situation of the appellant but this does not change the legislation. Once the earning exemption has been reached, the appellant is not eligible for assistance.
- Question: (Appellant)
  - Doesn’t the ministry know what Work Safe BC is paying each month?
- Response:
  - The appellant must declare income each month. If no declaration is made, the ministry assumes no income was received.
- Question: (Panel Member)



- To clarify: If the appellant had income in January and in February there is no change, is she to make a claim in February as well?
- Response:
  - Yes. This is where the appellant may be confused.
  - (appellant interjected)- She didn't think she had to submit a stub as she had been informed twice by ministry personal if the claim did not change, she did not have to submit a claim. The appellant assumed the ministry would know she is receiving the funds from Work Safe BC.
  - Ministry response to interjection- It is too bad the appellant received wrong information although there is nothing in the appellant's file to verify this misinformation.

In the reconsideration decision, the ministry noted:

- The appellant declared employment income of \$1938
- The amount of assistance determined under Schedule A of the (EWAPDR) for the appellant's family unit composition and size was determined to be \$1553.28.
- As the appellant has exhausted her Annual Exemption, the amount of net income for her family unit (to affect October income assistance), determined under Schedule B of the (EAPDR), is \$1565.93
- As the appellant's net income of \$1565.93 exceeded the amount of assistance determined under Schedule A (\$1553.28), she is not eligible for October income assistance.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for disability assistance for October 2016, pursuant to section 9.2 of the EAPWDR on the basis the appellant received income in excess of her rate of assistance as determined under Schedule A is reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is as follows:

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

#### **Reporting obligations**

**11(1)** For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form prescribed by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

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

#### **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.

#### **Amount of disability assistance**

**24** Subject to section 24.1 (3), 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.

## Reporting requirement

**29** For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

## Employment and Assistance for Persons with Disabilities Regulation

### Schedule A

#### Disability Assistance Rates

#### Maximum amount of disability assistance before deduction of net income

**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

- (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*.

## **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,

(a) the following are exempt from income: **(No exemptions were applicable in this appeal).**

(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 3, 7 and 8.

#### **The appellant's position**

The appellant's position is that due to confusion as a result of her accident of December 15, 2016 and the stress of family issues, and the misinformation supplied by ministry personal, she was not aware she had reached the allowable annual income exemption in August 2016 and was under the impression her assistance would change to hardship assistance.

#### **The ministry's position**

The ministry in viewing the evidence has determined the appellant has a net income in August 2016 which exceeds the amount of assistance determined under Schedule A of the EAPWDR and therefore she is not eligible for October income assistance.

#### **Panel Decision**

The panel is sympathetic with the situation of the appellant in terms of her medical condition and family situation. Both the appellant and the ministry acknowledge there may have been miscommunication in terms of Work Safe BC payments however, without evidence the panel cannot determine what impact this would have had with the ministry's decision to deny the appellant's October disability assistance.

Section 9 (2) of the EAPWDR states: 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 evidence shows the appellant in August 2016 was entitled to an amount of \$1553.28 as per Schedule A of the EAPWDR. As the appellant had exhausted her annual exemption, the amount of net income for her family unit (to affect October income assistance), determined under schedule B of the EAPWDR was \$1565.93. As the net income (\$1565.93) exceeds the amount of assistance determined under Schedule A(\$1553.28) the panel finds the ministry was reasonable in determining that the appellant was not eligible for disability assistance for October.

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### **Conclusion**

Having reviewed and considered all of the evidence and the relevant legislation, the panel determines that the ministry's decision that appellant is ineligible for disability assistance for the month of October 2016 was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant is not successful in her appeal.