PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 08 November 2016 that determined that, based on the records provided by the appellant, $4300 of $4450 he received in August 2016 must be applied to his annual earning exemption (AEE).
The ministry also denied the appellant's request to exempt the $500 cost for the purchase of raw material for an artwork project. The ministry determined that the appellant was not eligible for this exemption, as he was not participating in the Self-Employment Program (SEP), and therefore he could not deduct this amount as permitted under section 4 of Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Thus the full amount of the advance must be applied to his AEE, as provided under section 3 of Schedule B of the EAPWDR.

The ministry found that $150 that the appellant received to reimburse the cost of supplies he provided to participants of a workshop program will not be treated as income.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1 and 24 and Schedule B, sections 2, 3, 4, and 5.

PART E – Summary of Facts

The evidence relevant to this appeal before the ministry at reconsideration included the following:

1. The appellant is a recipient of disability assistance, as a member of a family unit that includes 2 recipients, with only his spouse designated as a person with disabilities.

2. On 08 September, the appellant submitted his monthly report for August 2016 income, with reported income of $4000. Attached to his report were the following records:

    - A) An invoice to an organization for $1650 for facilitating a workshop program, itemized as follows: $1200 for facilitation fees (3 days @400/day), $300 for co-facilitator fees for language and cultural support (3 days @100/day), and $150 for supplies provided (paint and paint brushes, exercise books, pen, pencil, etc.).
    - B) Cheque stubs from a community centre for $300 for 3 2-hour cultural sessions (@ $50/hour).
    - C) A receipt dated 19 August 2016 for $2500 as an advance for an artwork project. The appellant advised the ministry that the $2500 payment was an advance for a project, and that he paid $500 for raw materials for the project. The appellant did not provide a copy of a receipt for the raw material.
    - From the above, the ministry determined that the appellant's earned income for August 2016 was $4450.

3. On 14 September 2016, the appellant spoke with a ministry Assistant Supervisor, who explained that there is no exemption for expenses unless he was participating in the SEP. The Assistant Supervisor discussed the program with him, but he indicated that he was not interested.

4. The appellant's Request for Reconsideration, dated 14 October 2016, requesting a 10-business day extension to provide further information. He made a subsequent submission dated 03 November 2016. The submission goes to argument relying on a 2012 reconsideration decision regarding the deductions allowed for expenses associated with his workshop facilitation work (see under *Appellant's position* in Part F, Reasons for Panel Decision, below).

5. The above-mentioned reconsideration decision dated 01 May 2012 (the 2012 decision) that addressed money that the appellant had received as reimbursement for travel costs in the course of his work. This decision quotes the definition of "earned income" in the EAPWDR as including "any money or value received in exchange for work or the provision of a service." It states, "This definition describes only money or value received in exchange for work or the provision of a service." It goes on to state, "Any money a person receives for the cost of travel is not for the 'exchange for work' or 'the provision of a service,' and is therefore not included in the person's income.

The appellant's Notice of Appeal is dated 17 November 2016. Under Reasons for Appeal, the appellant writes:

> "The ministry decision is contradictory. I have been given direction to go on SEP and then non-receipted expenses are allowed but receipted expenses are not allowed among other

inconsistencies."

The hearing

At the hearing, the appellant submitted the following records:

- His August 2016 Monthly Report, showing income of $1200 for the workshop facilitation, $300 for the cultural sessions at the community centre, and $2500 for the artwork.
- A receipt dated 12 September 2016 in the amount of $500 for raw material for the artwork, and
- A receipt dated 19 August 2016 for $300 paid to a co-facilitator sub-contractor for cultural and language support.

The appellant spoke to a 10-page submission. In his submission, the appellant reviewed his background, the sporadic nature of his work, his responsibilities in caring for his seriously ill spouse and the challenges he faces in augmenting the family income, his frustrations in dealing with multiple ministry workers on AEE and SEP issues, what he perceives as persistently contradictory and convenient reinterpretation of AEE policies, what he views as the punitive provisions of the AEE, and the failure of the ministry to apply the 2012 decision when it included as income the fee for the workshop co-facilitator and not allowing him to deduct the costs of the raw material for his artwork. The balance of his submission goes to argument (see Part F, Reasons for Panel Decision, below).

The appellant explained that it was a condition of the organization sponsoring the workshop program that he be accompanied by a co-facilitator with expertise in language and cultural matters .

The appellant took issue with the ministry not sending him a promised letter advising him that he was approaching the 75% of his AEE. He also stated that in 2012, he was advised that the SEP "was full."

The ministry stood by its position at reconsideration. The ministry representative stated that the SEP is never full. It is open to any recipient of disability assistance who wishes to participate. The ministry representative also noted that the "approaching the AEE threshold" letter was never sent because before his August report his AEE balance was below the 75% threshold and his August Report put him near his AEE limit in the same month.

Admissibility of additional information

The panel finds that the records submitted by the appellant at the hearing and his explanation of the role of the workshop co-facilitator are in support of the records information and records before the ministry at reconsideration, as this information tends to corroborate the information before the ministry when it made its decision. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act.*

The panel accepts the appellant's submission as argument.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- That, based on the records provided by the appellant, $4300 of $4450 he received in August 2016 must be applied to his AEE.
- That the appellant was not eligible for an exemption for the $500 cost of the raw material for his artwork project, as he was not participating in the Self-Employment Program (SEP), and therefore he could not exempt this amount as allowed under section 4 of Schedule B of the EAPWDR. Thus the full amount of the advance must be applied to his AEE, as provided under section 3 of Schedule B of the EAPWDR.

At reconsideration, the ministry found that the $150 that the appellant received to reimburse the cost of supplies he provided to workshop participants will not be treated as income.

On appeal, the appellant disputed the ministry's decision that the $300 fee to cover the cost of the workshop co-facilitator must be included as income from his work facilitating workshops. He also disputed the ministry's denial of his request to exempt the $500 cost of raw material for his artwork project from the $2500 advance he received.

The panel will address these 2 issues below.

The applicable legislation is from the EAPWDR:

Definitions
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.
(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;

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.

And from Schedule B of the EAPWDR:

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;

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,

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
(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 7.

Withdrawals and expenditures from reserve account

5 The amount of any expenditure or withdrawal out of a separate account described in section 4 (2) (b) (ii) of this Schedule, is earned income for all purposes of this regulation, unless

(a) the expenditure or withdrawal is for the payment of permitted operating expenses of the small business referred to in section 4 (2) of this Schedule, and

(b) in the case of a withdrawal, the amount withdrawn is used within one month after the date of withdrawal to pay permitted operating expenses of the small business referred to in section 4 (2) (b) (i) of this Schedule.

$300 Co-facilitator fee

Appellant's position

The appellant's position, as explained in his submission and his testimony at the hearing, is that the 2012 decision sets a precedent for him to be able to deduct expenses from this income. He has been doing so since receipt of that decision, being diligent to provide the ministry information on with all monies earned. He argues that the ministry is using an invoice (request for payment) instead of a receipt (balance paid) to calculate monies earned to apply to the AEE. However, the intention of providing the invoice was to identify clearly what is "earned" versus "paid-out expenses." The 2012 decision revolved around the same definitions of "earned income" and "unearned income." He did not and does not personally gain financially from having to pay out monies to a sub-contractor. The monies that are clearly recorded in the invoice are there as a request for monies to pay the sub-contractor a fair wage. Having to pay again this amount of $300 towards the AEE is highly punitive and highly detrimental to his future efforts to employ a sub-contractor/co-facilitator.

He considers the SEP as a separate administrative agency. He asks why he is once again being instructed to participate in the SEP even though since 2012 he has already been doing "the same work that SEP would be doing for [him]."

Ministry's position

The position of the ministry, as set out in the reconsideration decision, is that the ministry has approved the appellant's request to exempt the $150 he received from the sponsoring organization, as it is clear that this is reimbursement for supplies only and will not be treated as income. The balance of the $1500 is earned income as he received it in exchange for the facilitation work for the program and therefore it affects his AEE.

Panel decision

The appellant argues that the 2012 decision sets a precedent for him to deduct expenses from his income. The 2012 decision related to a particular circumstance: the appellant had a contractual agreement with his sponsoring organization that in addition to paying him for his services, it would also pay him for his travel costs as he travelled to many remote locations for this work. The decision quotes the definition of "earned income" in the EAPWDR as including "any money or value received in exchange for work or the provision of a service." The decision states, "This definition describes only money or value received in exchange for work or the provision of a service." It goes on to state, "Any money a person receives for the cost of travel is not for the 'exchange for work' or 'the provision of a service,' and is therefore not included in the person's income.

Similarly, in the reconsideration decision under appeal, the appellant invoiced the sponsoring organization $150 for purchasing and packaging workshop supplies for workshop participants. The ministry understood that the money paid was to reimburse the appellant for providing supplies to the workshop participants; the $150 was not in exchange for the provision of his workshop facilitation services. Therefore this amount would not be treated as income.

Considering that these decisions applied to circumstances where the money received was not "in exchange for work or the provision of a service," the panel finds that these decisions do not establish a precedent that would permit the appellant, while not participating in the SEP, to deduct (or to use the language in the legislation, "exempt") from income all expenses incurred that are integral to activity that results in *any* money received in exchange for work or the provision of a service.

Regarding the issue under dispute, the appellant received $1500 from the sponsoring organization in exchange for providing workshop facilitation services. Part of this amount, $300, was for the hiring of a co-facilitator. In his submission, the appellant acknowledged that the $300 was an "expense" for a "sub-contractor." At the hearing, the appellant explained that one of the conditions set by the sponsoring organization was that he retain the services of a "co-facilitator" to provide language and cultural support: he would not have been able to provide his workshop facilitating services without hiring a person with this expertise. To the panel, this means that the payment for the co-facilitator was a necessary expense for the appellant to receive money in exchange for providing his facilitation services. Given the definition of "earned income" to mean "*any* money … received in exchange for work or the provision of a service," the panel finds that the ministry reasonably determined that the $1500 the appellant received for workshop facilitation must be treated as earned income.

Section 24 of the EAPWDR states that the amount of monthly disability assistance for a family unit is the amount determined under Schedule A, minus the family unit's net income determined under Schedule B. For earned income, net income is determined by subtracting the deductions permitted under section 2 of Schedule B (deductions at source such as income tax, CPP, EI, etc.) and the exemptions permitted under section 3 (the AEE) and section 4. Section 4 provides for the exemption of permitted operating expenses in the operation of a small business, but only if the recipient is participating in the SEP. As the appellant is not a participant in the SEP, an exemption for the expense of the "sub-contractor" in the appellant's workshop facilitation business is not available to him.

The panel notes that this methodology for the determination of net income is set out in legislation, and is applicable to all recipients of disability assistance. In the panel's view, the appellant cannot expect his operating expenses to be exempt *as if* he were participating in the SEP while declining to actually enroll in the program.

Based on the foregoing, the panel therefore finds that the ministry was reasonable in determining that the full $1500 the appellant received in exchange for his workshop facilitation services in August 2016 must be applied to his AEE balance.

$500 raw material cost for artwork project

Appellant's position

In his submission and at the hearing the appellant took the same position as he argued above regarding the workshop co-facilitator fee. He writes that first he has to purchase supplies, such as the raw material for the artwork project, to fulfill his work. He does not understand how he benefits financially by incurring expenses. He finds the decision highly punitive and "at best very confusing" and it has affected his confidence in the ministry's AEE policies and its adamant position for implementing SEP as a prerequisite

Ministry's position

The position of the ministry, as explained in the reconsideration decision, is that, as the appellant is not participating in the SEP the ministry is unable to deduct operating expenses. The receipt the appellant provided describes that the $2500 is a deposit for the artwork that he reports will take a year to complete. The receipt does not identify that the deposit includes reimbursement for supplies, nor did he provide a copy of the receipt he received for purchasing the raw material. As such, the full $2500 he received as a deposit must be treated as income and applied to his AEE.

Panel decision

On 19 August 2016 the appellant was paid $2500 as an advance for an artwork project that will take him some time to complete. As the appellant received this amount in (albeit partial) exchange for work in producing the artwork, the panel finds that the ministry was reasonable in determining that this amount was earned income. As discussed above in connection with the $300 co-facilitator fee, the only deductions and exemptions from earned income permitted are those provided in the EAPWDR Schedule B, section 2 (standard deductions at source), section 3 (the AEE) and section 4 (permitted operating expenses). Section 4 applies only to operating expenses incurred in operating a small business under the SEP.

The panel notes that the receipt for $500 from the raw material supplier is dated 12 September 2016, while the reconsideration decision applies only to August 2016 income. Nevertheless, the cost of the raw material for the artwork project would be a permitted operation expense under section 4, if paid out of the separate account described in section 4(2)(b)(ii) of Schedule B, into which the $2500 had first been deposited. However, as the appellant is not a participant in the SEP, the panel finds that the ministry was reasonable in determining that the $500 cost cannot be exempted from the appellant's income and that therefore the $2500 must be applied to the appellant's AEE balance.

Conclusion

Considering the above analysis, the panel finds that the ministry's decision that $4300 be applied to the appellant's AEE is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.