



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 19, 2017 wherein the ministry determined that the appellant was not eligible for disability assistance for the month of January 2017 as per section 9(2) Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) because her net income of \$1399.19 in November 2016 exceeded her monthly disability assistance rate of \$1284.08.

### PART D – Relevant Legislation

EAPWDR – Sections 1, 9, and 29 ; Schedule A Sections 1, 2 and 4; Schedule B Sections 1, 3 6 and 7

## PART E – Summary of Facts

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

- Letter from employer 1 dated November 3, 2016 confirming the appellant is employed full time with them.
- Paystub from employer 1 with cheque date October 27, 2016 showing year to date net pay in the amount of \$7,136.96
- Employee detail report from employer 2 dated December 5, 2016 showing the appellant's pay history from March 18, 2016 to July 8, 2016 showing total net pay of \$3,072.07
- Request for Reconsideration dated January 6, 2017 which noted the following:
  - January monthly report dated January 3, 2017 declared employment income of \$2200.78
  - Annual Earning Exemption (AEE) for 2016 calendar year had been exceeded
  - Amount of disability assistance the appellant is eligible for is \$983.42
- Paystubs from employer 1 for cheque dates November 3, 10, 17, 21 and December 8, 15 and 22
- Letter from employer 1 dated December 30, 2016 indicating the appellant is currently on a winter/Christmas slowdown with an expected return to work date of January 4, 2017

In her Notice of Appeal the appellant wrote that she only had enough money to pay rent as she went 3 weeks without work from Dec 16, 2016 to Jan 4, 2017. She wrote that she has car insurance and bills due.

At the hearing the appellant stated that she had been employed by two different employers in 2016, and that her work is sporadic. The appellant acknowledged that she was aware of the yearly exemption limit of \$9600 and that she had reached that limit in October 2016. She was also aware that any earnings after the limit being reached would affect the amount of her disability assistance. The appellant noted how hard it is to budget when her earnings are deducted two months later because with the type of work she does, she cannot predict how much work and pay she would receive. The appellant explained she unexpectedly had to move herself and her two children in December 2016 and that this resulted in extra expenses for moving. The appellant stated she had received her November disability assistance but nothing for December.

The appellant stated that she submitted two reports on January 3, 2017, one declaring all her November earnings and one declaring all her December earnings. The appellant stated she was aware that her November earnings would affect her January disability assistance and that she would not receive a cheque, and that the report declaring her December earnings would calculate her February disability assistance. She stated she was told she would not receive any disability assistance for February. The appellant stated she was confused as she believed this hearing was to review that she had not received her February disability assistance cheque, not the January one.

At the hearing the ministry pointed out what appeared to be a discrepancy in the rate of disability assistance. The request for reconsideration initially quoted the single person rate of \$983.42 and the reconsideration decision quoted the single parent rate of \$1284.08. The ministry explained that during the reconsideration period there had been a review of the appellant's file as they had been awaiting confirmation of dependents living with the appellant. The ministry explained that the annual earnings exemption of \$9600 was the same rate whether a single person or a single parent .

The ministry relied on its reconsideration decision and emphasized that legislation sets the reporting requirements such that November earnings are deducted from January disability assistance and December earnings are deducted from February disability assistance. The ministry noted that the appellant had received her November assistance and also a subsidy of \$745.11 for December, and advised the appellant to contact the ministry if she had not received it. The ministry noted that appeal benefits had been issued to the appellant on January 30, 2017.

## PART F – Reasons for Panel Decision

The issue under appeal is the ministry's reconsideration decision that held that pursuant to section 9(2) of the EAPWDR the appellant was not eligible for disability assistance for the month of January 2017 because her net income of \$1,399.19 in November 2016 exceeded her monthly disability assistance rate of \$1,284.08 was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

### Relevant Legislation – EAPWDR

#### Definitions

##### Section 1 (1)

"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 residence

##### Section 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.

#### 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.

**Schedule A** of the EAPWDR sets out the 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.

## **Schedule B - Net Income Calculation**

### **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

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 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

(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,

.....

(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;

.....

#### *Appellant's Position*

The appellant's position is that it is very difficult to budget when earnings from a previous month are deducted an additional month into the future, particularly when she works at employment that does not have regular hours. The appellant had thought this hearing would address her non-receipt of February disability assistance.

#### *Ministry's Position*

The ministry's position is that as the appellant has been a sole recipient of disability assistance for all of 2016 and therefore has a base earnings exemption of \$800 per month or \$9600 annually and once she reaches this threshold any additional earnings are deducted dollar for dollar from her disability assistance. The ministry argued that income for November 2016 and reported in December affects her eligibility to receive disability assistance in January 2017. The ministry's position is that at the end of October 2016 the appellant reached her AEE and when her net income was calculated for November 2016 it was determined to be \$1,399.19, which resulted in her net income exceeding her monthly disability assistance rate of \$1,284.08. The ministry argued that since her net income in November 2016 exceeded her disability assistance rate she was not eligible for disability assistance in January 2017 as set out in section 9(2) of the EAPWDR.

#### *Panel Decision*

The panel notes that although the appellant believed she was at the hearing to review her February disability assistance, there is no evidence in the appeal record to this effect, and therefore the panel's

role is to review the reconsideration decision of January 19, 2017 which cited that the appellant was not eligible for January 2017 assistance.

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 how earnings that are deducted two months later affects her budgeting. 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 reached her maximum earnings exemption for 2016 by the end of October 2016. As a result, the earnings declared as received in November 2016 for \$1,399.19 is the amount determined under Schedule B. This amount exceeded her January 2017 disability assistance rate of \$1284.08 as determined under Schedule A, and the ministry reasonably determined that she was not eligible for disability assistance in January.

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 January 2017 is reasonably supported by the evidence and confirms the decision.