

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated February 14, 2018, which determined that under section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), the appellant was not eligible for disability assistance for February 2018 because her net income in December 2017 determined under Schedule B of the EAPWDR exceeded her disability assistance rate determined under Schedule A of the EAPWDR.

In addition, the ministry determined that the appellant had reached her annual earnings exemption (AEE) for 2017 so her employment income received in December 2017 was not exempt

### **PART D – RELEVANT LEGISLATION**

EAPWDR sections 1, 9 and 24 and Schedule A, sections 1, 2, and 4 and Schedule B, sections 1-4

## PART E – SUMMARY OF FACTS

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

- Statement of earnings dated November 15, 2017 indicating October 2017 earnings of \$539.20
- Monthly Report dated December 7, 2017 indicating the appellant's income of \$1,078 with confirmation of income as follows:
  - E-transfer November 30, 2017 in the amount of \$175
- Statement of earnings, undated indicating November 2017 earnings in the amount of \$903
- Statement of earnings dated November 15, 2017 indicating earnings of \$1,222.30 of which \$770 was for labour ("Client M")
- Monthly Report dated January 2, 2018 indicating that the appellant had employment income of \$2,429.86 and was laid off work on December 15, 2017 with confirmation of income as follows:
  - E-transfer December 5, 2017 in the amount of \$175
  - E-transfer December 19, 2017 in the amount of \$75
  - E-transfer December 28, 2017 in the amount of \$310
  - E-transfer December 28, 2017 in the amount of \$70
- Statement of earnings dated January 2, 2018 indicating December 2017 earnings in the amount of \$2,281
- The appellant's Request for Reconsideration form dated January 30, 2018 (RFR) with the appellant's letter indicating that she was laid off work on December 15, 2017, did not have enough hours to obtain Employment Insurance, that her business license expired in December 2017 and she did not have the funds to renew it, and that her phone has water damage so she has not had a phone since January 5, 2017. The RFR indicates that the appellant is barely sustaining herself with food and is very nervous about paying her February rent

### Additional information provided

In her Notice of Appeal (NOA) dated February 19, 2018, the appellant states that the income assistance system does not fully serve its purpose. The appellant states that without any secured set structure of payments throughout the year, earning beyond the AEE limit early can cause a deficiency of funds later on when they are necessary.

With her NOA, the appellant submitted a letter dated February 19, 2018 indicating that the previous amounts provided for her December 2017 income of \$2,911 (gross) and \$2,429.86 (net) were not correct, as she had received two additional cheques in the amount of \$420, bringing her gross income to \$3,331 and net income to \$2,743.38. The appellant also states that she has never deducted any self-employment expenses from her earnings that she has reported to the ministry. She states that she is aware of the Work BC Self-Employment program but it did not apply to her situation, as her expenses were minor. The appellant states that the invoice to Client M was reported as \$722.30 and not \$1,222.30 because \$500 of the invoice is a deposit from Client M for their expenses. The appellant states that the \$500 was Client M's money and not hers. The appellant also states that she is grateful for the assistance she receives, hopes that she will always have opportunities to improve herself, and hopes that one day she will not require income assistance.

The appellant asks that the ministry "...allow the \$1,182.42 as inclusive within my 2017 income benefits, as I did not receive the full term amount that I may have if I did not work beyond the AEE amount".

Prior to the hearing, the appellant provided an email dated March 15, 2018 to EAAT indicating that she believed that the tribunal has the wrong information regarding her employment income in 2017. The appellant suggested that EAAT inquire with the ministry to receive accurate information.

Prior to the hearing, the appellant provided another email dated March 18, 2018 to EAAT advising of an error in the reconsideration and appeal packages that were sent to her. The appellant states that she had a meeting with a ministry representative on January 26, 2017 where the ministry added the gross income, not the net income, and then had to re-calculate the amounts.

In addition, the appellant states that the ministry printer copied her income statements twice and the calculations were doubled. The appellant provided a table showing the ministry's list of her earnings as set out in Section 2 Decision to be Reconsidered and her report of her accurate net employment earnings for 2017 as follows (the "Appellant's Table"):

	Document p. 2 from the Decision to be Reconsidered (the "Chart")	Net Employment Earnings
January	\$1,671.06	\$3,057.09
February	\$1,465.98	\$1,497.53
March	\$2,572.53	\$2,111.26
April	\$3,072.10	\$2,864.92
May	\$2,773.60	\$2,534.63
October	\$4,134.87	\$1,270.08
November	\$1,078	\$1,002.21
December	\$4,173.24	\$2,747.38
Total	\$20,941.11	

Prior to the hearing, the ministry provided a letter dated March 19, 2018 (the Ministry Submission) indicating that although the appellant indicated that she submitted information on February 9, 2018 to be added to her application the RFR was submitted on January 30, 2018 and there was no indication at that time that the appellant intended to submit additional information. The Ministry Submission indicates that the ministry has 10 business days to complete a reconsideration decision so it was completed on February 14, 2018. The Ministry Submission indicates that the appellant's additional information was profiled to her electronic file on February 14, 2018 after the reconsideration decision had already been completed which is why it had not been included with the reconsideration decision package. The Ministry Submission indicates that the minister reviewed the additional information and finds that while the information provided may have changed the Chart it does not change the reconsideration decision that the appellant was ineligible for February disability assistance as she still continued to have income in excess for February as she had exhausted her AEE limit.

The ministry also provided an email dated March 21, 2018 indicating that it had reviewed the appellant's letter dated March 18, 2018. The email indicates that the ministry continues to rely on the reconsideration decision and the Ministry Submission.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

#### **Admissibility of New Information**

The panel has admitted the information in the appellant's NOA and emails of March 15 and 18, 2018 including the information in the Appellant's Table as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information supports the information regarding the appellant's income in 2017.

The panel has accepted the Ministry submission and the email from the ministry dated March 21, 2018 as argument.

## PART F – REASONS FOR PANEL DECISION

### ***Issue on Appeal***

The issue on appeal is whether the ministry's decision which determined that under section 9(2) of the EAPWDR, the appellant was ineligible for February 2018 disability assistance because her net income determined under Schedule B of the EAPWDR exceeded her disability assistance rate determined under Schedule A of the EAPWDR was a reasonable application of the legislation in the appellant's circumstances, or was reasonably supported the by evidence. In particular, did the ministry reasonably determine that the appellant was not entitled to disability assistance in February 2018 because she had exceeded the AEE limit in 2017 and therefore her December 2017 employment income was not exempt?

### ***Relevant 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** 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.

## **EAPWDR Schedule 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) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]

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

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	758.42

**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 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
1	1 person	\$375

**EAPWDR 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 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;
  - (lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,
- (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) \$1 000, in the case of a family unit that includes only one recipient,
- (b) \$1 200, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 000, 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.

(6)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.

(8) If October 2017 is a qualifying month, other than an initial qualifying month, for a family unit, the exemption limit of the family unit for October 2017 is calculated in accordance with subsection (7) and then increased by the amount set out in Column 2 or 3 of the following table, as the case may be, that corresponds to the earliest initial qualifying month for the family unit in 2017 set out in Column 1 of the table.

Item	Column 1 <b>Earliest initial qualifying month for the family unit in 2017</b>	Column 2 <b>Family unit that includes only one person with disabilities on October 1, 2017 (\$)</b>	Column 3 <b>Family unit that includes two persons with disabilities on October 1, 2017 (\$)</b>
1	January	2 400	4 800
2	February	2 200	4 400
3	March	2 000	4 000
4	April	1 800	3 600
5	May	1 600	3 200
6	June	1 400	2 800
7	July	1 200	2 400
8	August	1 000	2 000
9	September	800	1 600

### **Repealed**

**3.1** Repealed. [B.C. Reg. 226/2014, s. 3.]

#### **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 70.1 of this regulation.

### **Panel Decision**

### **Ministry's Position**

The ministry's position, as set out in the reconsideration decision, is that the appellant is a sole recipient with persons with disability (PWD) designation, receiving \$1,133.42 per month for disability assistance, based on \$758.42 for a support allowance and \$375 for a shelter allowance pursuant to EAPWDR Schedule A sections 2 and 4.

The reconsideration decision indicates that on September 15, 2017 the appellant's file was closed because she did not receive support or shelter for two months as she had previously reached the AEE limit for 2017, which at that time was \$9,600. The reconsideration decision indicates that on October 1, 2017 the AEE limit was increased to \$12,000 per calendar year and on October 12, 2017 the appellant's file was re-opened and the ministry determined that the appellant was eligible for an additional \$2,400 earnings exemption beginning October 1, 2017.

The reconsideration decision indicates that on January 26, 2018 the appellant was advised that she was not eligible for February 2018 disability assistance because she had reached the AEE limit for 2017 so her employment income received in December was not exempt. The reconsideration decision indicates that in November 2017 the appellant declared income of \$1,309.20 for October; in December 2017 she declared income of \$1,078 for November; and in January 2018 she declared income of \$2,429.86 for December 2017.

The ministry's position is that EAPWDR Schedule B, section 4 outlines the permitted operating expenses that may be deducted from gross income of a person operating a small business. However, as the appellant is not a participant in the ministry's self-employment program, these deductions do not apply to her. The ministry's position is that although the appellant reported a different amount, the invoice to Client M indicates that the appellant received \$1,222.30 which included payment for items including plants, truck rental, gas, transfer station and wood are not allowable deductions under EAPWDR Schedule B section 2. The ministry also determined that the \$539.20 that the appellant received from another client paid on November 1, 2017 is not included in the net income calculation for October 2017 so the minister determined that the appellant's net income received in October was \$1,222.30. The reconsideration decision indicates that the \$539.20 received November 1, 2017 is included in the appellant's November net income calculation, resulting in net earnings of \$1,617.20 for November.

The reconsideration decision indicates that the appellant declared employment income of \$2,429.86 in December but the pay verification provided confirms that her actual income in December was \$2,911. The ministry's position is that this income meets the definition of "earned income" and "qualifying income" and any "qualifying income" in excess of \$2,400 AEE for 2017 is not exempt.

The reconsideration decision indicates that the AEE goes from earnings from January 2017 to December 2017 calendar year and affects the appellant's disability assistance from March 2017 to February 2018. Income received during the previous month is reported by the 5<sup>th</sup> of the current month and affects the following month's assistance (for example, December 2017 income was to be reported by January 5, 2018 and affected February's assistance).

The reconsideration decision indicates that the appellant's employment income impacts the AEE balance from October 2017 to December 2017 as follows (the "Ministry Table"):

2017	Employment Earnings Received	Exemption applied to Benefit Month	AEE Remaining as of October 1, 2017
October	\$1,222.30	\$1,222.30 to December 2017	\$1,177.70
November	\$1,617.20	\$1,177.70 to January 2018	\$0- AEE limit reached
December	\$2,911	\$0.00 February 2018	\$0

The ministry's position is that as the appellant reached the AEE limit in November 2017 her employment income of \$2,911 received in December 2017 is not exempt and must be included in the net income calculation when determining her eligibility for February 2018. The ministry's position is that in accordance with section 9(2) of the EAPWDR, the appellant is ineligible for disability assistance for February because her net income of \$2,911 exceeds her rate of assistance of \$1,133.42.

As set out in the Ministry Submission, the ministry considered the appellant's additional submissions provided February 14, 2018 and that although the additional information provided may have changed the Chart it does not change the reconsideration decision that the appellant was ineligible for February disability assistance as she still continued to have income in excess for February as she had exhausted her AEE limit.

## Appellant's Position

The appellant argues that the ministry calculated her earning incorrectly as the ministry worker initially added her gross income, not net income, so the amounts had to be re-calculated. The appellant also states that the printer copied her income statements twice so the calculations were doubled. In her March 18, 2018 email the appellant provided the Appellant's Table as follows:

	Document p. 2 from the Decision to be Reconsidered (the "Chart")	Net Employment Earnings
January	\$1,671.06	\$3,057.09
February	\$1,465.98	\$1,497.53
March	\$2,572.53	\$2,111.26
April	\$3,072.10	\$2,864.92
May	\$2,773.60	\$2,534.63
October	\$4,134.87	\$1,270.08
November	\$1,078	\$1,002.21
December	\$4,173.24	\$2,747.38
Total	\$20,941.11	

The panel notes that the appellant did not add up the total of her net employment earnings but that they add up to \$17,085.10.

As set out in her letter dated February 7, 2018, the appellant argues that she be allowed the "...\$1,182.42 as an inclusive within my 2017 income benefits" as she did not receive the full term amount that she may have if she had not worked beyond the AEE amount. The appellant argues that the total amount of disability assistance she received in 2017 was \$8,675.34 and that if she had not exceeded the AEE limit she could have received a total of \$13,601.04 for the year so there was \$4,925.70 in excess that she could have received if she did not work. The appellant states that although she was working, it was unpredictable and she did not have a safety net when she needed it. She also states that because she was laid off she did not work one day in January 2018. The appellant argues that there should be poverty reduction strategies to offer a person more stability and to accommodate particular situations, especially when a person exceeds the AEE limit early in the year. For example, the appellant argues that the ministry could set up a structured payment system to balance the payments that "...could deter a potential plummet of funds that could cause a severe imbalance of funds".

## Panel Decision

While the appellant argues that the ministry should have poverty reduction strategies in place to offset the potential lack of ability to obtain income or disability assistance when needed if a person exceeds the AEE limit early in the year, the panel does not have jurisdiction to determine whether the ministry should have poverty reduction strategies in place. Based on the evidence put forward by both parties, panel finds that the ministry reasonably determined that it has to apply the legislation to determine whether the appellant's net income exceeds the rate of assistance for her family unit size.

The appellant argues that she should be allowed an additional \$1,182.42 as an inclusive within her 2017 income benefits as she did not receive the full term amount that she may have if she had not worked beyond the AEE limit. The appellant argues that the total amount of disability assistance she received in 2017 was \$8,675.34 and that if she had not exceeded the AEE limit she could have received a total of \$13,601.04 for the year so there was \$4,925.70 in excess that she could have received if she did not work. The panel notes that the appellant has taken steps improve her skills (math/bookkeeping courses) and to obtain work to decrease the amount of income assistance she requires. However, the panel finds that the ministry reasonably determined that entitlement to disability assistance is not determined based on the amount of total disability assistance received in 2017 absent earnings, but by applying the applicable legislation as required.

The panel finds that under EAPWDR Schedule A the appellant is entitled to \$1,133.42 per month for disability assistance, being support of \$758.42 and shelter of \$375. As per EAPWDR Schedule B, the appellant's AEE is \$12,000 for the 2017 calendar year.

EAPWDR section 29 states that income received must be reported to the ministry by the fifth of the month after it is received and that the information declared is then used to calculate the appellant's net income and eligibility for the next months' disability assistance. In particular, income received in December 2017 is reported by January 5, 2018 and affects the appellant's February 2018 disability assistance.



As shown in the Appellant's Table, she had earned \$12,033.88 as of May 2017 so she had exceeded the AEE limit of \$9,600 as of May 2017 and had in fact even exceeded the increased AEE limit that took effect in October 2017. However, the ministry provided an additional exemption of \$2,400 from October to December 2017 as the AEE limit was not increased until October 2017.

EAPWDR Schedule B section 1 states that a family's net income includes all earned income, except for the specified deductions and exemptions. The panel finds that the ministry reasonably determined that the appellant's operating expenses are not excluded from earned income, as the appellant is not a participant in the ministry's self-employment program. Accordingly, the panel finds that the ministry reasonably determined that the income from Client M, in the amount of \$1,222.30 was income. Although the appellant argues that the \$500 was Client M's money not hers and while the statement indicates \$500 was a deposit, the statement also indicates that the total was \$1,222.30. Without something further to indicate that Client M only paid the appellant \$722.30 as opposed to the total \$1,222.30, the panel finds that the ministry reasonably determined that the full \$1,222.30 was to be considered as employment earnings.

Although the appellant states that her net November 2017 earnings are \$1,002.21, the panel finds that the ministry reasonably determined that the appellant's earnings for November 2017 were \$1,617.20 based on the documents submitted showing income of \$903, \$175 and \$539.20.

Although the appellant states that her net December 2017 earnings were \$2,747.38, the panel finds that the ministry reasonably determined that her earnings were \$2,911 based on the verification of income provided as follows:

- E-transfer December 5, 2017 in the amount of \$175
- E-transfer December 19, 2017 in the amount of \$75
- E-transfer December 28, 2017 in the amount of \$310
- E-transfer December 28, 2017 in the amount of \$70
- Statement of earnings dated January 2, 2018 indicating December 2017 earnings in the amount of \$2,281

Although there may have been calculation errors in the Chart, the panel finds that the Ministry Table was an accurate calculation of the appellant's October to December 2017 employment earnings based on the information before the ministry at the time of reconsideration as follows:

2017	Employment Earnings Received	Exemption applied to Benefit Month	AEE Remaining as of October 1, 2017
October	\$1,222.30	\$1,222.30 to December 2017	\$1,177.70
November	\$1,617.20	\$1,177.70 to January 2018	\$0- AEE limit reached
December	\$2,911	\$0.00 February 2018	\$0

Based on the above, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance for February 2018 as she had exceeded the AEE limit for 2017.

The panel also finds that the ministry reasonably determined that even using the Appellant's Table that its decision that the appellant was not eligible for February 2018 disability assistance did not change as the appellant has still reached the AEE limit by December 2017. In particular, as shown in the following table, the appellant had AEE of \$237.41 remaining in December 2017. However, as she earned \$2,747.38 in December 2017, even after deducting the AEE benefit remaining of \$237.41, her income for December 2017 was \$2,509.97, which is well over her monthly disability assistance amount of \$1,133.42.

2017	Employment Earnings Received	Exemption applied to Benefit Month	AEE Remaining as of October 1, 2017
October	\$1,270.08	\$1,270.08 to December 2017	\$1,239.92
November	\$1,002.21	\$1,239.62 to January 2018	\$237.41
December	\$2,747.38	\$237.41 to February 2018	\$0- AEE limit reached

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant reached the AEE limit for 2017, that her December 2017 earnings were not exempt, and that she was not eligible for February 2018 disability assistance because her net earnings in December 2017 exceeded the ministry rate for assistance for her family unit size, is reasonably supported by the evidence and is a reasonable application of the applicable legislation. The panel therefore confirms the ministry's reconsideration decision. The appellant is not successful on appeal.