

APPEAL NUMBER
2020-00015

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) decision of January 18, 2021 in which the Ministry determined that the appellant was ineligible for disability assistance as the family unit’s net income was in excess of the assistance rates, pursuant to sections 1 & 3 of the *Employment and Assistance for Persons with Disabilities Act* and sections 1, 6, 9 & 24 and Schedules A & B of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – RELEVANT LEGISLATION

EAPWDA – *Employment Assistance for Persons with Disabilities Act*, s. 1 & 3
EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, s. 1, 6, 9 & 24 and Schedules A & B

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

- 1) The appellant is a recipient of disability assistance and resides with an employed spouse that does not meet citizenship requirements.
- 2) Although the spouse is not eligible for disability assistance or supplements, all income must be included as part of the appellant's family unit.
- 3) The spouse's year-to-date net earned income as of October 25, 2020, was \$14,956.75.
- 4) As the spouse is not a recipient, the base amount of the Annual Exemption for the family unit is \$1,000 per qualifying month, as it includes only one recipient. $\$1,000 \times 12 \text{ months} = \$12,000$ Annual Exemption for the 2020 calendar year.
- 5) The spouse's 2020 year-to-date earnings are in excess of the appellant's family unit Annual Earnings Exemption (AEE) of \$12,000.
- 6) The family unit was found ineligible for disability assistance effective December 2020.

Additional Information

At the hearing, the panel waited a full ten minutes past the time that the hearing was set to begin for the appellant to call in. After establishing that the appellant had been notified of the hearing on January 22, 2021 at 10:17 am, the panel proceeded with the hearing in the absence of the appellant, pursuant to section 86 of the *Employment and Assistance Regulation*.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of January 18, 2021 in which the Ministry determined that the appellant was ineligible for disability assistance as the family unit's net income was in excess of the assistance rates, pursuant to sections 1 & 3 of the *Employment and Assistance for Persons with Disabilities Act* and sections 1, 6, 9 & 24 and Schedules A & B of the *Employment and Assistance for Persons with Disabilities Regulation*.

Legislation

EAPWDR

Citizenship requirements 6 (1) For a family unit to be eligible for disability assistance at least one applicant or recipient in the family unit must be a) a Canadian citizen, (b) authorized under an enactment of Canada to take up permanent residence in Canada, (c) determined under the Immigration and Refugee Protection Act (Canada) or the Immigration Act (Canada) to be a Convention refugee, (d) in Canada under a temporary resident permit issued under the Immigration and Refugee Protection Act (Canada) or on a minister's permit issued under the Immigration Act (Canada), (e) in the process of having a claim for refugee protection, or application for protection, determined or decided under the Immigration and Refugee Protection Act (Canada), or (f) subject to a removal order under the Immigration and Refugee Protection Act (Canada) that cannot be executed.

(2) If a family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is (a) a Canadian citizen, (b) authorized under an enactment of Canada to take up permanent residence in Canada, (c) determined under the Immigration and Refugee Protection Act (Canada) or the Immigration Act (Canada) to be a Convention refugee, (d) in Canada under a temporary resident permit issued under the Immigration and Refugee Protection Act (Canada) or on a minister's permit issued under the Immigration Act (Canada), (e) in the process of having a claim for refugee protection, or application for protection, determined or decided under the Immigration and Refugee Protection Act (Canada), (f) subject to a removal order under the Immigration and Refugee Protection Act (Canada) that cannot be executed, or (g) a dependent child.

(3) If a family unit includes a person who is not described in subsection (2), (a) the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for assistance, except as otherwise provided in this regulation, and (b) the family unit is not eligible for any disability assistance under Schedule A, hardship assistance under Schedule D or supplements under Part 5 of this regulation on account of or for the use or benefit of that person.

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 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 (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 (a.1) Repealed [B.C. Reg. 193/2017] (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 (\$) 1 Sole applicant/recipient and no dependent children Applicant/recipient is a person with disabilities 808.42

Monthly shelter allowance 4 (1) For the purposes of this section: "family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month; "warrant" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act. (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

Maximum Monthly Shelter 1 person \$375

Family Unit Size - Maximum Monthly Shelter/1 person \$375

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: **none found**

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.

Snapshot of Point in Time Changes

Schedule B section 3(1) in effect **prior to January 1, 2021** 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;

Schedule B section 3(1) as it reads after legislative amendment **January 1, 2021** Annual exemption — qualifying income 3 (1) In this section: "base amount" means (a) \$1 250, in the case of a family unit that includes only one recipient, (b) \$1 500, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and (c) \$2 500, in the case of a family unit that includes two recipients who are designated as persons with disabilities

Panel Decision

The Ministry's position is that the appellant's spouse does not meet citizenship requirements, and therefore the spouse is not eligible for disability assistance. However, as the spouse is part of the appellant's family unit, section 6 of the *EAPWDR* requires that all of their income and assets to be included when the family unit is assessed for disability assistance.

The Ministry maintains that eligibility for disability is determined by deducting the net income as determined in Schedule B from the disability assistance rate for the family unit as determined by Schedule A and that a family unit is not eligible for disability assistance if their net income exceeds the assistance rate for their family unit.

As per Schedule A, the Ministry had calculated the disability assistance rate for the family unit at \$1183.42. This rate is for a single person with the PWD designation.

As per Schedule B, which includes an Annual Earning Exemption for qualifying income for families that include a person with the PWD designation. "Qualifying income" means earned income, except the deductions permitted under section 2. The Ministry provides that the family unit is in receipt of earned income for both the appellant and their spouse, and provided the spouse is not a recipient, the base amount of the Annual Exemption for the family unit is \$1,000 per qualifying month [as it includes only one recipient] (\$12,000.00 per year).

The Ministry maintains that the appellant's spouse year-to-date earned net income as of October 25, 2020, was \$14,956.75. This year-to-date net income amount exceeds the \$12,000.00 rate by \$2,956.75.

Given the appellant did not attend the hearing, the panel relied on the information outlined in the appellant's Notice of Appeal (NOA) for the reason/rationale for appeal. The appellant indicated in the NOA that they felt the Annual Earnings Exemption (AEE) should increase.

As outlined in the *EAPWDR*; section 6 (1) For a family unit to be eligible for disability assistance at least one applicant or recipient in the family unit must be a) a Canadian citizen, (b) authorized under an enactment of Canada to take up permanent residence in Canada, and (2) If a family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is (a) a Canadian citizen, (b) authorized under an enactment of Canada to take up permanent residence in Canada.

The panel finds that the evidence establishes as a matter of fact that due to the appellant's spouse not being a Canadian citizen, they are not eligible for disability assistance. In addition, and given the spouse is considered part of the family unit, section 6 of the *EAPWDR* requires that all of their income and assets are to be included when the family unit is assessed for disability assistance.

The panel finds that the evidence establishes the appellant's base amount of the Annual Earning Exemption for the family unit is \$1,000.00 per month (one recipient) or ((\$12,000.00 per year) under Schedule B.

The panel finds, without objection that the evidence establishes the appellant's spouse earned in excess, \$2,956.75 more than the \$12,000.00 Annual Earnings Exemption (AEE) for 2020.

The panel considered that the Ministry acknowledged a change to the Annual Earnings Exemption for 2021 – which would afford the appellant's family unit to earn up to \$15,000.00 per year, beginning January 1, 2021. The panel considered that the Ministry encouraged the appellant to continue to submit the monthly income reports so as to determine eligibility under the recently changed amounts (\$15,000.00).

Accordingly, the panel finds that the Ministry reasonably applied the *EAPWDR* s. 6, 9, 24 and *Schedule A & B* in the circumstances of the appellant.

Therefore, the panel confirms the Ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the *Employment and Assistance Act*. The appellant is therefore not successful in this appeal.

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2021-00015

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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-02-09

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-10

PRINT NAME

Arshdeep Dhaliwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/11