

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 23, 2019 in which the ministry found that the appellant is not eligible for disability assistance for the month of October 2019 pursuant to Section 9(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) due to the family unit's net income from self-employment being more than the disability assistance amount for the month.

The ministry found some of the deductions claimed by the appellant from self-employment income were not allowed as exemptions under Section 4 of Schedule B of the EAPWDR and the appellant's annual earning exemption for 2019 (\$12,000) had been exhausted, pursuant to Section 3 of Schedule B of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1 and 9, and Schedules A and B

PART E – SUMMARY OF FACTS

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Although the appellant consulted an advocate, the appellant stated that the advocate was not able to attend and the appellant wanted to proceed with the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Simplified Monthly Self-Employment Report dated February 13, 2019 indicating gross income of \$3,779.82, deductions including those for provincial tax (\$230.82), meals on job sites (\$10.53) and a total net income of \$1,522.75 and January monthly report indicating employment income of **\$1,522.75**;
- 2) Simplified Monthly Self-Employment Report dated March 7, 2019 indicating gross income of \$2,349.01, deductions including those for provincial tax (\$153.68), meals on job sites (\$7.97) and a total net income of \$1,015.91 and February monthly report indicating employment income of **\$1,015.91**;
- 3) Simplified Monthly Self-Employment Report dated April 11, 2019 indicating gross income of \$3,962.74, deductions including those for provincial tax (\$259.24), meals on job sites (\$32.50) and a total net income of \$1,334.12 and March monthly report indicating employment income of **\$1,334.12**;
- 4) Simplified Monthly Self-Employment Report dated May 10, 2019 indicating gross income of \$3,922.05, deductions including those for provincial tax (\$256.55), meals on job sites (\$27.11) and a total net income of \$1,371.93 and April monthly report indicating employment income of **\$1,371.93**;
- 5) Simplified Monthly Self-Employment Report dated June 11, 2019 indicating gross income of \$3,567.26, deductions including those for provincial tax (\$233.36), meals on job sites (\$6.61) and a total net income of \$1,161.21 and May monthly report indicating employment income of **\$1,161.21**;
- 6) Simplified Monthly Self-Employment Report dated July 12, 2019 indicating gross income of \$6,333.49, deductions including those for provincial tax (\$414.33), meals on job sites (\$63.61) and a total net income of \$2,164.20 and June monthly report indicating employment income of **\$2,164.20**;
- 7) Simplified Monthly Self-Employment Report dated August 9, 2019 indicating gross income of \$2,792.10, deductions including those for provincial tax (\$182.99), meals on job sites (\$42.14) and a total net income of \$1,061.79 and July monthly report indicating employment income of **\$1,061.79**;
- 8) Simplified Monthly Self-Employment Report dated September 12, 2019 indicating gross income of \$5,554.67, deductions including those for provincial tax (\$343.63), meals on job sites (\$15.96) and a total net income of \$1,413.29 and August monthly report indicating employment income of **\$1,413.29**;
- 9) Letter dated September 12, 2019 from the ministry to the appellant indicating that a message had been left for the appellant and advising that documentation was required by the ministry to verify income, including a receipt for the \$182.99 provincial tax paid as reported in August 2019;
- 10) Letter dated September 20, 2019 from the ministry to the appellant advising the appellant

that the appellant's assistance cheque would be held until information was received, in particular documentation to verify income, including a receipt from Revenue Canada or an accountant to confirm that payment has been made for provincial tax collected; and, 11) The appellant's Request for Reconsideration dated December 3, 2019, to which was attached additional documents.

In the Request for Reconsideration, the appellant wrote that:

- The main basis for the dispute is that the appellant should have received the cheque of \$1,235.42 on September 25, 2019 when the earnings exemption was \$2,368.09, as shown in Evidence A.
- The appellant's annual earnings exemption (AEE) was reached October 22, 2019 as the ministry has admitted in Evidence D.
- The appellant attached a copy of the ministry's original decision. The appellant identified four portions of this decision as "Evidence A," "Evidence B," "Evidence C," and "Evidence D." Each identified portion was either commented upon on the decision itself and/ or referred to in subsequent pages that were added.
 - "Evidence A" is identified as information from the ministry in the original decision that the appellant's August income was \$1,413.29. The appellant wrote that this clearly shows the AEE and the last cheque that was not received, which caused the appellant's budget and business and living to be greatly affected.
 - "Evidence B" refers to \$206.43 being deducted for meals on job sites and the appellant wrote that this is agreed after speaking to an accountant.
 - "Evidence C" is identified as the information from the ministry that the appellant included (deductions) of \$2,074.46 for PST and the appellant was asked to provide confirmation of this expense and that the appellant admitted that the self-employment reports were incorrect with regards to PST and, as a result, this amount was added back into income.
 - "Evidence D" is identified as information that on October 22, 2019 the appellant was sent a message that the AEE had been reached.
- The "Evidence A" page includes a small screen shot that is illegible and larger screen shot stating that: (i) on September 25, 2019 the appellant is estimated to receive \$1,235.42 but the cheque will be held; (ii) this information may not be up-to-date; (iii) if the monthly report has not been submitted or processed yet, the actual amount of assistance received may change. In the screen shot, disability assistance is stated to include support of \$808.42, shelter rent of \$375, transportation supplement of \$52, and a Repayment Deduction of \$20. Regarding "Evidence C", the appellant wrote: The appellant never stated to anyone that this was in the bank. The appellant never stated to anyone that the accountant had this information. The appellant never admitted to anyone that there was an error made and the PST was incorrect.
- An "Evidence C continued" page in which the appellant wrote that the PST is dealt with at the end of the year by the accountant, including the offset amount of PST paid on materials, and the amount is submitted on an annual basis and paid when it is determined. When the offset amount is calculated, the monies are due in January, February 2020. The appellant questions whether any legislation requires that PST has to be accounted for on the date the ministry says. The appellant wrote that PST can be

done quarterly, bi-annually, and annually under the PST rules according to the appellant's discussion with the accountant. Regarding "Evidence D"- The appellant agrees that the AEE limit was reached on October 22, 2019. The appellant relies on the self-serve print screens to budget, live and run business. As "Evidence A" clearly shows, the cheque of \$1,235.42 was due and the AEE left over was \$2,368.09.

Additional Information

In the Notice of Appeal dated January 3, 2020, the appellant expressed disagreement with the ministry's reconsideration decision and wrote:

- A letter dated August 23, 2019 was received, advising to budget and prepare because the AEE was being reached.
- The self-serve "Evidence A" notified that the appellant's AEE was \$2,368.09 a few days prior to September 25.
- "Evidence A" shows on September 25, the appellant was to receive \$1,235.42.
- The ministry summary of facts states that on October 22, 2019 the appellant was advised that the appellant was not eligible for assistance, which is after the fact and 26 days after what Evidence A shows.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Copy of letter dated August 23, 2019 to the appellant in which the ministry advised that the appellant was close to reaching the AEE limit for 2019 as the AEE is \$2,368.09. Regarding saving for future expenses, money earned in one month is deducted from the payment issued in the following month, for example: income earned in September is to be reported by the 5th of October and applies to the benefit month of November. If the AEE limit is reached for 2019, additional income earned in that calendar year will be deducted dollar for dollar from the disability assistance payments. If the AEE limit is reached and monthly income is over the disability assistance rate, no disability assistance payment will be made but there may be eligibility for ongoing Medical Services Only (MSO) coverage. The transportation supplement will still be received until the end of the exemption year.
 - Beside "saving for future expenses," the appellant wrote that this was done and the appellant's budget included the cheque being held; the ministry is saying one thing and doing the opposite, which affects the appellant's PTSD, PCS, MDD, and MPD.
 - Regarding reaching the AEE for 2019, the appellant wrote that the ministry knows how much the appellant makes based on the monthly reports.
 - With respect to the transportation supplement, the appellant wrote that this was not done and two cheques, two months, were sent.
- 2) Copy of undated page with the answers to two queries.
 - The first query is the client is wondering what happens with all the money owed to client for the last 7 years for income tax that was not deducted on monthly reports. The response is the client first stated that the client had paid Revenue Canada and then the client was unable to provide proof, then the client stated it was with

an accountant and again this was untrue, and the worker then asked for bank statements that would prove that the client had a separate account for these funds. The direction is that all deductions for meals on site and provincial taxes will be added back to client annual earnings.

- The second query is the client wants to know why the client was not notified that these amounts should have been deducted, especially considering a worker is supposed to be reviewing all monthly reports once submitted. The answer is that whether it is a ministry or client mistake, the problems must be corrected.
- 3) Copy of the Evidence A page included with the Request for Reconsideration (summarized above).
- 4) Copy of two screenshots that the appellant indicated were taken approximately one week apart.
- One indicates that on September 25, 2019 the appellant is estimated to receive \$1,235.42.
 - The second screenshot, which the appellant indicated was taken a few days before September 25, 2019, showed the same information plus set out that there is \$2,368.09 remaining in the appellant's 2019 AEE. The appellant wrote that this was part of budgeting that the ministry suggested in their letter.

At the hearing, the appellant stated:

- The appellant has had to deal with the ministry through a third party and this has been challenging for getting information in a timely way since the ministry has 5 days to respond and documents have often been received at the last minute on the fifth day. The appellant repeatedly expressed frustration with the ministry's processes and stated the appellant feels this situation is exacerbating the appellant's PTSD.
- The appellant suffered a traumatic brain injury and has difficulties understanding information and especially has challenges with budgeting, being "numerically challenged."
- The ministry sent a letter August 23, 2019 that indicated that the appellant had used up 70% of the AEE and there was \$2,368.09 remaining. The appellant relied on the information from the ministry to budget. The appellant assessed that there would be disability assistance to get through the next couple of months.
- The photograph of the appellant's self-serve screen shot was taken on September 5, 2019 and indicated that the appellant was estimated to receive \$1,235.42. Although the amount was illegible in the screen shot, the appellant stated that the amount stated as remaining in the 2019 AEE was a higher amount than the figure in the screen shot taken around September 22, 2019.
- In the screen shot that the appellant took around September 22, 2019, which was 2 or 3 days before the appellant would receive a disability assistance cheque, the amount of the AEE remaining is stated as \$2,368.09 and that the cheque of \$1,235.42 will be held. The appellant became distraught when the appellant saw that the cheque would be held since the appellant had already budgeted based on the ministry's August 23, 2019 letter. The appellant experienced a panic attack and depressive thoughts. The appellant had to borrow money to get through

October.

- The appellant does not keep track of how much income is generated in the business and relies on the information from the ministry to understand how much of the AEE is remaining each month.
- The appellant did not understand why the cheque would be held by the ministry as the documents requested had been provided to the ministry through the third party within 3 weeks to a month from when the ministry requested them. It took the appellant about 2 ½ weeks to get together all the documents that were requested. The appellant did not have any verification that the documents were provided to the ministry.
- In the form to apply for a Provincial Sales Tax (PST) number, there are questions about one's experience with depression and psychiatric services and, therefore, the appellant could not register and obtain a PST number. The appellant told the ministry there was a problem with getting a PST number.
- Some of the appellant's clients required that the appellant charge PST and set it out on their receipt. Some of the appellant's clients do not pay PST and the appellant does not charge them PST.
- The appellant has asked the ministry how to deal with the situation with reporting PST and the ministry had not provided an answer. The appellant's accountant said not to charge PST but the appellant does not want to lose the clients who require PST to be itemized on the invoice.
- The ministry required the appellant to open up a separate bank account around the end of October or the beginning of November 2019, and the appellant placed approximately \$440 to \$455 in that account for PST.
- The appellant pays PST on the supplies that are purchased for the business and these amounts should be deducted from the PST that is paid at the end of the year. The appellant does not remit PST as the appellant does not have a PST number.
- No one has shown the appellant how to fill out the Self-Employment reports each month or how to set up accounts properly and finds this challenging with the mental health issues experienced.
- The ministry reviews the Self-Employment reports each month and there was never an issue taken with the PST deductions before.
- The appellant and the advocate will be meeting with the ministry to sort out how the ministry wants the appellant to complete the reports in the future.

The ministry did not attend the hearing and relied on its reconsideration decision as its submission on the appeal.

Admissibility of Additional Information

The panel considered the appellant's testimony and the additional documents provided by the appellant as relating to the ministry's denial of disability assistance for the month of October 2019 and, therefore, as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision, which determined that the appellant is not eligible for disability assistance for the month of October 2019 pursuant to Section 9(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) due to the family unit's net income from self-employment being more than the disability assistance amount for the month, was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

The relevant sections of the legislation are as follows:

Section 1 of the EAPWDR defines "earned income" as:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

Section 9 of the EAPWDR provides:

Limits on income

- 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 dependant.
- (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.

Schedule A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

In calculating the net income of a family unit under Schedule B, some deductions and exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation. . . .

- (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 [annual exemption- qualifying income] and 4 [small business exemption], and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3 [annual exemption- qualifying income], 7 [exemptions- unearned income] and 8 [minister's discretion to exempt education-related unearned income].

Section 3 of Schedule B of the EAPWDR provides as follows:

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;

"**initial qualifying month**", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"**qualifying income**" means

- (a) earned income, except the deductions permitted under [section 2](#), and
- (b) unearned income that is compensation paid under [section 29](#) or [30](#) of the [Workers Compensation Act](#);

"**qualifying month**", in respect of a family unit and a calendar year, means

- (a) the initial qualifying month for the family unit in the calendar year, and
- (b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"**recognized family unit**", in respect of a calendar year, means a family unit that

- (a) forms during the calendar year, and
- (b) includes at least one person who
 - (i) is designated as a person with disabilities, and
 - (ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of [section 1](#) (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

- (a) the qualifying income of the family unit for the qualifying month;
- (b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

- (a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);
- (b) in the case of any other qualifying month for the family unit in the calendar year, the

- amount calculated in accordance with subsection (7).
- (4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:
- (a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of
 - (i) the base amount for the family unit, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
 - (b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of
 - (i) the base amount for the recognized family unit, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
 - (c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).
- (5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:
- (a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is
 - (i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if
 - (A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or
 - (B) a member of the family unit received income assistance under the [Employment and Assistance Act](#) for the calendar month immediately preceding that first calendar month, or
 - (ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;
 - (b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;
 - (c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is
 - (i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or
 - (ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.
- (6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:
- (a) in the case of a recipient who is not designated as a person with disabilities, the product of
 - (i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;
 - (b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of
 - (i) nil, and
 - (ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:
 - (A) by deducting the qualifying income of that last family unit in that last

- qualifying month;
- (B) by deducting the product of
- (I) the amount specified in paragraph (a) of the definition of "base amount", and
 - (II) the number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;
- (c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of
- (i) the amount specified in paragraph (a) of the definition of "base amount", and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.
- (7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of
- (a) nil, and
 - (b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:
 - (i) by deducting the qualifying income of the family unit in that last qualifying month;
 - (ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded
 - (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,
- by deducting the product of
- (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made
- (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,
- by adding the product of
- (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iv) by deducting the product of
- (A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and
 - (B) the number of calendar months after that last qualifying month and before the index qualifying month.
- (8) If October 2017 is a qualifying month, other than an initial qualifying month, for a family unit, the exemption limit of the family unit for October 2017 is calculated in accordance with subsection (7) and then increased by the amount set out in Column 2 or 3 of the following table, as the case may be, that corresponds to the earliest initial qualifying month for the family unit in 2017 set out in Column 1 of the table.

Item	Column 1 Earliest initial qualifying month for the family unit in 2017	Column 2 Family unit that includes only one person with disabilities on October 1, 2017 (\$)	Column 3 Family unit that includes two persons with disabilities on October 1, 2017 (\$)
1	January	2 400	4 800
2	February	2 200	4 400
3	March	2 000	4 000
4	April	1 800	3 600
5	May	1 600	3 200
6	June	1 400	2 800
7	July	1 200	2 400
8	August	1 000	2 000
9	September	800	1 600

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:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this

regulation;

(m) office expenses;

(n) equipment purchases or rentals.

- (2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if
- (a) the recipient is participating in a self-employment program, and
 - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

Panel's decision

In the reconsideration decision, the ministry wrote that Section 9 of the EAPWDR stipulates that a family unit is not eligible for assistance if the net income of the family unit determined under Schedule B of the EAPWDR equals or exceeds the amount of disability assistance determined under Schedule A. The ministry wrote that the appellant, as a sole recipient with PWD designation, is entitled to disability assistance in the total amount of \$1,133.42 according to the rates in Schedule A. The ministry also wrote that under Section 1(c) of Schedule B of the EAPWDR, all earned income must be included in the calculation of net income unless there is an allowed deduction or an amount is specifically exempted under Sections 3 or 4.

The ministry wrote that the appellant had claimed deductions from self-employment income for meals on job sites (\$206.43) and this was not a permitted operating expense and therefore not exempt under Section 4(2)(b)(i) of Schedule B of the EAPWDR. The ministry also wrote that the appellant had claimed deductions from self-employment income for taxes (\$2,074.46) and did not provide evidence of payment to support these deductions when requested by the ministry and, therefore, they were not allowed as permitted operating expenses and were not exempt under Section 4(2)(b)(i) of Schedule B of the EAPWDR. The ministry wrote that the appellant did not show, alternatively, that there was a separate bank account consisting exclusively of funds reserved for the purpose of paying permitted operating expenses, as set out in Section 4(2)(b)(ii) of Schedule B. The ministry wrote that when these non-exempt amounts were included in the appellant's self-employment income, the AEE limit for 2019 (\$12,000) had been exceeded at the end of August 2019 and the appellant was not eligible for October disability assistance.

In the Request for Reconsideration, the appellant referred to the ministry's original decision and a statement ("Evidence B") regarding the \$206.43 for meals on job sites not being an allowable deduction and the appellant wrote that this is agreed after speaking to an accountant. At the hearing, the appellant stated that no one has shown the appellant how to fill out the Self-

Employment reports each month or how to set up accounts properly and the appellant finds this challenging with the mental health issues experienced. The appellant acknowledged at the hearing that, after talking with the accountant, the meals on job sites were not deductible from the self-employment income.

At the hearing, the appellant argued that the appellant relies on the ministry system for budgeting and the ministry advised in August and in September 2019 that a cheque would be coming. The appellant argued that it was not until mid-September 2019 that the appellant was advised that no cheque would be forthcoming. The appellant argued that the Self-Employment reports had been completed in the same manner for many months and the ministry did not take issue with the reports anytime before. The appellant argued that the ministry's disallowing of the deductions and adjusting of income that resulted in the ministry holding the October disability assistance caused significant upset as well as financial hardship.

The appellant stated at the hearing that the ministry sent a letter August 23, 2019 that indicated that the appellant had used up 70% of the AEE and that there was \$2,368.09 remaining. The appellant stated that this information from the ministry was relied upon for budgeting. The appellant assessed at the time that there would be sufficient disability assistance to get through the next couple of months. The appellant referred to the self-serve screen shot taken on September 5, 2019, which indicated that the appellant was estimated to receive a cheque for \$1,235.42. Although the number was illegible, the appellant stated that the amount set out as remaining in the 2019 AEE was a higher amount than the figure in the screen shot taken around September 22, 2019. The appellant referred to the screen shot from around September 22, 2019, which the appellant stated was 2 or 3 days before the appellant would receive a disability assistance cheque, and the amount of the AEE remaining is still set out as \$2,368.09.

The appellant stated that the appellant does not keep track of how much income is generated in the business and relies on the information from the ministry to understand how much of the AEE is remaining each month. The appellant also stated that when the appellant read that the cheque of \$1,235.42 would be held by the ministry, the appellant became distraught since the appellant had already budgeted based on the ministry's August 23, 2019 letter. The appellant experienced a panic attack and depressive thoughts and had to borrow money to get through October.

While the appellant stated that the information in the screen shots from the ministry's website were being relied upon as an accurate and up-to-date record of the 2019 AEE remaining and the amount that the appellant would receive in disability assistance, the panel noted that the screen shots included a statement that the information "may not be up-to-date" and "if your monthly report has not been submitted or processed yet, the actual amount of assistance you receive may change." While the monthly reports had been provided by the appellant to the ministry, each report for the period February through September 2019 included an amount for a deduction for meals on job sites and for PST, which the ministry subsequently denied as a

deduction and included back into the appellant's self-employment income as an adjustment.

In a letter dated September 12, 2019, the ministry indicated that a message had been left for the appellant and the ministry required documentation to verify income, including a receipt for the \$182.99 provincial tax paid as reported in August 2019. The ministry also set out in a letter dated September 20, 2019 that documentation was required from the appellant to verify income, including a receipt from Revenue Canada or an accountant to confirm that payment has been made for provincial tax collected. The appellant stated that the documents requested by the ministry had been provided through the third party within 3 weeks to a month from when the ministry requested them. The appellant acknowledged that there was no verification available to show which documents had been provided to the ministry. Although the appellant stated that the documents requested had been provided, the panel notes that one of the requested items was "a receipt from Revenue Canada and/or accountant that payment had been made to them monthly for provincial tax you have collected," and the appellant acknowledged that there had been no payment to Revenue Canada for provincial tax that was collected.

The appellant explained that due to some of the requirements for obtaining a PST number, the appellant had been unable to register and obtain a PST number, which the appellant told the ministry. The appellant stated that some clients of the business require that the appellant charge PST and the appellant includes PST on their invoices. The appellant stated that the ministry had been asked about how to deal with the situation and the ministry had not provided an answer. The appellant's accountant told the appellant not to charge PST to the clients, but the appellant does not want to lose the clients who require PST to be itemized on the invoice. The appellant stated the PST is paid on the supplies that are purchased for the business and these amounts should be deducted from the PST to be remitted.

The appellant acknowledged that PST is not remitted as the appellant does not have a PST number. The appellant stated that the ministry reviews the Self-Employment reports each month and there was never an issue taken with the PST deductions before. As the appellant acknowledged that the amounts deducted for PST each month on the appellant's Self-Employment reports will not be remitted to the proper authority, the panel finds that the ministry reasonably concluded that there was insufficient evidence to establish these amounts are permitted operating expenses of the business and, as the amounts are not exempt, they must be included in the appellant's self-employment income. The panel notes the appellant expressed frustration and upset that the ministry's adjustment of the self-employment income after several months of processing the monthly reports resulted in the loss of funds that the appellant had counted on.

Section 4(2)(b)(ii) of Schedule B of the EAPWDR provides another option for earned income to be exempted from total income, one that requires that the small business income be deposited in a separate account in a savings institution that consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business. The

appellant stated that the ministry required the appellant to open up a separate bank account around the end of October or the beginning of November 2019, and the appellant placed approximately \$440 to \$455 in that account for PST. The ministry wrote in the reconsideration decision that the appellant did not show that a separate bank account had been set up, and the appellant did not produce confirmation of the establishment of a separate bank account at the hearing. The panel finds that the ministry reasonably determined that there was insufficient information to establish that the requirements of Section 4(2)(b)(ii) of Schedule B had been met. At the hearing, the appellant stated that the appellant and the advocate will be meeting with the ministry to sort out how the appellant will report income and deductions in the future.

The panel finds that the ministry reasonably determined that the appellant had claimed deductions from self-employment income for meals on job sites (\$206.43) that the appellant admitted, after having spoken with an accountant, were not included in the list of permitted operating expenses under Section 4(1) of Schedule B. The panel finds that the ministry reasonably determined that the appellant had claimed deductions from self employment income for taxes (\$2,074.46) with insufficient evidence to support the remittance of PST. Therefore, the ministry reasonable concluded that these deductions were not allowed as permitted operating expenses and were not exempt under Section 4 of Schedule B of the EAPWDR.

On a review of the net income amounts from the appellant's Self-Employment reports, the panel finds that the ministry reasonably concluded that when these non-exempt amounts were included in the appellant's self-employment income, the AEE limit for 2019 (\$12,000) had been exceeded at the end of August 2019, resulting in net self-employment income of \$1,326.23. As the appellant's net income for August exceeded the disability assistance rate of \$1,133.42, the appellant was not eligible for October disability assistance pursuant to Section 9(2) of the EAPWDR.

The panel notes that the use of the word "must" in Section 1(c) of Schedule B of the EAPWDR requires the ministry to include all earned income in the calculation of the net income of a family unit, except for permitted deductions and any earned income exempted as specifically set out in Sections 3 and 4 of the Schedule, and does not give the ministry the discretion to do otherwise.

Conclusion

The panel finds that the ministry's decision, which determined that the appellant is not eligible for disability assistance for the month of October 2019 pursuant to Section 9(2) of the EAPWDR due to the family unit's net income from self-employment being more than the disability assistance amount for the month, is reasonably supported by the evidence. The panel confirms the decision pursuant to Section 24(1)(a) of the *Employment and Assistance Act*. Therefore, the appellant is not successful in the appeal.

APPEAL NUMBER

2020-00006

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Neena Keram

SIGNATURE OF MEMB

DATE (YEAR/MONTH/DAY)