

### PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated May 8, 2012 in which the Ministry determined that the Appellant was ineligible for disability assistance for the month of May 2012 because her combined unearned income received in March 2012 exceeded her monthly disability rate.

The Ministry found that in March 2012, the Appellant received lottery income in the amount of \$1,200.00 and Family Maintenance Assistance payments of \$618.18 which combined to exceed her monthly disability rate of \$1,372.08 and as such, pursuant to section 9 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR") the Ministry determined that the Appellant was not eligible for disability assistance in May 2012.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24, 29 and Schedule A sections 1, 2 and 4 and Schedule B, sections 1, 6, 7 and 9

## PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's Request for Reconsideration dated May 2, 2012;
2. A document headed "Account Activity – Details" for the period of March 27, 2012 through April 24, 2012;
3. A document headed "Account Activity – Historical Details" for the month of March 2012;
4. Separate documents headed "Account Activity" for the months of September 2011 through April 2012;

The Ministry did not attend the hearing. Being satisfied that the Ministry had been properly notified of the date and time of the hearing, the panel proceeded to hear the appeal in the absence of the Ministry pursuant to s.86(b) of the Employment Assistance Regulation.

In the appellant's Notice of Appeal, she states that she believes all transactions should be considered and that any deposits as well as cash outs should be looked at. The appellant says that if you go to a casino and buy \$100.00 and end up cashing out even then you didn't win anything. She says she was not the one gambling and that she made a bad choice by letting her father play in her account but that there is no way she can afford to play the amount that was played. The appellant says she has no other source of income and that for the most part, her father lost almost every month so she questions how that can be income.

At the hearing, the appellant stated that the Ministry considers anything that is cashed out after playing at the online casino to be income but that they don't take into consideration what is paid in. The appellant explained that when she plays at an online casino, she logs into the website and directly deposits money from her personal account into her casino "account" and she uses her casino account to gamble. The appellant described the example of depositing \$500.00 to her casino account, losing \$200.00 in the course of her gaming session and then withdrawing or "cashing out" the balance of \$300.00. By this example, the Appellant argues that she has actually lost \$200.00 but that the Ministry only takes into consideration the credit to her personal bank account of \$300.00 which it characterizes as unearned income for the purpose of determining her disability benefit eligibility. The appellant stated that the Ministry must consider what first goes into the her casino account to properly determine whether the amount she cashes out is a profit and therefore income or alternatively a net loss.

In response to a question, the appellant conceded that the funds she received on account of Family Maintenance payments for the month of March 2012 and their use in calculating her eligibility for disability benefits was not in issue. In response to a further question, the appellant stated that her father did play on her casino account but that she was no longer maintaining his role in respect of this matter. In response to a question, the appellant stated that each of her cash-outs were not necessarily winnings or a profit but that she was not sure how much of the lottery income she received in March 2012 was winnings as opposed to net losses although it could be done by looking at her casino account. In response to a question, the appellant stated that she was not sure if the total cash-outs for March 2012 brought her casino account to a zero balance.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision 2012 in which the Ministry determined that the Appellant was ineligible for disability assistance for the month of May 2012 because her combined unearned income received in March 2012 exceeded her monthly disability rate.

The Ministry found that in March 2012, the Appellant received lottery income in the amount of \$1,200.00 and Family Maintenance Assistance payments of \$618.18 which combined to exceed her monthly disability rate of \$1,372.08 and as such, pursuant to section 9 of the EAPWDR the Appellant was not eligible for disability assistance in May 2012.

Section 1 as it pertains to the definition of "unearned income", section 9, section 24 and section 29 of the EAPWDR provide as follows:

**"unearned income"** means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (p) maintenance under a court order, a separation agreement or other agreement;
- (r) a lottery or game of chance;

**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 dependent.

(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.

**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.

**29.** For the purpose of section 11(1)(a) of the Act,

- (a) the report must be submitted by the 5<sup>th</sup> day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b) and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:
  - (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.

Sections 1, 2 and 4 of Schedule A of the EAPWDR provide as follow:

### **Maximum amount of disability assistance before deduction of net income**

**1** Subject to 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.

**Monthly support allowance**

**2** (0.1) For the purposes of this section, "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
- (b) the amount calculated in accordance with subsections (2) to (5) 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 support
2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08

**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
4	4 persons	\$700

Section 1 of Schedule B of the EAPWDR sets out that which is exempt from income when calculating the net income of a family unit for the purposes of section 24(b) of the EAPWDR. Sections 6, 7 and 9 of Schedule B of the EAPWDR provide as follows:

**6.** The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

**7.** The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's

assets to exceed, at the time the award is received, the limit applicable under section 10 [asset limits] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (2) [assets held in trust for person with disabilities] of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 12 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A-B) \times C$ , where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

= (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.

**9 (1)** The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

(a) the date the income is payable;

(b) the period for which the income is payable;

(c) the date the income is reported to the minister;

(d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

The Ministry's position is set out in the Reconsideration Decision. The Ministry states that the appellant's disability assistance rate for May 2012 was \$1,372.08 and that her combined unearned income for March 2012 (including lottery income of \$1,200.00 and Family Maintenance payments of \$618.18 for a total of \$1,818.18) exceeded the disability assistance rate thus making her ineligible for disability assistance in May 2012.

The Appellant argues that all transactions in her casino account should be considered and that any deposits as well as cash outs should be looked at as the credits to her personal bank account cannot all be necessarily considered unearned income as contemplated by the EAPWDR.

Section 1 of the EAPWDR defines unearned income as including any income that is not earned income, and includes, without limitation, money or value received from, inter alia, maintenance under a court order, a separation agreement or other agreement as well as a lottery or game of chance. In the present case, the appellant concedes that the \$618.18 in Family Maintenance proceeds she received in the month of March 2012 was properly considered by the Ministry in calculating her disability assistance eligibility for May 2012. In addition, the appellant's personal bank statement indicates that in March 2012 she received credits from the BC Lottery Corporation totaling \$1,200.00. The appellant argues that these credits to her personal bank account should not be defined as income, earned or unearned, because the credits don't reflect the monies that she deposited to her casino account and therefore, it cannot be determined whether the credits in her personal bank account represent a net profit or loss. While the appellant did point to her March 2012 personal bank statement to demonstrate debits that funded her casino account, she could not provide evidence of how the credits were calculated and as such, the Panel finds that the Ministry reasonably determined that the \$1,200.00 in credits received by the appellant from the BC Lottery Corporation in March 2012 was money or value received from a game of chance and therefore satisfied the definition of unearned income as set out in section 1(r) of the EAPWDR.

Section 24 of the EAPWDR provides that disability assistance may be provided to a family unit for a calendar month in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under Schedule B. In the present case, as a sole applicant/recipient with one or more dependent children and as a person with disabilities, the Panel finds that the appellant is entitled to support in the amount of \$672.08 and shelter in the amount of \$700.00 for a total monthly disability benefit of \$1,372.08. As the appellant received unearned income in March 2012 that exceeded her monthly disability benefit, the Panel finds that the Ministry reasonably determined that the appellant was not eligible for disability assistance in May 2012 pursuant to section 24 of the EAPWDR.

The Panel therefore finds that the Ministry decision that the appellant was not eligible for disability assistance in May 2012 was reasonably supported by the evidence and the Panel confirms the Ministry decision.