

APPEAL NUMBER
2021-00031

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”), dated January 25, 2021 (the “Reconsideration Decision”). In the Reconsideration Decision, the Ministry determined that the Appellant had reached the annual earned income exemption limit for 2020 in November, 2020 and that \$165.98 ought to have been deducted from the Appellant’s January disability assistance and that \$976.18 would be deducted from the Appellant’s February disability assistance as the Appellant earned that amount in December and had no further exemptions left, pursuant to the provisions of the *Employment and Assistance for Persons with Disability Regulation* (“EAPWDR”).

PART D – RELEVANT LEGISLATION

Sections 1, 9, and 24 of the EAPWDR
Sections 1, 2, and 4 of Schedule A to the EAPWDR
Sections 1, 2, 3, 4, and 6 of Schedule B to the EAPWDR

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of the Reconsideration Decision included:

- the Appellant's Request for Reconsideration ("RFR"), which set out that:
 - the Appellant was filing for a reconsideration because of what the Appellant described as an error, whereby a Ministry employee advised that child support could be deducted from the Appellant's earned income for the purpose of the earned income exemption;
 - the impact on the Appellant's disability assistance of the correction will now have a significant financial impact on the Appellant;
- the Appellant's earnings statements (the "Pay Statements") for the period from January 8, 2020 through December 18, 2020 from a retailer for whom the Appellant worked during that time, which show that:
 - the Appellant had gross earnings of \$12,489.60, as at November 6, 2021, with year to date statutory deductions of \$53.35 for federal income tax, \$197.34 for in employment insurance premiums, \$26.68 in provincial income tax, and \$501.80 in Canada Pension Plan contributions;
 - the Appellant had gross earnings of \$13,173.94, as at November 20, 2021, with year to date statutory deductions of \$53.35 for federal income tax, \$20.15 in employment insurance premiums, \$26.68 in provincial income tax, and \$530.92 in Canada Pension Plan contributions;
- the Appellant's Monthly Reports (the "Reports") to the Ministry for the period from February 2, 2020 through January 3, 2021, which indicate that the Appellant had been reporting just the net amount deposited from the Appellant's employer;
- an income record summary for the period between January 1, 2020 and December 1, 2020.

In the Appellant's Notice of Appeal, filed February 3, 2021, the Appellant stated that "I was explicitly told and walked through my reporting leaving out my Family maintenance by a ministry worker. The ministry deliberately misinformed me."

At the hearing of the appeal, the Appellant advised that the appeal record was not received but that the Appellant was nevertheless prepared to proceed with the hearing of the Appeal.

The Appellant advised that it was brought to the Appellant's attention in November, 2021 that the annual earned income exemption had been exceeded. This was communicated to the Appellant in a telephone conversation. The Appellant advised that a couple of factors contributed to the exemption limit being exceeded unexpectedly, including the Appellant's employer increasing the Appellant's wage rate and the Appellant having understood that only the net pay, after *all* deductions, including the amount paid for child support to the Family Maintenance Enforcement Program, needed to be reported on the Reports. The Appellant's belief that the child support need not be included in the Appellant's reported income was the result of another telephone conversation with a Ministry worker in late 2019 in which the worker advised the Appellant that child support could be deducted from the amount reported as income on the Reports.

The Appellant gave evidence that the Appellant has two children, both of whom reside primarily with their other parent and, for the purposes of the EAPWDR, the Appellant's family unit consists just of the Appellant.

Prior to late 2019, the Appellant had no history of having to report income being earned to the Ministry.

In its submissions, the Ministry acknowledged that recipients are sometimes given the wrong information and, in this case, confirmed that notes of the Appellant's conversation with a Ministry worker in late 2019 did indicate that the Appellant was told to report only the amount of income received on the Reports.

The Ministry argued, however, that despite the potential error, there is no discretion for the Ministry to not follow the legislation and, in the Appellant's case, the child support that the Appellant may have been told to deduct, is not deductible from the calculation of the Appellant's net income.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had reached the annual earned income exemption limit for 2020 in November, 2020 and that \$165.98 ought to have been deducted from the Appellant's January disability assistance and that \$976.18 would be deducted from the Appellant's February disability assistance, pursuant to the provisions of the *Employment and Assistance for Persons with Disability Regulation* ("EAPWDR").

Applicable Legislation

Section 1 of the EAPWDR defines earned income:

"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 sets out limits on income which may be received by a recipient in a given month as follows:

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.

Section 24 of the EAPWDR governs the maximum amount of disability which may be paid to a recipient in a given month:

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.

Sections 1, 2, and 4 of schedule A to the EAPWDR set out the maximum amount of disability assistance and shelter allowance payable each month before accounting for deductions of net income:

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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

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);

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

- (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, s. 9 (a).]
 - (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 (\$)
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1	Sole applicant/recipient and No dependent children	Applicant / recipient is a person with disabilities.	808.42
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...

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;

"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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Section 1 of Schedule B to the EAPWDR lists what income must be included and what types of income are exempt from inclusion in the calculation of a family unit's net income. Subsection (c) of section 1 of Schedule B to the EAPWDR provides that all earned income, other than statutorily prescribed exceptions, must be included in the calculation of a family's net income..

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,

...

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

Section 2 of the EAPWDR permits certain specified items to be deducted 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.

Section 3 of Schedule B to the EAPWDR sets out the annual earnings exemptions for qualifying income and defines qualifying income:

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).

...

(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.

Sections 4 and 6 of Schedule B to the EAPWDR list several other exemptions from income:

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.

...

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Panel Decision

As a sole recipient of disability assistance, the Appellant was, in 2020, eligible for monthly disability assistance in the amount of \$808.42 and a monthly shelter allowance of \$375.00, for a total payment of \$1,183.42.

Pursuant to section 3(1) of Schedule B to the EAPWDR, the Appellant had an earned income exemption for 2020 of \$12,000.00 given that the Appellant's family unit consisted of one recipient, the appellant, of disability assistance. The effect of the earned income exemption provided for in the EAPWDR is that a recipient of disability assistance may earn income up to the annual limit without any deduction of their disability assistance. After the exemption limit is reached, however, a recipient's disability assistance will be deducted by the amount of that recipient's earned income in each month.

The Appellant's position is that a Ministry worker had previously advised the Appellant, in or about late 2019, that child support deducted at source from the Appellant's pay need not be included in the Appellant's income. The Appellant acknowledges that child support is not an eligible deduction from the calculation of income under section 2 of Schedule B to the EAPWDR. The Appellant is not taking the position that the Ministry improperly included any other income in its calculation of net income or that any of the other deductions provided for in section 4 and section 6 of Schedule B to the EAPWDR are applicable to the Appellant's circumstances.

The Ministry's position is that, while it is regrettable that the Appellant may have been given incorrect information about what needed to be reported, the Ministry has no discretion to deviate from the exemption and deduction rules prescribed in the EAPWDR.

In this case, the Appellant's income, after making the deductions permitted under section 2 of Schedule B to the EAPWDR exceeded the annual exemption limit in November, 2021. In the result, only part of the Appellant's earned income in November, 2021 was exempt from inclusion in the calculation of the Appellant's net income for November. The Ministry correctly determined that the Appellant's net income, as at November 20, 2021, after making the eligible deductions provided for in section 2 of Schedule B to the EAPWDR was \$12,354.82, exceeding the Appellant's annual exemption of \$12,000.00. Although the legislative authority for it is not clear, the Ministry also determined that a \$188.84 pandemic bonus paid to the Appellant was also deductible and found that the Appellant, as the end of November, 2021 had exceeded the annual exemption limit by \$165.98 after deducting the pandemic bonus. As no other exemptions or deductions provided for in the rules are applicable to the Appellant's circumstances, the panel finds that the Ministry was reasonable in its determination that the Appellant received an overpaid disability assistance in November by \$165.98 and that same was deductible from the Appellant's disability assistance for the month of January, 2021.

As the Appellant reached the earned income exemption limit for 2020 in November, the panel also finds that the Ministry reasonably determined that any income earned by the Appellant in December, 2021 was deductible from the Appellant's disability assistance by operation of section 9 of the EAPWDR. As the Pay Statements for December indicate that the Appellant had total earnings of \$413.63 and \$562.55, after accounting for the eligible statutory deductions, and that none of the other deductions provided for in sections 4 and 6 of Schedule B to the EAPWDR applied to the Appellant, the panel finds that the Ministry reasonably determined that the Appellant received an overpayment of \$976.18 for the month of December and that same was deductible from the Appellant's February, 2021 disability assistance.

In view of the foregoing, the Appellant is not successful in this 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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/March/2

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/March/02

PRINT NAME

Edward Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/March/02