

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 3, 2018 which found that the appellant's son's income cannot be exempt from her net income calculation for determining the amount of her assistance. In particular, the ministry found that the appellant's son was a dependent child for the period in question (from January 2018 – April 2018) and therefore he was a part of the family unit pursuant to section 1 of the *Employment and Assistance Persons with Disability Act* (EAPWDA). The ministry also found that the appellant's son was not a full-time student during the period in question and therefore, pursuant to Schedule B, section 1 of the *Employment and Assistance Persons with Disability Regulations* (EAPWDR), his earned income is not exempt from her net income calculation for determining the amount of her assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance Persons with Disability Act (EAPWDA) - section 1

Employment and Assistance Persons with Disability Regulations (EAPWDR) – Schedule B, section 1

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration included:

Request for Reconsideration (RFR), signed and dated July 20, 2018, which in part stated the following:

- The appellant's son has bad anxiety.
- He has his own bank account, stubs emailed to him, it is his money, and the appellant does not have access to her son's bank account.
- The appellant was not aware that she had to claim her son or his income as a part of her Annual Earnings Exemption (AEE).
- The appellant started working in April (2018) on a very part-time basis and is looking for work now. Her income went down to \$879 last month (June 2018) from \$1460 in May 2018. Also her rent went up for June 2018.
- Since her son is now off of her file, the appellant gets less money.
- Her son must now pay rent \$705.
- The appellant's son has a disability (ADHD [Attention Deficient Hyperactivity Disorder] and anxiety) and has a disability tax credit as of 2 years ago.
- The appellant needs extra money to pay the bills.

Evidence on Appeal

A Notice of Appeal (NOA), signed and dated August 20, 2018, which in part stated that the appellant's AEE should be higher because her son is disabled and he has a lot of challenges in daily life and work life.

Evidence Prior to the Hearing

Prior to the hearing, the appellant submitted the following information:

- A letter from the Revenue Canada Agency dated March 31, 2016, which in part stated that appellant's son is eligible for the Disability Tax Credit (DTC) for the 2006 to 2021 tax years.
- A letter from a physician, signed and dated August 12, 2018, which stated "This will confirm that this patient (the appellant's son) is currently unwell to leave the care of his mother and live independently".

Evidence at the Hearing

At the hearing the appellant submitted a 6-page assessment report from a psychiatrist regarding the diagnosis of ADHD for her son. The report is signed and dated January 13, 2015.

At the hearing the appellant stated, in part, the following:

- She was not aware that her son's income could be included in her AEE and that the AEE was only for her income. Her son's income makes up the majority of her allowable AEE for 2018.
- Even the ministry worker was uncertain that a dependent child's income could be included in the AEE.
- She argued that since April's income reporting determines June's income amount, she would like the ministry to give her a credit for the month of April 2018, as they did for May 2018, because her son turned 19 in June 2018.
- She was honest and included her sons' income and she disagrees with the legislation that includes all of the income from teenagers in the household. At the hearing the ministry relied on its reconsideration decision.
- She provides respite care and is looking for a part-time job so she can make ends meet.
- This year she has had reductions in her own income, which includes the elimination of child support.
- Since June 2018 her son has had to pay rent at the subsidized housing unit they live. He pays \$705 per month plus his own expenses such as cell phone and household bills. Their rent has gone from \$486 to \$1002 per month.

- She and her son struggle with anxiety and ADHD. In addition, she suffered from postpartum depression and was placed on anti-depressants.
- Her son had panic attacks and is now trying new medication.
- She must support him as he cannot live on his own.
- Since she and her son have disabilities, the appellant stated that she qualifies for a larger AEE amount.
- She does not recall whether or not she advised the ministry of her son's disabilities.

At the hearing the ministry relied on its reconsideration decision.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In this case, the panel determined that the letter from the Revenue Canada Agency dated March 31, 2016, the letter from the physician dated August 12, 2018 and her son's ADHD assessment dated January 13, 2015 are all in support of or corroborate information that was before the ministry at the time of reconsideration and therefore the panel admits this information into evidence in accordance with s. 22(4) of the *Employment and Assistance Act*.

The panel also determined that the appellant's reference to postpartum and use of antidepressants was not information that was before the ministry at the time of reconsideration and therefore it does not support or corroborate the information that was before the ministry at the time of reconsideration. As such, reference to postpartum depression and the use of antidepressants is not admitted into evidence in accordance with s. 22(4) of the *Employment and Assistance Act*.

The panel determined that, though the letter from the Revenue Canada Agency dated March 31, 2016, the letter from the physician dated August 12, 2018 and her son's ADHD assessment dated January 13, 2015 are all in support of or corroborate information that was before the ministry at the time of reconsideration, this information is not relevant to the case at hand and therefore the panel assigns little to no weight to the said information.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision, which found that the appellant's son's income cannot be exempt from her assistance because her son was a dependent child which makes him a part of the family unit pursuant to section 1 of the EAPWDA and the appellant's son's earned income is not exempt from her assistance because he was not a full-time student, pursuant to Schedule B section 1 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

The Relevant Legislation

EAPWDA

Interpretation

1 (1) In this Act:

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants

EAPWDR- Schedule B, Section 1

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;

The Appellant's Position

The appellant argued that both she and her son have disabilities and therefore her AEE should be increased. The appellant also argued that all of her son's income should not be included in her AEE because he pays rent, bills and she does not have access to his money or bank account.

The Ministry's Position

The ministry argued that since the appellant's son was not in school full-time from January to April 2018 his earnings do not qualify for exemption from her AEE pursuant to section 1 of Schedule B of the EAPWDR.

The Panel's Decision

Schedule B, section 1 of the EAPWDR lists the items that qualify for exemption from AEE, which includes a dependent child's earning if that child is in school full time. The appellant does not dispute that from January 2018 to April 2018 her son was a dependent child and that at that time he was not in school full time. The appellant has argued that her son has disabilities and therefore her AEE should be higher. The panel finds that the son's disabilities have no bearing on the issue at hand since the appellant's son is not designated as a person with disabilities under the EAPWDA. The panel also determines that it has no authority to increase the appellant's AEE.

The appellant's son started paying rent at age 19 which was in June 2018. The ministry has not included the son's income in the appellant's AEE since he turned 19 and furthermore the fact that he pays rent has no bearing on the issue at hand. The appellant has argued that her son's income should not be included in her AEE because he was a teenager. The panel does not have the jurisdiction to make a determination on whether or not legislation that governs the ministry's action is, in principle, fair or just. Given the evidence as a whole, the panel finds that the ministry was reasonable in its determination that the appellant's son's income is not exempt from her AEE pursuant to section 1 of Schedule B of the EAPWDR.

Conclusion

The panel finds that the ministry's decision that the appellant's son's income cannot be exempt from her assistance because he was a dependent child and therefore he was a part of the family unit pursuant to section 1 of the EAPWDA, and because the appellant's son was not a full-time student during the period in question, pursuant to Schedule B, section 1 of the *EAPWDR*, his earned income is not exempt from her assistance, was a reasonable application of the legislation and was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful at appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/09/10

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/10

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/10