

APPEAL NUMBER  
2021-00010

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 24, 2020 in which the ministry found that the appellant is not eligible for disability assistance for the month of December 2020, pursuant to Section 9(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The ministry found that the family unit's net income from employment earnings in October 2020, after applying the appellant's remaining 2020 annual earning exemption (AEE) under Section 3 of Schedule B of the EAPWDR, exceeded the disability assistance amount.

**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**

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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

- 1) Statement dated September 24, 2020 indicating the appellant earned employment income of \$754.77 for the period September 6 to September 19, 2020 with year-to-date earnings less deductions of \$11,704.16;
- 2) Statement dated October 8, 2020 indicating the appellant earned employment income of \$644.68 for the period September 20 to October 3, 2020 with year-to-date earnings less deductions of \$12,348.84;
- 3) Statement dated October 22, 2020 indicating the appellant earned employment income of \$854.11 for the period October 4 to October 17, 2020 with year-to-date earnings less deductions of \$13,202.95;
- 4) Monthly report to the ministry dated October 28, 2020 indicating that the appellant received employment income of \$1,498.79; and,
- 5) The appellant's Request for Reconsideration dated December 10, 2020.

In the Request for Reconsideration, the appellant wrote that:

- The appellant was getting assistance from an advocate and the advocate would submit something in writing for the appeal.
- The appellant was requesting benefits while awaiting a reconsideration.
- The appellant cannot afford rent or food and may be made homeless without appeal benefits.

***Additional Information***

In the Notice of Appeal dated January 8, 2021 the appellant expressed disagreement with the ministry's reconsideration decision and wrote that the appellant did not understand about a reconsideration as the appellant does not understand much English.

The appellant did not provide a written submission on the appeal.

The ministry relied on the reconsideration decision as the ministry's submission on the appeal.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry decision, in which the ministry found that the appellant is not eligible for disability assistance for the month of December 2020, pursuant to Section 9(2) of the EAPWDR, as the family unit's net income from employment earnings in October 2020, after applying the appellant's remaining 2020 annual earning exemption (AEE) under Section 3 of Schedule B of the EAPWDR, exceeded the disability assistance amount, 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 set out in the Schedule at the end of these reasons.

*Ministry's argument*

In the reconsideration decision, the ministry wrote that Section 9 of the EAPWDR says 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 \$808.42 for support and \$368 for shelter, for a total amount of \$1,176.42 per month in disability assistance 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 reported receiving \$1,498.79 in employment income for October 2020, which falls within the definition of "earned income," as set out in Section 1 of the EAPWDR as being "any money received in exchange for work or the provision of a service." The ministry wrote that the small business exemption in Section 4 of Schedule B of the EAPWDR is not applicable to the appellant's earned income as the appellant is not participating in the self-employment program. The ministry wrote that the appellant had \$295.84 remaining for the 2020 AEE of \$12,000 for a sole recipient, as set out in Section 3 of Schedule B of the EAPWDR, and the amount of \$295.84 was applied towards the appellant's earned income of \$1,498.79 to yield net income of \$1,192.84 (sic). The ministry referred to the reporting requirements and wrote that income received in the month (October) is reported by the 5<sup>th</sup> day of the following month (November) and is considered for the assistance paid in the subsequent month (December). The ministry wrote that as the appellant's net income of \$1,192.84 for October exceeded the ministry's rate of assistance of \$1,176.42, the appellant was not eligible for assistance for December 2020, in accordance with Section 9(2) of the EAPWDR.

*Appellant's argument*

In the Request for Reconsideration, the appellant wrote that an advocate was assisting the appellant and the advocate would submit something in writing for the appeal. The appellant wrote that the appellant cannot afford rent or food and may be made homeless without appeal benefits, which were being requested by the advocate. In the Notice of Appeal the appellant

wrote that the appellant did not understand the reconsideration process; no further submission was provided by the appellant on the appeal. The appellant did not dispute the ministry information about the amount of employment income earned by the appellant in October 2020 or the amount of the 2020 AEE remaining to be applied towards the appellant's earned income. The appellant did not dispute the ministry information that the small business exemption was not applicable to the appellant's earned income as the appellant is not participating in the self-employment program.

*Panel's decision*

Section 9 of the EAPWDR sets out 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 \$808.42 for support and that the shelter costs have been calculated as \$368, for a total amount of \$1,176.42 per month in disability assistance. In Schedule A of the EAPWDR, Section 2 provides the amount of \$808.42 in support for a sole recipient with no dependent children. Section 4 of Schedule A provides the shelter amount as the smaller of the family unit's actual shelter costs and the maximum of \$375 for one person. The appellant did not dispute the ministry's calculation of shelter costs at smaller than the maximum amount for one person and the panel finds that the ministry reasonably concluded that the total disability assistance amount calculated under Schedule A of the EAPWDR is \$1,176.42.

Section 1 of Schedule B of the EAPWDR provides that when calculating the 'net income' of a family unit 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]. Section 1 of the EAPWDR defines "earned income" to mean "any money or value received in exchange for work or the provision of a service." The appellant does not dispute that the amount of \$1,498.79 was received in employment income in October 2020. The statement dated October 8, 2020 indicates the appellant earned employment income of \$644.68 after deductions and the statement dated October 22, 2020 indicates the appellant earned employment income of \$854.11 after deductions, for a total in net employment income of \$1,498.79. As well, the appellant's monthly report to the ministry dated October 28, 2020 indicates that the appellant received employment income of \$1,498.79 in the month. The panel finds that the ministry reasonably concluded that the appellant received net employment income of \$1,498.79 in October 2020 and that this falls within the definition of "earned income."

In terms of available exemptions from earned income, the appellant did not dispute the ministry's conclusion that the small business exemption in Section 4 of Schedule B of the EAPWDR was not applicable to the appellant's earned income as the appellant is not participating in the self-employment program. Section 3 of Schedule B of the EAPWDR provides an AEE limit of \$12,000 for a sole recipient and the ministry wrote in the reconsideration decision that the appellant had \$295.84 remaining for the AEE for 2020. The

appellant did not dispute the amount of the AEE remaining to be applied towards earned income in 2020.

The statement dated September 24, 2020 indicates the appellant's year-to-date earnings less deductions were \$11,704.16. Applying the total AEE of \$12,000 to the appellant's prior employment income in 2020 yields a remaining balance of \$295.84. The panel finds that the ministry reasonably determined that the available AEE for 2020 to apply towards the appellant's earned income was \$295.84. In deducting the exemption amount of \$295.84 from the appellant's earned income of \$1,498.79 the ministry made a mathematical error in the reconsideration decision by stating the resulting balance to be \$1,192.84, while the calculation ( $\$1,498.79 - \$295.84$ ) yields a resulting balance of \$1,202.95. However, as the appellant's net income of \$1,202.95 for October 2020 exceeded the disability assistance rate of \$1,176.42, as determined under Schedule A of the EAPWDR, the panel finds that the ministry reasonably concluded that the appellant was not eligible for December 2020 disability assistance pursuant to Section 9(2) of the EAPWDR.

#### *Conclusion*

The panel finds that the ministry's decision, which found that the appellant is not eligible for disability assistance for the month of December 2020, pursuant to Section 9(2) of the EAPWDR, as the family unit's net income from employment earnings in October 2020, after applying the appellant's remaining 2020 annual earning exemption (AEE) under Section 3 of Schedule B of the EAPWDR, exceeded the disability assistance amount, 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.

## Schedule

### 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. . . .

- (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] . . .

### 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

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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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-02-12

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-12

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-12