

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 13, 2022 which held that the appellant's employment income had to be deducted from their disability assistance.

The ministry determined that the appellant had exceeded the Annual Earnings Exemption.

The determination under appeal was related only to the entitlement for disability assistance for the month of May 2022.

Part D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA), s. 1.
Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), ss. 24, Schedule A, Schedule B

Part E – Summary of Facts

The information before the ministry at reconsideration included:

1. The appellant was designated as a person with disability;
2. The appellant's family unit included a spouse and a dependent child;
3. The appellant received \$2,403.75 per month for disability assistance composed of \$1,478.50 for support, \$665.00 for shelter, \$208.25 for family bonus top up, and \$52.00 for a transportation supplement.
4. On May 20, 2022 the appellant's gross pay from January 1 to May 20, 2022 was \$29,566.48 with deductions of \$1,589.91 for CPP, 467.14 for Employment Insurance, and \$5,191.39 for income tax.
5. On May 31, 2022 the appellant submitted a monthly report indicating net employment income of \$2,196.17.

At the hearing, the appellant provided additional information which the panel determined was appropriate to admit under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

That information included:

1. The appellant had to stop work two weeks prior to the hearing because of a medical condition;
2. The appellant was medically required to isolate because of treatment they were receiving;
3. The appellant had applied for employment insurance; and
4. The appellant did not have to pay any money for the medical treatments they received.

At the hearing, the ministry provided the following information clarifying how the determination if the appellant was entitled to disability assistance was conducted:

1. Disability assistance is "paid in advance", which means that if a person is entitled to disability assistance for a specific month that assistance is provided before the start of the month not at the end of the month (in this circumstance, the payment received by the appellant in July reflected their entitlement based on income earned in May);
2. The Annual Earnings Exemption was \$15,000 plus an additional \$3,000 when there are multiple people in a family unit and only one person is designated as a person with disabilities; and
3. The determination of the disability assistance the appellant will receive in future months will be based on the income earned in the prior month. For example, if the appellant does not earn any income during a month because of their medical condition they will receive up to \$2,403.75 for disability assistance (the total amount the family unit is eligible to receive).

Part F – Reasons for Panel Decision***Introduction***

The issue at appeal is whether the reconsideration decision dated July 13, 2022 which held that the appellant's employment income had to be deducted from their disability assistance was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

Summary of The Relevant Legislation

The Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) permits the ministry to provide disability assistance in an amount that is not more than the entitlement (determined under Schedule A) minus the family unit's net income. The effect of this is that if a family unit earns income the amount of the disability assistance provided decreases.

Schedule B, section 2 states that the only permitted exemptions from earned income are amounts deducted at the source for income tax, employment insurance, Canada Pension Plan, medical insurance, superannuation, company pension plans and union dues.

Schedule B, section 1(c), of the EAPWDR states that all earned income must be included "except...any earned income exempted under sections 3".

Schedule B, section 3, of the EAPWDR provides for an "annual exemption". Although the wording of section 3 is complicated for the purpose of this decision it can be simplified as a base amount of \$1,500 per month for an annual total of \$18,000 (\$1,500 times 12).

Did the Appellant Exceed the Annual Earning Exemption?***The Appellant's Position***

At the hearing the appellant agreed that they had earned income in excess of the Annual Earning Exemption as provided in section 3 of Schedule B to the EAPWDR.

The Ministry's Position

The ministry's position was that the appellant had earned income in excess of the Annual Earning Exemption. The ministry affirmed its determination that the Annual Earning Exemption for the appellant was \$18,000 and that as of May 20, 2022 the appellants gross pay from January 1 to May 20, 2022 was \$29,566.48. When the permitted deductions are made (\$1,589.91 for CPP, \$467.14 for Employment Insurance, and \$5,191.39 for income tax) the total amount of qualifying income was \$22,318.04.

The Panel's Decision

The panel reviewed the May 20, 2022 income statement provided by the appellant. The panel confirmed the ministry's calculation.

In the result, the panel confirms the ministry's determination that by May 20, 2022 the appellant had qualifying income that exceeded the Annual Earning Exemption.

Did the Appellant Have Earned Income in May 2022?

The Appellant's Position

At the hearing the appellant agreed that they had earned income as referred to in EAPWDR section 24 and Schedule B.

The Ministry's Position

At the hearing the ministry affirmed the Reconsideration Decision. The ministry confirmed that it verified the information provided by the appellant with their employer and agreed it was accurate and a full disclosure.

The Panel's Decision

The panel reviewed the information provided by the appellant. The appellant's total income in May 2022 was \$2,643.06. From that total income the following deductions are permitted under s.2 of Schedule B:

1. CPP of \$135.31;
2. Employment Insurance of \$41.76;
3. Income Tax of \$269.82.

Consequently, the appellant's family unit's net income was \$2,196.17.

In the result, the panel confirms the ministry's determination that in May, 2022 the appellant's family unit had a net income of \$2,196.17.

Was the Appellant Entitled to \$207.58 in Disability Assistance?

The Appellant's Position

At the hearing the appellant agreed that they were entitled to \$207.58 in disability assistance.

The Ministry's Position

At the hearing the ministry affirmed the Reconsideration Decision.

The Panel's Decision

EAPWDR section 24 states that disability assistance may be provided in an amount that is not more than the amount determined under Schedule A minus the family unit's net income.

The amount determined under Schedule A was \$2,403.75. The family unit's net income was \$2,196.17. The amount determined under Schedule A less the family unit's net income is \$207.58.

Consequently, the most the ministry could provide in disability assistance was \$207.58.

In the result, the panel confirms the ministry's determination that the appellant was eligible to receive \$207.58 in disability assistance.

Conclusion

The panel confirms the ministry decision.

Extracts of the Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation

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

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 8 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*.

Schedule B

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;
- (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.

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;

"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 191 [*temporary total disability*] or 192 [*temporary partial disability*] 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.

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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Trevor Morley

Signature of Chair

Date (Year/Month/Day)

2022/Aug/24

Print Name

Marvam Maiedi

Signature of Member

Date (Year/Month/Day)

2022/08/26

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2022/08/25