

**PART C – Decision under Appeal**

The decision under appeal is a Reconsideration Decision dated August 26, 2013 in which, pursuant to Section 24 and Schedules A and B of Employment Assistance for Persons With Disabilities Regulation (EAPWDR), the Ministry determined that maintenance payments received by the appellant were properly deducted as "unearned income", which when added to her existing Canada Pension Plan income deduction resulted in the appellant becoming ineligible for disability assistance (DA).

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act (EAPWDA):

- Section 1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Sections 1, 24
- Schedules A and B

## PART E – Summary of Facts

The panel had before it the appeal record comprising the appellant's request for reconsideration with two letters from the appellant attached; a two-page Monthly Report dated March 28, 2013 reporting monthly maintenance income of \$570; the ministry's reconsideration decision denying the appellant's request; and documents informing the appellant of her right to appeal the reconsideration decision. No additional documentation was presented by the appellant at the hearing. The ministry presented a written submission containing a summary of facts, reasons for the ministry's decision and relevant legislation.

At the hearing the ministry representative summarized the facts as follows:

- The appellant is a recipient of disability assistance (DA) for herself and her teenage son in the amount of \$1,242.08 (\$570 shelter plus \$672.08 support) from which CPP income of \$801.12 is deducted, resulting in a net DA amount of \$440.96.
- The appellant also receives a monthly nutritional supplement of \$205.00.
- On March 28, 2013 the appellant submitted a Monthly Report form showing she had received \$570 in maintenance income in the month of March. The March maintenance was deducted from her DA on April 24, 2013, and on a monthly basis thereafter.
- The ministry determined that the appellant's monthly maintenance income when combined with her CPP income was in excess of the allowable DA rate. She therefore became ineligible to receive disability assistance.

At the hearing the appellant stated that the monthly maintenance income she receives is for the feeding, clothing and school-related expenses of her teenage son. She told the panel that she suffers from brain cancer, currently in remission, and diverticulitis. Chemotherapy and radiation treatment together with diverticulitis have damaged her body's ability to absorb nutrients, making nutritional and vitamin supplements essential. The appellant argued that because she is ill she should still be eligible for DA in order to receive a nutritional supplement, and she not have to use the maintenance she receives for her son's care to pay for her nutritional supplements.

The panel makes the following findings of fact:

- the appellant is a recipient of disability assistance for herself and her dependent child
- the appellant receives monthly CPP income; and
- since March 2013 the appellant has received monthly maintenance income.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision that maintenance payments received by the appellant were properly deducted as "unearned income", which when added to her existing Canada Pension Plan income deduction resulted in the appellant becoming ineligible for disability assistance (DA) was a reasonable application of the applicable legislation or was reasonably supported by the evidence before the Reconsideration Officer.

The legislation relevant to this appeal is as follows:

### EAPWDA

**1(1)"disability assistance"** means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

### EAPWDR

**1(1)"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;

**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.

#### Schedule A

#### 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**

Column 1	Column 2	Column 3
Family unit composition	Age or status of applicant or recipient	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(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	Column 2
	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570

**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,

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

The ministry argues that the appellant's monthly CPP income of \$801.12 has been deducted from her DA (support of \$672.08 + shelter of \$570) since 2010, which leaves a net DA payable of \$440.96. The CPP deduction was not argued or addressed at reconsideration. The ministry argued further that the appellant's maintenance income of \$570 per month is "unearned income" which pursuant to Schedule B Section (1)(d) must be included as net income and deducted from the DA amount calculated in Schedule A. Because the Schedule B net income exceeds the remaining DA amount payable to the appellant in Schedule A she is no longer an eligible recipient of DA.

The appellant argues that the monthly maintenance income she receives should be used solely for the care of her son, and that she should still be entitled to receive a nutritional supplement because her cancer treatment and diverticulitis have seriously impaired her body's ability to absorb nutrients.

The panel concluded that the monthly support allowance and shelter allowance rates set out in Schedule A take into account the circumstances of a DA recipient with a dependent child. Additional maintenance income is therefore considered to be "unearned income" pursuant to EAPWDR Section 1(1)(p) and forms part of the appellant's net income in Schedule B. Because the appellant's net income in Schedule B exceeded her combined support and shelter allowance (less CPP benefit) in Schedule A she became ineligible for disability assistance (Section 24). In coming to its decision the panel considered the definition of "disability assistance" set out in Section 1(1) of the EAPWDA which limits DA to the amount provided for shelter and support and does not include additional supplements to which a DA recipient might otherwise be eligible.

Accordingly, this panel finds that the ministry's decision to deduct maintenance income from the appellant's disability assistance resulting in the appellant's ineligibility for disability assistance was a reasonable application of EAPWDR sections 1 and 24 and Schedules A and B in the appellant's circumstances, and confirms the decision.