

APPEAL NUMBER
2020-00121

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated February 27, 2020 that determined the appellant was not eligible for courses and travel costs to attend courses, to be included as a permitted operating expense in the Self Employment Program as per the Employment and Assistance for Persons with Disabilities Regulation, schedule B, section 4.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, section 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24, schedule B, sections 1, 2, 3 and 4

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show:

- The appellant is a sole recipient of disability assistance.
- They were designated as a person with disabilities (PWD) effective November 1, 2018.
- The appellant receives a total of \$1133.42 disability assistance.
- On February 7, 2020 the appellant completed a voluntary participation plan agreeing to participate in the Self Employment Program (SEP).
- The ministry advised the appellant that transportation to attend courses and costs for courses were not a permitted business expense under the EAPWDR, schedule B, section 4.

Reason for Request for Reconsideration - February 12, 2020

- The appellant asks for reconsideration of the deduction of continuing education course tuition and travel and meals as a business expense under the SEP as they believe the program has not been designed in consideration of the situation of a self-employed health care worker.
- The appellant is required to participate in ongoing continuing education to maintain their license as a [REDACTED]. "These courses are not merely for professional development but are mandated by BC government legislation." If the appellant does not take these courses, they cannot continue to practice.
- At this time, the appellant is able to supplement their limited PWD income by continuing to practice their profession in a very limited practice. In doing so, they assist their patients who require their treatments, and assist themselves, as the income they make after expenses goes directly to funding their health care, as they require significant ongoing physical therapy to recover and continue to have the level of function that they have recovered thus far and to potentially recover further.
- As the appellant is highly experienced at their career they can manage their body and time with relative freedom as a self-employed person. They can still do this work in a limited fashion and it would be difficult to find alternative work that allows them such freedom for self-care management. This is the best option for them at this time.
- The appellant does not agree that a requirement of practising their profession should result in losing income that is desperately needed for their recovery from a life threatening and debilitating illness and what is in fact an essential business expense.

Voluntary Participation Plan form - (no date)

Name of Program/Service - Self-Employment Program

Start date January 1, 2020 - End date - December 31, 2023

2020 Appellant, [REDACTED] EXP Summary PWD-SEP		
2020 Total	est/year	est/month
advertising	\$250	\$21
dues, lic, fees	\$1,100	\$92
Insurance	\$170	\$14
Interest fees		
Maint. & Repr	\$120	\$10
AdmFees CC	\$120	\$10
AdmFees CU	\$120	
Vehicle**		
Office	\$120	\$10
Supplies	\$400	\$33
Prof. Fees		
Rent	\$1,920	\$160
Training	\$500	\$42
Cell	\$180	15
Internet	\$996	\$83
HomeLaundry	\$300	\$25
Other		
Total	\$6,296	\$515

January	
advertising	
dues, lic, fees	
Insurance	
Interest fees	
Maint. & Repr	
AdmFees CC	\$27.8
Vehicle**	
Office	
Supplies	\$25
Prof. Fees	
Rent	\$160
Training	
Cell	\$14.96
Internet	\$82.86
HomeLaundry	\$25
Other	
Total	\$335.62
GR [REDACTED] Income	1310
Expenses	-335.62
NET inc SEP	974.38
Vehicle SEP	***

Additional Information

Notice of Appeal (NOA) – April 20, 2020

Attachment to the NOA

The appellant is appealing the cost of tuition and the cost of travel if and as required. It is important to note that these courses are a legal requirement of working in the appellant's profession and are not discretionary.

The College of [REDACTED] administers approval of required courses and creates and charges for some of the required courses. Some of the courses are provided online; some require in person attendance due to the hands-on nature of the profession. All of the required courses are mandated and approved by the [REDACTED] and as such they form a required professional expense to remain in the appellant's profession.

The appellant submits therefore, they have technically become professional "fees" and should be allowed as a permitted operating expense under the PWD-SEP.

The appellant adds, the legislation does not include this expense as a permitted operating expense because it may not have taken into consideration the type of business the appellant is involved in or the professional responsibilities of a health care professional. Other professions like engineering have similar

requirements to maintain professional licensing and similarly offer, administer and/or mandate courses required to maintain licensing.

The appellant states it would seem unlikely that the creators of the legislation would have intended for professionals who have suffered challenges that have caused them to become a persons with disability to have to pay to maintain their licensing requirements out of their limited ability to earn income. It seems that the legislation may have been created without consideration of the costs required in some professions where the professional is a sole proprietor of a business and therefore these additional professional costs are an operating expense that this type of business must endure, as opposed to a business where one is making/producing/selling in an unregulated environment.

It is completely understandable that the program does not allow discretionary courses as permitted operating expenses as this could be open to abuse. However, in cases like this, overseeing jurisdictions often look to the intention of legislation to make a determination. The fees for *required* courses, not *discretionary* ones, seem like they should be considered a professional fee and therefore a permitted operating expense under the working of this legislation. In courses where travel is required to attend these courses, that could also be seen as a required (and therefore permitted operating) expense as well, for the same reasons.

Ministry Submission

The ministry's submission in this matter was the reconsideration summary provided in the Record of Ministry Decision.

The panel determined that the additional information is considered argument, and therefore no admissibility determination is required under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is:

Whether the ministry's reconsideration decision that determined the appellant was not eligible for courses and travel costs to attend courses, to be included as a permitted operating expense in the SEP as per schedule B, section 4 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The ministry based the reconsideration decision on the following legislation.

Employment and Assistance for Persons with Disabilities Act

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons With Disabilities Regulation

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 (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.

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 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

...

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4...

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;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

(a) \$1000, in the case of a family unit that includes only one recipient,

...

"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

...

(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...

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.

...

Appellant Argument

The appellant argues that continuing education course tuition and travel and meals should be considered a business expense under the SEP. The appellant is required to participate in ongoing continuing education to maintain their license as an [REDACTED]. "These courses are not merely for professional development but are mandated by BC government legislation." If the appellant does not take these courses, they cannot continue to practice.

The appellant also argues that by continuing to practice their profession in a very limited practice they assist their patients who require their treatments, and assist themselves, as the income they make after expenses is going directly to fund their health care.

The appellant argues further that the legislation does not include this expense as a permitted operating expense because it may not have taken into consideration the type of business the appellant is involved in or the professional responsibilities of a health care professional. Other professions like engineering have similar requirements to maintain professional licensing and similarly offer, administer and/or mandate courses required to maintain licensing.

Ministry Argument

The ministry argues that it advised the appellant that transportation to attend courses and costs for courses were not a permitted business expense under the EAPWDR schedule B section 4 and they would be unable to approve costs for courses or travel costs to attend courses, as these items are not listed as permitted expenses.

Analysis

EAPWDA, section 5

Section 5 states that the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it. Ministry records show the appellant is a sole recipient of disability assistance. They were designated as a person with disabilities effective November 1, 2018.

EAPWDR, sections 1.9 and 24 – calculation of disability assistance

Section 1 defines earned income as, "any money or value received in exchange for work or the provision of a service". Evidence submitted (Voluntary Participation Plan) shows the appellant is participating in a self-employment program from January 1, 2020 to December 31, 2023.

Section 9 sets the limits on income, and states that the "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."

Section 24 provides a formula for the amount of disability assistance as,
"(a) the amount determined under Schedule A, minus
(b) the family unit's net income determined under Schedule B."

In applying the above legislation, ministry records show the appellant's disability assistance was calculated as \$1133.42 per month.

EAPWDR, schedule B, sections 1, 2 and 3 – deductions and exemption rules, deductions from earned income and annual exemption qualifying period

Section 1 provides a list of exemptions when calculating the net income of a family unit. The panel notes, course costs and travel to attend courses are not listed under this section.

Section 2 provides a list of the "only deductions permitted from earned income", The panel notes, course costs and travel to attend courses are not listed under this section.

Section 3 provides the annual exemption amounts for qualifying income. As ministry records show the appellant is a sole recipient with PWD designation, they qualify for an annual earnings exemption of

\$12,000. This exemption would apply once the appellant reaches a net income of \$12,000 in the calendar year.

EAPWDR, schedule B, section 4(1) – small business exemption

Section 4(1) of schedule B provides a list of permitted operating expenses – “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”.

The appellant argues that continuing education course tuition and travel and meals should be considered a business expense under the SEP. They are required to participate in ongoing continuing education to maintain their license [REDACTED]. “These courses are not merely for professional development but are mandated by BC government legislation.” If the appellant does not take these courses, they cannot continue to practice.

The ministry argues they would be unable to approve costs for courses or travel costs to attend courses, as they are not listed as an expense permitted in accordance with schedule B, section 4(1).

In reviewing the list under schedule B, section 4(1), the panel notes, “(d) taxes, fees, licences and dues incurred in the small business” as well as “(i) motor vehicle expenses” are included as permitted operating expenses”. The panel also notes there is no definition for “fee” or “motor vehicle expenses” in the EAPWDA or the EAPWDR.

The panel finds that the list under schedule B, 4(1)(d), “taxes, fees, licences and dues incurred in the small business” pertain to items that are all required (not discretionary) in operating a small business and as fees (tuition) for mandatory courses are a requirement of the appellant’s practice, they should reasonably be included as a permitted operating expense under schedule B, 4 (1)(d). The panel finds the ministry’s interpretation of the definition of “fees” under this legislation, too narrow. Therefore, the panel finds the ministry’s determination that the appellant was not eligible for mandatory course costs (tuition) to be included as a permitted operating expense, under schedule B, 4 (1)(d) unreasonable.

The appellant also argues that, as the courses are a requirement for their business, where travel is required to attend these courses, travel could also be considered a permitted operating expense. The panel notes that in the “2020 Appellant [REDACTED] EXP Summary PWD-SEP” as well as the January 2020 actual expenses document, the appellant lists “Vehicle** and Vehicle – SEP”. The panel finds there is insufficient evidence to determine the significance of the asterisks’ and there is also insufficient evidence to determine if the appellant uses a vehicle to attend the required courses.

In addition, the appellant argues that meals, as a travel expense should also be considered a business expense under the SEP. However, the panel notes schedule B (4)(1) does not include meals.

Therefore, the panel finds the ministry’s determination that the appellant was not eligible for travel costs to attend courses, under schedule B, section 4 (1), to be included as a permitted operating expense, reasonable.

Conclusion

In conclusion, the panel finds the ministry’s reconsideration decision that determined the appellant was not eligible for courses costs (tuition), to be included as a permitted operating expense in the Self Employment Program as per the EAPWDR, schedule B, section 4 was not a reasonable application of

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the legislation in the circumstances of the appellant.

The appellant is successful on appeal.

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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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)