

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated December 4, 2018, in which the ministry found the appellant is not eligible for disability assistance (“DA”) for November 2018 under section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined the appellant had earned income from employment in excess of her DA rate as calculated under section 24 and Schedules A and B of the Regulation, and had reached the exemption limit set out in section 3(1) of Schedule B.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 11

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 1, 9, 24, and 29, and Schedules A and B

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's reconsideration decision indicating the appellant was advised of the ministry's initial decision on October 25, 2018 and submitted her Request for Reconsideration ("RFR") on November 21, 2018. The ministry includes the following background information:

- The appellant is a sole recipient of DA with two dependent children.
- The appellant's file re-opened on April 23, 2010.
- The appellant has had disability designation ("PWD") since April 1, 2015.
- On October 19, 2018, the ministry reviewed all of the pay information the appellant provided and determined that her total income up to August 2018 was \$13,060.96, and she had used up her annual earnings exemption of \$12,000.
- The appellant had Year to Date ("YTD") net earnings of \$6,995.49 from employer "E" as of May 25, 2018; YTD net earnings of \$6,065.47 from employer "L" as of her August 4, 2018 pay stub; and net earnings of \$1003.62 for August 4, 2018.

2. The RFR, signed by the appellant on November 14, 2018, with attached handwritten submission in which she states that her income from employer "L" was the gross amount (not net) except for her last income stub that she re-submitted. The appellant indicates that she moved (was relocated) and her documents were boxed and she was impacted by the drug crisis and changes in her community

3. Information from the ministry's *Decision to be reconsidered*, section 2, including the following background entries:

- On September 13, 2018, the appellant submitted her *Request for Continued Assistance* form ("monthly report") for the October benefit month, declaring \$1,148.78 for employment income. The appellant submitted a copy of her pay slip for the pay period ending August 18, 2018, confirming net pay of \$1,148.78.
- On September 14, 2018, the ministry reviewed the monthly report and the pay slip and noted that the appellant's YTD earnings on the pay slip were \$8,698.50. The ministry noted that employment income had been reported since the appellant's file was opened on April 23, 2010. The ministry placed a hold on the appellant's October 2018 DA benefits.
- On September 17, 2018, the ministry advised the appellant of the requirement to submit all pay slips and that October benefits would be held pending submission of same.
- On September 18, 2018, the appellant submitted a monthly report dated September 18, 2018, declaring 2018 YTD employment income of \$17,085.35. The appellant also submitted a pay slip from employer "E" for the time period May 13 - 19, 2018 with YTD gross earnings of \$8,386.75.
- On September 25, 2018, the appellant spoke with the ministry and confirmed that her YTD earnings of \$17,085.35 are from two different employers. The appellant advised that she worked for employer "E" from January - May 2018, and for employer "L" from May - August, 2018. The appellant advised that she has now returned to employer "E". The ministry advised that the appellant may be in an overpayment situation due to failing to report any and all income. The ministry requested that she submit a breakdown of earnings from January - July 2018 in the form of pay stubs or a letter from her employer with earnings and pay dates, as well as monthly reports for March - October (declaring income from January - August 2018) and a Record of Employment ("ROE") for both employer "E" and employer "L".
- On September 25, 2018, the appellant submitted the following documents:
 - monthly report for the February 2018 benefit month, declaring \$0 income;
 - monthly report for the March 2018 benefit month, declaring \$699.40;
 - monthly report for the April 2018 benefit month, declaring \$1,659.92;
 - monthly report for the May 2018 benefit month, declaring \$2,274.48;
 - monthly report for the June 2018 benefit month, declaring \$1,906.68;
 - monthly report for the July 2018 benefit month, declaring \$3,369.12;
 - monthly report for the August 2018 benefit month, declaring \$2,511;
 - monthly report for the September 2018 benefit month, declaring \$2,875.50;
 - monthly report for the October 2018 benefit month, declaring \$2,646;
 - pay slip dated June 9 [illegible], showing net pay of \$1,032 [illegible];

- pay slip dated September 15, 2018, showing net pay of \$1001.37;
 - pay slip dated May 26, 2018, showing net pay of \$514.37;
 - pay slip dated August 4, 2018, showing net pay of \$1003.62;
 - pay slip dated August 18, 2018, showing net pay of \$1,148.78;
 - ROE from employer "numbered company" (same company as "employer E") indicating employment from May 5 - September 11, 2018; reason code left blank; and a
 - Statement of earnings from employer "E" dated September 25, 2018.
- On October 19, 2018, the ministry reviewed all of the documents submitted on September 25, 2018 and determined that as a PWD, the appellant is entitled to an annual earnings exemption of \$12,000. The ministry determined the appellant's total income up until August 2018 was \$14,209.74, less the declared income of \$1,148.96 on her August 18, 2018 pay slip (equals \$13,060.96). The ministry determined the appellant exceeded the maximum allowable income and has zero remaining for her annual earnings exemption. The ministry determined the appellant has an overpayment for the October 2018 benefits that she received, as her income of \$1,148.78 for August 2018 was over and above her October benefits amount. The ministry determined that the appellant's income of \$2,049.37 for September 2018 was over and above her November benefits amount and the appellant is ineligible for November 2018 benefits.

4. The appellant's monthly report dated September 13, 2018, declaring employment income of \$1,148.78.

5. The appellant's pay slip from employer "numbered company" (employer "E") for the period ending August 18 [illegible], indicating net pay of \$1,148 [illegible] and YTD pay [illegible].

6. A letter from the ministry dated September 17, 2018, advising the appellant that the next cheque issue date is September 26, 2018 and her assistance cheque will be held at the office pending receipt of all completed monthly reports and income verification (pay stubs). The letter states that the appellant's monthly report declares \$1,148.78 and the YTD amount is \$7,214.25. The letter states that no income has been declared in 2018.

7. The appellant's monthly report dated September 18, 2018, declaring 2018 YTD employment income of \$17,085.35.

8. A pay stub from employer "E" for the period ending August 18, 2018, indicating net pay of \$1,148.78, and total YTD of \$9,175.32 (gross) equal to \$6,995.49 net.

9. Nine monthly reports dated September 25, 2018 for monthly cheque issue dates from January - September 2018, indicating employment income for all months except the January cheque issue.

10. A pay stub from employer "numbered company", indicating net pay of \$1001.37 for the period ending September 15, 2018 and YTD gross earnings of \$11,171.18 for the same end date.

11. An ROE for employer "numbered company" indicating dates worked from May 22 - September 11, 2018 and total insurable earnings of \$11,171.16. Insurable earnings for September are \$1,203.66 and \$1,269.

12. A Statement of Earnings from employer "E" dated September 25, 2018, indicating payments for cheque dates from January 19 - May 25, 2018. Total gross pay for this period is \$9,175.32 (YTD), equal to net pay of \$6,995.49.

13. The appellant's bank statement dated October 24, 2018, indicating a cheque deposit of \$1,023 on September 7, 2018 and a cheque deposit of \$1001.37 on September 19, 2018.



Additional information

Subsequent to the reconsideration decision the appellant filed her *Notice of Appeal*, received by the Tribunal on December 21, 2018. In her attached type-written submission, dated December 19, 2018, the appellant provides her argument and states that the ministry indicates she did not report income since April 23, 2010 when in fact she did provide proof of income. The panel accepts the appellant's submission as argument and does not determine the admissibility the appellant's additional information on income reporting since 2010 under section 22(4) of the *Income Assistance Act*. The ministry found the appellant ineligible for DA for the month of November 2018 only, as determined by the income she received in September 2018. The panel notes that September 2018 earnings were reported to the ministry.

The ministry relied on the reconsideration decision and did not submit any new evidence.

Procedural matter

The appellant did not attend the hearing. Upon confirming that she was notified of the date and time, the panel considered the appeal in a party's absence as it is authorized to do under section 86(b) of the Employment and Assistance Regulation.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant is ineligible for DA for November 2018 under section 9(2) of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant had earned income from employment in excess of her DA rate as calculated under section 24 and Schedules A and B of the Regulation, and had reached the exemption limit set out in section 3(1) of Schedule B?

The ministry based the reconsideration decision on the following legislation:

EAPWDA

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

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,

Limits on income

9 (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);...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. 87/2018:

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income;

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.

Monthly support allowance

2 (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 (4) for each dependent child in the family unit.

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| Item | Column 1 Family unit composition | Column 2 Age or status of applicant or recipient | Column 3 Amount (\$) |
|------|---|---|-------------------------|
| 2 | Sole applicant/recipient and one or more dependent children | Applicant/recipient is a person with disabilities | 899.08 |

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 Family Unit Size | Column 2 Maximum Monthly Shelter |
|------|------------------------------|-------------------------------------|
| 3 | 3 persons | \$660 |

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: [*panel note: amounts for dependents, government benefits, legal settlements, and other sources of income/ monies listed in clauses i to lviv*]
- (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

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;

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; [*panel note: the annual exemption base amount is a monthly figure and the scheme of section 3 provides for an annual exemption equal to 12 times the base amount*]

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: [*panel note: section 4 lists specific business expenses and the exemption rules for earned income derived from the business*]

Withdrawals and expenditures from reserve account

5 The amount of any expenditure or withdrawal out of a separate account described in section 4 (2) (b) (ii) of this Schedule, is earned income for all purposes of this regulation, unless

- (a) the expenditure or withdrawal is for the payment of permitted operating expenses of the small business referred to in section 4 (2) of this Schedule,

Arguments and panel's decision

The ministry's position is that the appellant is not eligible for DA for November 2018 because her employment income in September 2018 exceeded her assistance rate of \$1,559.08 and she had reached her earnings exemption limit of \$12,000. The Appellant's position on appeal is that the ministry did not include all of the documents she submitted for the reconsideration and her earnings exemption limit should be \$24,000 because she has a special needs child. The appellant requests the ministry to refund her overpayment after the exemption. At the reconsideration, the appellant argued that her income from employer "L" was the gross amount (not net) except for the last income stub that she re-submitted. The appellant states that she was impacted by relocation as well as a crisis and major changes in her community.

The ministry explains that for recipients of DA, income received during the previous month is reported by the 5th day of the current month, and affects the following month's assistance payment. This reporting requirement is set out in section 29 of the EAPWDR. The panel finds the ministry reasonably determined that the appellant's DA rate is \$1,559.08 under Schedule A of the EAPWDR. The tables in sections 2 and 4 of Schedule A indicate a support allowance of \$899.08 for a sole recipient of DA with dependent children and a shelter allowance of \$660 for a three person family unit (the appellant and her two children).

The ministry argues that the appellant's employment income meets the definition of "earned income" under the Regulation and is therefore subject to the deduction and exemption rules set out in Schedule B. The appellant does not dispute that she had earned income of \$2,024.37 in September 2018. Her bank statement of October 24, 2018 shows cheque deposits of \$1,023 on September 7, 2018 and \$1001.37 on September 19, 2018, corroborating her pay stub from employer "E" that shows a net payment of \$1001.37 for the period ending September 15, 2018.

While the pay stubs/ statement of earnings in the record do not show net pay of \$1,023 to match the September 7, 2018 bank entry, the 2018 pay stubs indicate bi-weekly net payments from May - August 2018. The panel finds that the ministry reasonably determined the bank deposits of \$1023 and \$1,001.37 in September 2018 are net earnings from employment and the appellant's employment income therefore meets the definition of earned income under subsection 1(1)(a) of the EAPWDR.

The actual amount of DA the family unit receives is in accordance with the calculation in section 24 of the EAPWDR: the family unit's assistance rate minus their net income as determined under Schedule B of the Regulation. Section 1 of Schedule B sets out the net income calculation, specifying that net income includes all of the recipient's earned income, minus any applicable deductions and exemptions under Schedule B sections 1 to 4:

- Section 1 of Schedule B lists exemptions for dependents as well as deductions for individuals under various government programs and legal settlements. None of these exemptions apply to the appellant's employment income.
- Section 2 of Schedule B permits deductions at source, including income tax and Employment Insurance. As shown on the appellant's pay stubs and statement of earnings, these deductions were applied in arriving at the net earnings she received.
- Section 3 of the Schedule sets out exemption limits for earnings. The ministry determined that the appellant is eligible for a \$1,000 per month earnings exemption as described in subsection 3(1)(a) of the Schedule which applies to a family unit in which a sole recipient is designated as a PWD. The appellant argues that her annual earnings exemption should be \$24,000 (\$2,000 per month) but under subsection 3(1)(c) of the Schedule, the \$2,000 per month earnings exemption applies only when two recipients in the family unit are designated as PWD. While the appellant states that her child has "special needs", there is insufficient evidence to confirm that the child is designated as a PWD under the EAPWD legislation. The panel finds that the ministry reasonably applied the Regulation in the circumstances of the appellant in determining that she is eligible for a maximum earnings exemption of \$12,000 for 2018 as the sole recipient in her family unit with PWD designation.
- The exemptions set out in sections 4 and 5 of Schedule B do not apply in the circumstances of the appellant because they pertain to self-employment and small business operations and the appellant is not self-employed.

The panel finds that the ministry reasonably determined the appellant had reached her \$12,000 annual earnings exemption in July 2018. As noted by the ministry, the appellant's YTD net pay (shown on her pay stub for the period ending May 19, 2018) was \$6,995.49. The appellant therefore had \$5004.51 remaining for her annual earnings exemption. Upon reviewing the appellant's August 4, 2018 pay stub from employer "L", the ministry determined the appellant's YTD net income was \$6,065.47. The ministry therefore concluded that by August 4, 2018, the appellant had net earnings of \$13,060.96 (\$6,995.49 + \$6,065.47).

Subtracting the appellant's net pay of \$1,003.62 for August 4, 2018, the ministry determined that the appellant reached her earnings exemption limit on July 21, 2018 with net earnings of \$12,057.34 as of that date. The appellant argues that the ministry based some of its calculations on her gross pay (rather than net pay) from

employer "L" but the ministry's finding that the appellant exhausted her earnings exemption in July 2018 is based on the YTD net earnings that were entered on her May and August 2018 pay stubs. In addition, the appellant declared 2018 YTD employment income of \$17,085.35 in her monthly report dated September 18, 2018.

The ministry explains that once the appellant has exhausted the earnings exemption limit, employment earnings are deducted dollar for dollar from her DA rate of \$1,559.08. The ministry determined that the appellant's September net pay of \$2,024.37 (\$1,023 + \$1,001.37 as shown on her September 15, 2018 pay stub and October 24, 2018 bank statement) exceeded her assistance rate and consequently, the ministry found the appellant ineligible for November 2018 DA under section 9(2) of the EAPWR.

Section 9(2) of the Regulation states that a family unit is not eligible for DA 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. As the appellant's net pay for September 2018 exceeds her DA rate, the panel finds that the ministry reasonably applied the Regulation in the circumstances of the appellant and was reasonable in finding that the appellant is not eligible for November 2018 DA.

As noted by the appellant, the ministry did not include copies of all of the pay stubs and statements of earnings that she provided; in particular, the documents that set out the appellant's net earnings from employer "L" are not in the record of decision. The ministry cites earnings amounts (with corresponding dates) for employer "L" in the reconsideration decision and the panel is satisfied that the ministry reasonably considered all of the relevant evidence.

Conclusion

The panel finds that the ministry reasonably determined the appellant is not eligible for DA for the month of November 2018 because her income exceeds the assistance rate for her family unit and the deductions or exemptions set out in Schedule B do not apply in her circumstances. The panel confirms the reconsideration decision. The appellant is not successful on 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/15

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/15

PRINT NAME

Adam Shee

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/15