

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of February 11, 2019 in which the ministry determined that the appellant was not eligible for disability assistance because her monthly GIS/Survivor's allowance income is not exempt and exceeds the assistance rate; pursuant to the Employment and Assistance for Persons with Disabilities Act (EAPWD), section 1 and Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 24 and Schedule A & B.

**PART D – RELEVANT LEGISLATION**

EAPWD - *Employment and Assistance for Persons with Disabilities Act, section 1*  
EAPWDR *Employment and Assistance for Persons with Disabilities Regulation, section 1, 24 and Schedule A & B*

## **PART E – SUMMARY OF FACTS**

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

- 1) **December 21, 2018** – The Appellant was informed that she was ineligible for benefits from the ministry because her OAS/GIS Survivor benefits are in excess of disability assistance rates.
- 2) **January 30, 2019** – The Appellant requested a reconsideration of the decision. The Appellant reported that she is in need of money for food, shelter, a bus pass, and medication. She reported her monthly rent as \$1000, \$85 for a bus pass, pay hundreds of dollars for vitamins, and \$600 a month for food.
- 3) **Additional information regarding the Appellant:**  
The Appellant is 62 years of age, has the PWD designation, and is in receipt of disability assistance for a sole recipient with no dependents. The Appellant had been receiving \$1168.42 a month for support, shelter and a diet allowance. As a PWD recipient, she had also been receiving a monthly bus pass.

### **Additional Information**

The ministry relied on the reconsideration decision of February 11, 2019 and did not submit any further evidence or information for the panel to consider.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of February 11, 2019 in which the ministry determined that the appellant was not eligible for disability assistance because her monthly GIS/Survivor's allowance income is not exempt and exceeds the assistance rate pursuant to the Employment and Assistance for Persons with Disabilities Act (EAPWD), section 1 and Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 24 and Schedule A & B.

The relevant sections of the legislation is as follows:

### Employment and Assistance for Persons with Disabilities Act

#### Interpretation

- 1 (1) In this Act: "disability assistance" means an amount for shelter and support provided under section 5 [disability assistance and supplements];

### Employment and Assistance for Persons with Disabilities Regulation

- 1 (1) In this regulation:

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;

(v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;

(w) tax refunds;

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation.

### 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.

### Schedule A

#### Disability Assistance Rates

#### 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,

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

#### 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
1	1 person	\$375

**Panel Decision**

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for disability assistance because the Appellant's income exceeds the disability assistance rate. The ministry relies on the requirements set out by the EAPWDR, section 24, and Schedule A & B. The ministry determined that the Appellant's GIS/OAS Survivor benefit totals \$1360.20 per month, and the total net income or GIS/Survivor Allowance exceeds what she would receive through disability assistance, which is \$1133.42.

The appellant's position, as outlined as her reason for appeal is that she acknowledges that she receives her GIS/Survivor's Allowance income; however, she feels that she should still receive the disability assistance because she is desperately in need of money to take her proper medication and vitamins. She submits that her vitamins cost over \$200 a month, her rent is \$1000 and she pays over \$800 for food and utilities.

The ministry outlines in the reconsideration decision that the GIS/Survivor Allowance is for individuals between the ages of 60 and 64, who have low income, and whose spouse or common law partner had died. Further, the ministry adds that assistance may be available for medical transportation, medical equipment and medical supplies.

As outlined, in section 2 of the Employment and Assistance for Persons with Disabilities Regulation; "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: (k) surviving spouses' or orphans' allowances.

The panel finds that the evidence establishes that the appellant does receive a GIS/Survivor Allowance of \$1360.20 per month, and that the total net income or GIS/Survivor Allowance exceeds what she would receive through disability assistance, which is \$1133.42, and is not considered exempt income pursuant to section 2 (k), and Schedule A & B of the Employment and Assistance for Persons with Disabilities Regulation. The panel finds that the ministry was reasonable in its determination to declare the Appellant ineligible for disability assistance.

The panel also considered that the ministry reasonably highlighted in the reconsideration decision that assistance may still be available for medical transportation, medical equipment and medical supplies, and that the GIS/Survivor Allowance is only for people with low income whose spouse has died, and are between the ages of 60 and 64. The panel interpreted this statement of the ministry to mean that the Appellant may be eligible for disability assistance when she is no longer receiving the GIS/Survivor allowance, at 65 years of age.

Accordingly, the panel finds that the decision of the ministry to determine the Appellant was ineligible for disability assistance because her GIS/Survivor Allowance (net income) exceeded the disability assistance allowance was a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(b) and section 24(2)(a) of the *Employment and Assistance Act*. The appellant therefore is not successful in her 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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/03/27

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/03/27

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/03/27