

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 21, 2017, which found that the appellant is not eligible for disability assistance (DA) for the month of September, 2017. The ministry determined that the appellant's income is earned income as defined under section 1(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and is subject to the annual exemption limit for qualifying income outlined in section 3 of Schedule B, EAPWDR. The ministry found that the appellant reached the maximum earnings exemption limit in April, 2017 and that income received after that date must be deducted from his disability assistance in accordance with section 24, EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1(1), 9, 24; Schedule A, sections 1, 2, 4; Schedule B sections 1, 2, 3

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A copy of a letter to the appellant from his employer dated January 27, 2017 confirming his change of status from casual to regular as permanent part-time (0.9 FTE) with medical, group health, long term disability, vacation and sick leave and paid holidays benefits.
- A letter from the appellant's employer "To whom it may concern", undated, stating that the appellant has been employed as a support worker since 2015.
- A facsimile from the appellant's case manager dated March 7, 2017, stating that the appellant's income was exempt when he worked in a similar position with a different employer.
- Copies of 15 pay advice statements for the appellant for pay periods from December, 2016 to July, 2017, showing gross pay and deductions for union dues, Employment Insurance, Canada Pension Plan and taxes.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the appellant's name, dated September 3, 2017.
- A copy of a job posting for a Housing First Support Worker, permanent part-time.
- A copy of the appellant's certificate of completion of a Peer Support Worker training program.
- A copy of a ministry policy "Ministry of Health Services/Health Authority Therapeutic Volunteer Program and Other Volunteer Stipends, dated May 1, 2005, with the section "Payments to a person with a mental disorder who provides formal or informal peer support in accordance with the Ministry of Health Peer Support Manual shown as "not considered income" and "fully exempt".
- A letter from a physician "To whom it may concern" dated September 8, 2017, stating that the appellant is suffering with anxiety, depression and post-traumatic stress disorder and is currently unable to work as a result and that the appellant is at risk of losing his housing.
- The appellant's Request for Reconsideration, signed September 8, 2017.

The appellant submitted documents prior to the hearing:

1. A letter to the Tribunal from the appellant, also signed by a case worker, dated October 17, 2017 which stated his argument that his income should be exempt and including a letter previously submitted.
2. A statement of "Core Values" related to the appellant's employment.
3. A copy of a job posting previously submitted.

The ministry did not object to the admission of documents 1 and 3. The Panel accepted these two documents as argument and admitted the Statement of Core Values (number 2) under section 22(4) of the Employment and Assistance Act (EAA), as they are in support of information that was before the minister when the decision was made.

At the hearing the appellant submitted the Decision section of a Reconsideration Decision of a different person related to a similar matter dated March 30, 2015. This document was accepted by the Panel as part of the appellant's argument.

The appellant stated that his previous income with another agency was considered to be exempt as he was a peer support worker, but his new position with another agency, which has similar duties, is not considered by the ministry to be exempt. The appellant stated that he is a peer support worker who was hired because he has had mental health and addiction issues and he can identify with the clients he serves. He stated that all of his work is support based; he provides duty logs and data base information about clients to provide support as needed. He referred to the statement of core values he provided to the Panel. The appellant stated that the ministry thinks he is working full-time, but he is actually permanent part-time with benefits. He stated that he attempted to apply for a peer support exemption for his income in 2016 but was denied because the employer was not recognized as a part of the peer support program. That changed in 2017 when a peer support program was established, so the ministry told him to record his earnings as earned income until a decision was made. He stated that a ministry worker advised him by telephone that his work is peer support, his application was accepted and his income is exempt. He stated that he was told his earnings would be exempted retroactively for 2017. The appellant stated that he asked for written confirmation of this decision, but it did not come. The appellant stated that he received mixed messages from the ministry, because another person told him his job is not classified as peer support. He stated that there appears to be confusion between volunteer

peer support worker and paid peer support worker. In response to questions from the Panel, the appellant stated that the ministry did not specify why he was not eligible. He stated that he has been employed at the agency since December, 2015 and his duties are those listed in the job description – he works at different sites, some “low barrier”. He stated that he was never a volunteer.

The ministry responded by referring to the reconsideration decision, which found that the appellant is a regular employee, not a volunteer. The ministry referred to the policy excerpt, which states that payments to a person who provides peer support are exempt; however the appellant is an employee. As the appellant’s earnings exceed the annual earnings exemption, they must be deducted from his disability assistance. In response to questions from the Panel, the ministry stated that the appellant’s mental disability is not in dispute, but the policy refers to volunteer payments. With respect to the appellant’s statement that he received a telephone call from the ministry, the record shows that a call was made in March, 2017, and the worker noted that the file should be reviewed. The ministry stated that the ministry’s position is that the appellant is an employee and that the issue is not whether he is full or part time. The ministry stated that the appellant receives a salary with benefits, not lump-sum volunteer payments, and the decision is related to the volunteer aspect of his work, not the nature of the work. The ministry clarified, the appellant’s income was always classified as earned income; once such income reached the exemption limit, the exemption ended. The decision was made to review the appellant’s income and a determination was made to confirm the previous decision.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry decision which found that the appellant is not eligible for disability assistance (DA) for the month of September, 2017. The ministry determined that the appellant's income is earned income as defined under section 1(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and is subject to the annual exemption limit for qualifying income outlined in section 3 of Schedule B, EAPWDR. The ministry found that the appellant reached the maximum earnings exemption limit in June, 2017 and that income received after that date must be deducted from his disability assistance in accordance with section 24, EAPWDR.

Legislation

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. [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.

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.

Schedule A

Disability Assistance Rates

(section 24 (a))

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*.

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(a.1) subject to section 24.1 [*disability assistance in the form of transportation support allowance*], the amount set out in Column 4 of the following table for the family unit, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of base support (\$)	Column 4 Amount of transportation support (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	606.42	52.00

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

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:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) payments granted by the government of British Columbia under an agreement referred to in section

93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;

(xxvi) a loan that is

- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
- (B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

- (A) Autism Funding: Under Age 6 Program, or
- (B) Autism Funding: Ages 6 — 18 Program;

(xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(xlix) gifts;

(l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

(li) money withdrawn from a registered education savings plan;

(lii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a

- (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;

child, as defined in section 17 of that Act;

(liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee,

(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.

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;

(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.

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

(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.

5) 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.

The appellant's position is that his employment qualifies for an exemption as earned income and should not be deducted from his disability assistance in accordance with section 3, EAPWDR after reaching the maximum annual amount. The appellant argued that because he is a peer support worker, his position and income qualifies under ministry policy as fully exempt income. The appellant argued that previously his position with the same agency was not considered as exempt because his employer was not recognized as a part of the peer support program, but that changed in 2017, and his position should now qualify. The appellant argued that he received a telephone call from a ministry worker who told him that his income is exempt, but the worker never followed up in writing, and subsequently the ministry conducted a review that found his income is not exempt. The appellant argued that the ministry, in a previous reconsideration decision, exempted payments for a peer support worker which included deductions for income tax, CPP, employment insurance and union dues.

The ministry's position is that the appellant is an employee regardless of his duties. The Ministry does not dispute that the Appellant provides peer support services. In support of its position that the Appellant is an employee, the ministry noted in the reconsideration decision that the appellant is paid vacation pay, overtime pay and accrues sick time, which is not consistent with his being a volunteer, as required under the exemption set out in section 1(a)(xxix) of Schedule B, and leads to a conclusion that he is a regular employee, and therefore his earnings fall under the annual exemption limit stated in section 3 of Schedule B, EAPWDR.

Panel Decision

The Panel notes that the duties of the appellant's position and his qualification to provide support to persons with a mental disorder would appear to qualify for the exemption set out in section 1(a)(xxix) of Schedule B were the Appellant "participating in a volunteer program" in accordance with the exemption stated in ministry policy. The issue is whether the payments received by the appellant were "made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the Mental Health Act, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program" and therefore subject to the earnings exemption stated in section 3 of Schedule B, EAPWDR and whether, when his earnings reach the maximum stated in that section, they should be deducted from his disability assistance.

The Panel reviewed the job posting for the appellant's position, which states that it is 0.9 of an FTE (full-time equivalent) and is permanent part-time, and the appellant's pay advice statements, which show deductions for union dues, Employment Insurance and Canada Pension Plan among other things. The Panel notes that these deductions are indicators of regular employment, not volunteer stipends or payments. The appellant stated that he is a "peer support worker", which is supported by the job posting and other evidence from his employer. No evidence was provided, however, to show that the appellant is being supported in a mental health or addictions rehabilitation program or that his employer is a health authority or a contractor of a health authority, as required under section 1(a)(xxix) of Schedule B, EAPWDR. The Panel finds that the ministry reasonably determined that the appellant is employed, and as such, his earnings are subject to the annual earnings exemption limits stated in section 3 of Schedule B, EAPWDR, and that the ministry reasonably determined that the appellant's earnings after the maximum exemption limit is reached should be deducted from the appellant's disability assistance.

The Panel confirms the ministry decision. The appeal is not successful.