

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated September 18, 2019, which held that in accordance with section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the net income of the appellant's family unit must be deducted when determining the amount of disability assistance for which the appellant's family unit is eligible.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 1*

EAPWDR, sections 1, 24, Schedule A, and Schedule B

**PART E – SUMMARY OF FACTS***Information before the ministry at reconsideration*

The appellant had been receiving disability assistance as a 1-person family unit. Following the appellant's marriage in July 2019, the appellant completed the ministry's 7-page Employment and Assistance Review form (the Review form) on August 7, 2019, at which time the appellant's spouse was added to the ministry file (together, the appellant and spouse now form the family unit). A copy of the Review form is in the appeal record and includes the information that the spouse, who is over the age of 65, receives monthly payments of \$535 of Canada Pension Plan (CPP) and \$1110 of Old Age Security (OAS). Also included in the appeal record is a 3-page print-out of activity in a bank account held by the spouse for the period June 1, 2019 to August 3, 2019, showing direct deposits from the Federal government in the amount of \$593.45 on both June 26<sup>th</sup> and July 29<sup>th</sup>, as well as \$1,113.77 on June 26<sup>th</sup> and \$1,121.76 on July 29<sup>th</sup>.

On August 29, 2019, the ministry determined that the family unit's net income of \$1514.06 must be deducted from the maximum rate of disability assistance for the family unit, which is \$1846.06 [\$1276.06 support and \$570.00 shelter]. The appellant continues to receive monthly supplements for nutrition and transportation which are not included in the calculation for monthly disability assistance [theses supplements do not fall within the definition of disability assistance which only includes shelter and support allowances].

On September 4, 2019, the appellant submitted a Request for Reconsideration of the ministry decision which stated that the strata and mortgage amount of \$875.32 should be released, that \$261 should be added to the amount of assistance for an emergency repair (replacement of carpet).

*Information provided on appeal and admissibility*

On September 24, 2019, the appellant completed a Notice of Appeal (NOA) which did not include additional information.

At the hearing, the appellant explained that an advocate provided the information in the Request for Reconsideration and acknowledged that the carpet repair costs were not part of this appeal. The appellant stated that significant costs associated with moving following the marriage and that the regular costs of living prior to the marriage remain and are not manageable with a reduction in disability assistance. The appellant's spouse also attended the hearing and questioned why the ministry would consider the spouse to be a dependent of the appellant and require the spouse to be added to the appellant's ministry file, given that the spouse has always had medical coverage and worked for many years in order to receive the Federal benefits. The spouse confirmed that the amount of Federal benefits received is not in dispute.

At the hearing, the ministry reviewed the reconsideration decision, responded to questions, but did not provide additional evidence. A ministry observer was also in attendance with the consent of the appellant.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration.

The panel determined that the submissions at the hearing either did not include additional evidence or were argument. Accordingly, a determination on admissibility was not required.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's decision to reduce the amount of disability assistance payable to the appellant's family unit because of the spouse's income was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the OAS, GIS and non-exempt CPP benefits received by the spouse were unearned income that formed the family unit's net income and must be deducted when calculating the rate of disability assistance in accordance with section 24 of the EAPWDR?

**Relevant Legislation****EAPWDA****Interpretation**

1(1) In this Act:

“**dependant**”, in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,....

“**disability assistance**” means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

“**family unit**” means an applicant or a recipient and his or her dependants;

“**person with disabilities**” means a person designated under section 2 [*persons with disabilities*];

“**recipient**” means the person in the 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**

## Definitions

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:.....

- (f) any type or class of Canada Pension Plan benefits .....
- (u) Federal Old Age Security and Guaranteed Income Supplement payments....

**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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

**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.

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
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5	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	1 276.06
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**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
2	2 persons	\$570

**Schedule B - Net Income Calculation**

**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.....

- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);
- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(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

(d) **all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.**

### **Deductions from unearned income**

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.

### **Exemptions — unearned income**

7 (0.1) In this section:

**"disability-related cost"** means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

**"disability-related cost to promote independence"** means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

**"intended registered disability savings plan or trust"**, in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

**"structured settlement annuity payment"** means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) 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 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for

- (i) disability-related costs,
- (ii) the acquisition of a family unit's place of residence,
- (iii) a registered education savings plan, or
- (iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

- (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;
- (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
- (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;

**(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*;**

(f) a tax refund;

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

### **PANEL DECISION**

#### *Positions of the Parties*

The appellant argues that it is unreasonable for the ministry to reduce the amount of disability assistance because of income received by the appellant's spouse as they each have the same costs of living as before the marriage.

The ministry argues that when calculating the amount of disability assistance for which a family unit is eligible in accordance with section 24 of the EAPWDR, the family unit's net income as determined under Schedule B of the EAPWDR must be deducted from the amount of disability assistance for the family unit determined under Schedule A (\$1276.06 for a 2-person family unit comprised of 1 person who is a person with disabilities and 1 person who is not a person with disabilities and is 65 or more years of age).

The ministry determined that the family unit's net income includes the full amount of OAS and GIC payments received by the appellant's spouse (\$1121.76) as there are no deductions/exemptions for these payments in Schedule B. Additionally, \$392.30 of the \$593.45 CPP payment is included in the family unit's net income, as the balance of \$201.15 is a tax liability that is exempt under section 7(1)(e) of Schedule B. The ministry notes that this calculation is done automatically by the system. For these reasons, the ministry concluded that the net income of \$1514.06 must be deducted from the rate of disability assistance. The ministry determined that the rate of monthly disability assistance is \$1846.06, comprised of \$1276.06 support for a family unit comprised of 1 person with disabilities and another person who is not a person with disabilities and is 65 or more years of age plus \$570.00 shelter for a 2-person family unit.

#### *Panel Analysis*

In this case, there is no dispute that the appellant was married in July 2019 and that the appellant and the spouse reside together. Accordingly, the spouse is a "dependant" of the appellant as defined in section 1 of the EAPWDA - anyone who resides with the person and who is the spouse of the person. As a result, the spouse is part of the appellant's "family unit" which is defined in section 1 of the EAPWDA as an applicant or a recipient and his or her dependants.

Under section 24 of the EAPWDR, when determining the monthly amount of monthly disability assistance which may be provided the net income of the entire family unit as calculated under Schedule B must be deducted from the rate of monthly disability assistance for the family unit set out under Schedule A.



In this case, the ministry has correctly determined that the maximum monthly amount of disability assistance that may be provided for the appellant's family unit as set out in Schedule A is \$1846.06. Regarding the family unit's net income, the amount of CPP/OAS/GIS received by the spouse is not in dispute and was properly considered by the ministry as "unearned income" which is defined in Section 1 of the EAPWDR as money or value received from "any type or class of Canada Pension Plan benefits" and "Federal Old Age Security and Guaranteed Income Supplement payments." Schedule B of the EAPWDR sets out the rules for calculating a family unit's net monthly income which include deductions and exemptions for unearned income described in sections 1, 3, 6, 7 and 8.

Exemptions set out in section 1 of Schedule B relate to orphan's benefits and disabled contributor's child benefits under the CPP, which are not applicable to the spouse's CPP benefit payments. Section 3 of Schedule B provides an annual exemption respecting earned income paid under certain sections of the *Workers Compensation Act* when calculating an annual exemption, but does not apply in this case. Exemptions under section 6 of Schedule B relate to employment insurance benefits or operating costs of renting self-contained suites, neither of which is applicable. Most of the exemptions set out in section 7 of Schedule B address payments of unearned income unrelated to the appellant's circumstances, including structured annuity payments and settlement agreements; however, subsection 1(e) exempts monthly income tax paid on CPP benefits, except voluntary CPP tax deductions. The ministry notes that this calculation is automatic and that the system identified a \$201.15 monthly tax liability, which was appropriately exempted when calculating the family unit's net income. Finally, section 8 of Schedule B provides exemptions related to education costs which do not apply in the appellant's circumstances.

In summary, the panel concludes that the ministry was reasonable when determining that the only applicable deduction/exemption regarding the unearned CPP/OAS/GIS income received by the spouse was the tax liability exemption under section 7(1)(e) of Schedule B and that the balance of the CPP/OAS/GIS payments must be included when calculating the family unit's net monthly income. The panel also finds that the ministry was reasonable in concluding that the family unit's net income must be deducted from the rate of disability assistance set out in Schedule A, \$1846.06, when determining the amount of disability assistance for which the family unit is eligible under section 24 of the EAPWDR.

### **Conclusion**

The panel concludes that the ministry's reconsideration decision is a reasonable application of the legislation in the appellant's circumstances and confirms the decision. The appellant is not successful on appeal.

APPEAL NUMBER

**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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/16

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/16

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/16