

APPEAL NUMBER
2021-00049

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 27, 2021 which found that the appellant is not eligible for Disability Assistance (DA) because the family's net income exceeded the rate of assistance for the appellant's family unit size pursuant to section 9(2) of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance Persons with Disabilities Regulation (EAPWDR) – section 9(2).

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

- Letter from the appellant's lawyer dated November 23, 2020, which stated that the appellant's spouse is still symptomatic of the injuries and is in receipt of Total Temporary Disability benefits (TTD) from ICBC due to MVA injuries.
- ICBC cheque statement for \$2234.88 in the appellant's spouse's name.
- Letter from the appellant lawyer dated December 23, 2020, confirming that the appellant's spouse was the passenger in the MVA.
- RFR, dated December 30, 2020, which stated that the appellant's spouse is unable to work, the family was dependent on their income, the income from ICBC is not enough for the necessary expenses such as rent and groceries, the lawyer takes payment from the monthly cheque, a list of expenses is totalling \$3150.00 per month and a request for hardship allowance.

Evidence at Appeal

Notice of Appeal (NOA), dated March 1, 2021 which stated that the appellant disagreed with the ministry's decision.

The panel considered the NOA to be the appellant's argument.

Evidence at the Hearing

At the hearing, the ministry relied on its reconsideration decision and added that the appellant also receives a \$52 transportation allowance which can be given in cash or as a bus pass. When questioned, the ministry provided the following information:

- The appellant has been receiving TTD since December 6, 2019 but the ministry only found out about it in October 2020. The appellant was required to report this unearned income by the 5th of the of every month since January 2020.
- The ministry is not aware how long ICBC will pay out TTD to the appellant's spouse.
- The ministry continues to provide medical benefits to the family unit, the appellant's file will remain open and their PWD designation will remain for life.
- The appellant's family unit has an exemption of \$14,400.00 annually from their earned income.
- As far as the ministry is knows the TTD benefit is a full cash payment to the family unit and they do not pay for treatments, medication, or accident-related costs from this amount.

Finding of Fact

- The appellant has PWD designation, and the file has been open since December 13, 2011.
- The appellant's and their spouse receive DA as a two-parent family with one dependent child.
- The appellant's spouse receives a Total Temporary Disability Benefits (TTD) from ICBC for the amount of \$2234.88 per month.
- The appellant is required to report any income (earned or unearned) to the ministry by the 5th of each month.
- The maximum allowable rate of allowance for the appellant's family unit size before net income deduction and one person has PWD designation is, support of \$1121.56, and shelter of \$660.00. The appellant's family unit also receives \$166.49 for a Family Bonus Top. The total the appellant's family unit receives per month is \$1948.05.
- As the appellant's spouse's TTD is from ICBC and not WorkSafeBC. It is, therefore, not exempt

APPEAL NUMBER
2021-00049

under the Annual Earnings Exemption.

- The ministry does not have discretion when calculating the family unit's net income.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether or not the ministry reconsideration decision, which determined that the appellant is not eligible for DA because their family's net income exceeded the rate of assistance for a family unit of their size, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

The EAPWDR provides as follows:

Section 1, "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from insurance benefits, except insurance paid as compensation for a destroyed asset.

Section 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.

Section 29 a person must report income by the 5h of the month after the month any income is received.

Schedule B

Section 3, explains the annual exemption for 'qualifying income', which includes 'unearned income' that is compensation paid under section 191 or 192 of the Workers Compensation Act.

Section 6, the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits.

Section 7, insurance benefits are not included in the listed types of unearned income exempt for the purposes of calculating net income.

The Appellant's Position

The appellant argued that the TTD benefit does not cover their monthly expenses and they need the DA. They also argued that their spouse was a passenger in the accident and that a portion of the TTD is claimed by the lawyer as payment.

The Ministry's Position

The ministry argued that pursuant to section 9(2) of the EAPWDR, the appellant is not eligible for DA because their net income of \$2234.88 exceeds the \$1948.05 amount of assistance determined for his family unit size.

The Panel's Decision

Section 1 of the EAPWDR states that insurance benefits are 'unearned income', and they are not exempt unless they are compensation for destroyed property. In this case, the evidence demonstrates that the appellant's spouse has been receiving TTD benefits from ICBC for injuries sustained a motor vehicle accident in which they were a passenger. The TTD is not for destroyed property and therefore is not exempt.

Section 3 of Schedule B of the EAPWDR states that compensation from WorkSafeBC under section 191 and 192 is exempt. In this case, the evidence demonstrates that the TTD benefit that the appellant's spouse receives is from ICBC and not WorkSafeBC. Therefore, it is not exempt.

Section 7 of Schedule B of the EAPWDR does not include insurance benefits as a type of unearned income that is exempt from calculating net income. Therefore, the panel finds that the ministry was reasonable to include the TTD benefit as a part of the appellant's net income.

Section 6 of Schedule B of the EAPWDR states that the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits. In this case, the evidence demonstrated that the TTD benefits that the appellant's spouse receives is not an employment insurance benefit and is an ICBC benefit for an MVA. Therefore, no amount from the \$2234.88 TTD benefit that the spouse receives is deductible.

Pursuant to the legislation, the TTD benefit that the appellant's spouse receives from ICBC for the amount of \$2234.88 is an unearned income, no amount of it is exempt and therefore all of it must be considered when calculating the appellant's net income.

Section 9(2) of the EAPWDR states that, a family unit is not eligible for DA if the net income of the family unit determined under Schedule B equals or exceeds the amount of DA determined under Schedule A for the family unit size. In this case it has been established that the appellant receives \$1948.05 plus \$52 for transportation in the form of cash or a bus pass. If the transportation allowance is received in cash, the appellant then receives \$2000.05 per month. Even at this amount, the TTD of \$2234.88 exceeds the allowable DA. Pursuant to section 9(2) of the EAPWDR the appellant is not eligible for DA.

Conclusion

The evidence establishes that the appellant is in receipt of unearned income in the amount of \$2234.88 and also establishes that, pursuant to section 9(2) of the EAPWDR they are not eligible for DA as the family's net income exceeds the allowable monthly DA amount for their family size. The panel therefore finds that the ministry's decision to find the appellant ineligible for DA was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision, and the appellant is not successful in the appeal.

APPEAL NUMBER
2021-00049

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/03/19

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/03/19

PRINT NAME

Ken Smith

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/03/19