

APPEAL NUMBER
2020-00261

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated October 26, 2020, in which the ministry denied disability assistance because the appellant's earnings exceed the ministry's rate of disability assistance ("DA") for the family unit size.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 9, 24, Schedule A section 1, 2, and 4, and Schedule B section 1, 2, 3, 4.

PART E – SUMMARY OF FACTS

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

1. Information from the ministry's reconsideration decision stating that the appellant was not eligible for Disability Assistance (DA) for October 2020. On October 26, 2020, the minister completed the review of the RFR.

The ministry record includes the following background information:

- The family unit consists of the appellant, spouse and three dependent children.
- The appellant has persons with disabilities (PWD) designation.
- The appellant has been in receipt of the annual earnings exemption for the 2020 calendar year. The total earnings exemption permitted was \$14,400.
- On October 7, 2020 the ministry processed the monthly report for November. The appellant had declared \$4734.75 income for September and the spouse declared child tax benefits.

2. The appellant had submitted a copy of paystubs, dated 14 and 31 August 2020, showing current earnings of \$5835.11 and current deductions of \$1201.71 for the period 1 – 31 July 2020. The stubs show a direct deposit amount of \$3,081.84 on the 14th of August and a direct deposit payment of \$1100.00 on the 31 August 2020. The stubs listed a number of deductions.

The panel finds the appellant received a total of \$5835.11 of employment income during the month of August 2020, with \$4, 181.84*, after deductions, being directly deposited to the bank account.

**Note, the panel notes the ministry listed this amount in the reconsideration decision as \$4, 181.34 (sic) which the panel believes to be a simple typographical error.*

2. An Annualized Earnings Exemption (AEE) screen print, showing AEE net employment income payments to the appellant from February to September inclusive, in the amount of \$27532.77 and a remaining AEE balance in June 2020 of \$0.00. The panel notes the ministry had used the same dollar value for the September income, \$4181.84, as received by the appellant in August 2020 as net income.

3. A monthly appellant self-report, filed on September 3, 2020, requesting continued assistance. The report declared \$4181.34 employment income for the previous month and declared child tax benefits of \$1000.00 received by the spouse.

Additional information

With the consent of both parties, the appeal proceeded as a written hearing according to section 22(3)(b) of the Employment and Assistance Act.

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

The appellant has submitted no other written evidence. As no submission was received within the time established in the Tribunal submissions schedule, the panel finds that the appellant declined the opportunity to provide a written submission.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant is ineligible for DA for October 2020 under section 9(2) of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant had earned income from employment in excess of the DA rate as calculated under section 24 and Schedules A and B of the Regulation, and had reached the exemption limit set out in section 3(1) of Schedule B?

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this 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,

"unearned income" means any income that is not earned income,

Limits on income

9

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

SCHEDULE A

Disability Assistance Rates

(section 24 (a))

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

(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 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
6	Two applicants /recipients and one or more dependent children	One applicant /recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	1 121.56

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

(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
5	5 persons	\$750

Schedule B

Net Income Calculation

(section 24 (b))

Deduction and exemption rules

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

- (a) the following are exempt from income:
(v) the basic child tax benefit;
(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

Deductions from earned income

2. The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
- (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

- (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

"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

"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).

(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;

Arguments of the Parties

Appellant's Position

The panel had found that that the appellant declined the opportunity to provide a written submission. However, in the Reconsideration Decision, the Ministry states the appellant "requested a reconsideration of the ministry's decision that you had exhausted your earnings exemption limit and your earnings exceeded the ministry's rate of assistance and you were ineligible for October disability assistance."

Ministry's Position

The ministry's position is that when the appellant declares 2020 employment income, the net income is deducted from the calculated \$14,400 annual earnings exemption amount each month until it reaches the \$14,400 exemption limit.

For recipients of disability assistance, income received during the previous month is reported by the 5th of the current month and affects the following month's assistance (for example, August 2020 income was to be reported by September 5, 2020 and affected October disability assistance).

Once the appellant has exhausted the earnings exemption limit, employment earnings are deducted dollar for dollar from the ministry's calculated rate for disability assistance for the appellant of \$1768.56. The ministry holds that the appellant received August employment net income of \$4181.84, which is not exempt income. Accordingly, if the monthly net income then exceeds \$1768.56, the appellant is not eligible for disability assistance, but would be eligible for medical services only.

Panel Decision

The ministry has discussed the copies of the pay stubs, and used them as an indication of 'earned income' and resultant 'net income'. Section 1 of the EAPWD Regulation defines "earned income" as any money received in exchange for work or the provision of a service. There has been no argument from the appellant of the receipt of earned income, and indeed the pay stubs and self-report are in agreement. The Panel finds the amount of \$5835.11 of employment income to be 'earned income'.

The panel notes the ministry's position that the net income for the month of \$4181.84 is shown as the same value as that submitted by the appellant on the self-report. Legislation provides for the purposes of section 24 (b), calculation of net income, in section 2 of Schedule B and allows only the following deductions from earned income;

- (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;

The panel notes that in addition to the deductions listed on the pay stubs, the ministry included in its determination a monthly cellular amount of \$33.60. Section 1(c) of the EAPWDR states all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4. The cellular deduction of \$33.60 for the month is not a permitted deduction. The panel finds therefore that the appellant received a calculated net income for August of $4181.84 + \$33.60 = \underline{\$4215.44}$. The panel finds the ministry was reasonable in its determination of the amount of net income received by the appellant.

Legislation allows those receiving disability assistance to potentially receive other income streams. Section 1 of Schedule A provides that the maximum amount of disability assistance before deduction of net income is the monthly support allowance and the shelter allowance.

This monthly support for the family unit consisting of two recipients with only one designated as a person with disabilities and who have 3 dependent children, is shown under Schedule A as \$1,121.56 and a \$750 (maximum) shelter allowance for a total of \$1871.56 disability assistance. The ministry records that the actual shelter expenses are \$647 per month. Therefore, the maximum disability assistance rate for the appellant's family unit is \$1,121.56 support and \$647 shelter for a total of \$1768.56. The panel finds the ministry was reasonable in its determination of the maximum amount of disability assistance rate.

Schedule B of the EAPWDR provides for deduction and exemption rules. Section 3 of the EAPWD Regulation provides the legislative criteria relating to an annual exemption for a qualifying income amount. This qualifying income means earned income minus any permitted deductions. For a family unit with two recipients and only one designated with Persons with Disabilities, as in the case of the appellant's family unit, the monthly earnings exemption limit is shown as \$1 200 for a maximum annual exemption of \$14,400. The panel finds the ministry was reasonable in its determination of the maximum annual exemption amount.

The Annualized Earnings Exemption (AEE) screen print tracks the application of what the ministry holds to be monthly net income of the appellant. The appellant has not provided any evidence to indicate disagreement or error in these figures. The panel finds the ministry has monitored the impact and balance of the income versus the annual exemption which shows the exemption of \$14,400 was used up in July 2020. The panel finds the ministry was reasonable in its determination that net income received for August 2020 was not therefore exempt.

Section 24 allows that disability assistance may be provided to or for a family unit. The section states that a person's income (calculated under Schedule B of the Regulation), must be deducted from their disability assistance (calculated under Schedule A of the Regulation). Section 9(2) of the EAPWD Regulation states a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit. In this case the net income of \$4215.44 exceeds the amount of disability assistance of \$1768.56. As the annual earnings exemption was used up, and no other exemptions are applicable, the panel finds the family unit is therefore not eligible for assistance for the month of October, 2020 and the ministry was reasonable in its determination of ineligibility, which was supported by the evidence.

Conclusion

The panel finds that the ministry reasonably determined the appellant is not eligible for DA for the month of October 2020 because the appellant's income exceeds the assistance rate for the family unit and the deductions or exemptions set out in Schedule B do not apply in the appellant's circumstances. The panel confirms the reconsideration decision.

APPEAL NUMBER
2020-00261

The appellant is not successful on appeal.

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2020-00261

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

Donald Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/12/17

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/12/17

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/12/17