

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 4, 2017, which determined that the appellant was ineligible for January 2017 disability assistance because he had exhausted his annual earnings exemption as calculated under Schedule B, section 3 of the Employment and Assistance for Persons with Disabilities Regulation, and received income in excess of his rate of assistance contrary to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 9(2), 29, Schedule A, Schedule B section 1, 3

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

- Appellant's bank statements for January-November 2016
- Appellant's payroll stub for the period Nov 10-24, 2016
- Appellant's payroll stub for the period Nov 25- Dec 15, 2016
- Monthly report to the ministry, dated Dec 15, 2016 indicating income of \$1406.95
- Monthly report to the ministry, dated Dec 16, 2016 indicating income of \$1398.64

The following information is referred to in the reconsideration decision as having been received by the ministry on December 22, 2016 but was not included in the appeal package before the panel on appeal

- A Request for Reconsideration, dated December 22, 2016 – the ministry sections 1 and 2 of the Request for Reconsideration were included, noting that the appellant had requested reconsideration. The Reconsideration Decision specifically noted that a signed Request for Reconsideration was received in December, 2016, but the actual request section 3 signed by the appellant was omitted.
- The appellant's employee loan application, eviction notice, written statement and a Residential Tenancy Branch Dispute Resolution Decision.

Notice of Appeal

In the Notice of Appeal, dated December 17, 2016, the appellant wrote "please see lined attachment" and included the following documents:

- A copy of the appellant's adjournment request (dated 12-17-2017) stating that the reason for request was "awaiting ministry information from a freedom of information request"
- A letter from the ministry, dated December 19, 2016 informing the appellant that an overpayment may have occurred due to ministry error in calculating his remaining annual earning exemption for Dec 2016 benefit month
- A copy of the reconsideration decision letter, dated January 4, 2017
- A handwritten letter from the appellant as part of the Notice of Appeal to the tribunal (dated 12-17-2017) which stated the following:
 - *With respect to his initial application for PWD on April 6, 2016 the BCEA states that applicants who are already designated as a PWD and are re-applying for disability assistance are eligible for disability assistance retroactively on the date of their application.*
 - *Also, contrary to the act he has not received an AEE threshold letter which he should have received when he reached 75% of his threshold (Form HR 3508).*
 - *With the decision of the reconsideration tribunal he has been placed in a worse position to when the decision was applied because now he has to undertake another eligibility review from the ministry mistake due to his AEE threshold being prorated making him ineligible until March 2017.*
 - *For him to meet eligibility requirements he has to take an unpaid leave of absence due to earnings over legislation.*
 - *He will not have resources for rent or food leaving him in a worse position.*
 - *He is awaiting ministry information and will submit once said information becomes available which is pertinent to the tribunal proceeding.*

At the Hearing

Appellant's Submission

At the hearing the appellant stated that he was informed of an overpayment when he went to pick up his cheque in December. He had no prior notification and had not received a "threshold letter". The AEE sheet he received shows a manual adjustment on December 19. He stated that his eligibility should not be impacted if he had no knowledge of the limit due to ministry error and will now have to repay \$692 due to ministry error. The appellant stated that he is ineligible until May 2017 and will need to increase his hours at work to pay bills or take an unpaid leave from work. He does not understand why a threshold letter was not provided. The appellant stated that he needs to maintain his support for rent and prescriptions costs as he is only able to work 2 days per week due to his medical conditions. He is willing to supply a letter from his doctor to this effect.

The appellant also spoke to new information, which is outline below under "New Information"

Ministry's Submission

The ministry relied on its reconsideration decision at the hearing.

New Information

At the hearing, the appellant stated that he is married (since October 2015) to a person who has PWD status. He submitted that because both he and his spouse have PWD status, the annual earnings exemption should increase to \$1600 per month for the family unit. The appellant indicated that his spouse does not work and the AEE for the family unit could be used to exempt his income. The appellant stated that if he had known about this, despite he and his spouse living in separate residences, he would have disclosed this information as soon as he was married.

The ministry representative objected to the admission of this evidence because it is new information and did not factor in to the ministry's reconsideration decision.

Admissibility of Additional Information

The panel determined the information provided in the Notice of Appeal as well as the additional information provided at the hearing was admissible under s. 22(4) of the EAA as it relates to information before the minister at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in determining that the appellant was ineligible for January 2017 disability assistance because he had exhausted his annual earnings exemption as calculated under Schedule B, section 3 of the EAPWDR, and received income in excess of his rate of assistance contrary to section 9(2) of the EAPWDR. More specifically, the issue is whether the evidence reasonably supported the following determinations or whether they were a reasonable application of the legislation in the appellant's circumstances:

- The ministry determined that the appellant had exhausted his exhausted his annual earnings exemption of \$7200 as calculated under Schedule B, section 3 of the EAPWDR
- The ministry determined that the appellant had received income in excess of his rate of assistance contrary to section 9(2) of the EAPWDR making him ineligible for January 2017

The regulation provides:

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. [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;

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.

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

...

Schedule B

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*.

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).

(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.

(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.

Annual earnings exemption

Schedule B, section 3 of the Employment and Assistance Regulation sets out the calculation for the annual earnings exemption (AEE) as 12 minus the number of months in the calendar year prior to the qualifying month multiplied by the base amount for the family unit.

Appellant's Position

The appellant argues that the ministry did not inform him that the AEE would be prorated for the 2016 calendar year resulting in a limit of \$7200. The appellant further argues that the ministry's failure to provide him with a "threshold letter" when he reached 75% of his AEE so that he could make arrangements with his employer to take an unpaid leave of absence and maintain his eligibility for

disability benefits. He argues that his eligibility should not be impacted if he had no knowledge of the limit due to ministry error. He stated that he was not informed of his ineligibility until he went to pick up his December cheque.

The appellant also argues that, because he is married to a person who also has PWD status, the AEE for his family unit should be increased to \$1600 per month.

Ministry's Position

The ministry's position is that the legislation is clear about the AEE calculation and there is no discretion to calculate the appellant's AEE as anything other than \$7200. The ministry argues that a "threshold letter" was not sent to the appellant because this letter is automatically generated for clients by the system according to the information that is entered; however, in the appellant's case information was not submitted on time according to legislated timelines, which resulted in manual adjustments needing to be made and this is why the system did not trigger the letter.

The ministry's position is that the appellant's AEE cannot be retroactively increased. Rather, the AEE can only be determined on a going forward basis from the date that information is provided.

Panel Decision

The panel finds that the appellant, despite being a family unit that includes two recipients who are designated as persons with disabilities, had not informed the ministry of his marriage prior to the hearing. The panel further finds that there is no dispute that the appellant's qualifying month is April 2016. The panel also notes that neither party was able to point to a legislative requirement for a "threshold letter" to be issued when a client reaches 75% of their AEE, and finds that there is no requirement for such a letter. As such, the panel finds that the ministry's conclusion that the appellant had reached his AEE of \$7200 was reasonable.

Excess income

Section 9(2) of the EAPWDR provides that a family unit is not eligible for disability assistance for the month following the month in which the excess income was earned if the net income of the family unit equals or exceeds the amount of disability assistance for that family unit.

Appellant's Position

The appellant does not dispute being in receipt of \$1339.47 in November 2016, which he acknowledges should have been reported by December 5, 2016. The appellant argues that he deals with several health issues that keep him bed-ridden and the first time he was informed of his ineligibility was when he went to pick up his December cheque. The appellant argues that he needs to maintain his support because he needs it for rent and prescriptions costs because he can only work 2 days per week due to his medical conditions. He further argues that, but for ministry error, he would have been able to make arrangements that would allow him to maintain his eligibility.

Ministry's Position

The ministry's position is that the appellant was not informed of his ineligibility until he went to pick up his December cheque because the appellant's monthly report information had not been submitted on time and the initial submission was wrong, which resulted in a manual adjustment being made and the appellant being informed that he was ineligible.

[]

The ministry further argued that the appellant cannot take a leave of absence from work in order to maintain his eligibility because ministry support is a last resort; as such the appellant is required to pursue any and all income available to him and failure to do so can result in sanctions or ineligibility.

Panel Decision

The panel finds that the appellant does not dispute being in receipt of \$1339.47 in November 2016, which should have been reported by December 5th as directed by EAPWDR and because this income exceeds the appellant's disability rate of \$963.42, there is no eligibility for the month of January 2017. The panel finds that the ministry reasonably concluded that the appellant was not eligible for January 2017 disability assistance under section 9(2) of the EAR.

Conclusion

Having reviewed and considered the evidence and relevant legislation, the panel finds that the ministry's Reconsideration Decision, which determined that the appellant was ineligible for January 2017 disability assistance because he had exhausted his annual earnings exemption and received income in excess of his rate of assistance, was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel confirms the reconsideration decision. The appellant is not successful in his appeal.