

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the decision) dated 18 August 2022 where the ministry determined the appellant has reached her Annual Earnings Exemption (AEE) limit for 2022 and denied the appellant's request for August disability assistance, because her spouse's employment income is more than the permitted rate of assistance for her family unit size.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWD Act) – Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWD Reg) - Sections 1, 9(2), 24 and 29, Schedule A, sections 1, 2 and 4, Schedule B, sections 1, 2 and 3.

Part E – Summary of Facts

The evidence before the ministry at reconsideration included information that;

- The appellant and spouse receive disability assistance as a two-parent family with one dependent child, the appellant having Persons with Disabilities designation (the spouse does not) and the appellant's file has been open since April 8, 2013
- On July 5, 2022, the appellant submitted the monthly report for August, and the appellant's spouse declared \$4171.62 employment income which included amounts deducted for an RRSP contribution:
 - o June 10 - \$1943.66 net income + \$77.77 RRSP deduction = \$2021.43
 - o June 24 - \$2071.98 net income + \$78.21 RRSP deduction = \$2150.19
- On July 20, 2022, the appellant requested reconsideration because she did not receive August assistance. The ministry advised the appellant she had reached her AEE limit for 2022 and the appellant advised she cannot afford to live on just the employment income.
- On August 4 the appellant submitted a request for reconsideration. The appellant described the significant financial challenges her family faces and provided a Fortis bill, utility bill, gas receipts, snapshot on inflation rates, mortgage statement and listings for local rental market to demonstrate her expenses, and
- The appellant explained needing to maintain vehicles due to no local transportation.

Hearing

The hearing was held as a teleconference.

Appellant

At hearing the appellant reiterated her previous testimony regarding the rate of inflation and the increasing cost of living and if not able to pay bills, then her family may end up on the street, that rent is 2 or 3 times the rate of the family current monthly mortgage payment.

The appellant also testified to not being able to work and in this economic climate a family needs a double income. There is currently not enough money for a family of four to live and they need help to keep the children fed. If they must move from the home, they will not be able to pay the bills, which keep increasing. Her \$10 000 disability payment has gone to pay bills and keep a roof over their head.

In questioning from the ministry about the cost of the mortgage and current expenses the appellant stated it varied from month to month depending on bills such as car payments and is likely \$3000 to \$3500 per month which leaves about \$500 to \$1000 per month.

The panel notes the reconsideration package includes a mortgage information statement showing a monthly principal and interest payment of \$1181.81.

In answer to a question from the ministry as to whether the appellant's reason for appeal is because she is more opposed to the actual policy rather than the amount of annual earnings exemption and if the legislation is unfair, the appellant stated that she is familiar with the legislation as she went through the same situation last year. Similarly, part way through the year, the family exhausted the earnings exemption and lost disability assistance for a time. They managed to struggle through, it exhausted all their resources, and the appellant stated severe debt was a result.

The appellant stated to not having argued at that time however they are now living below (sic) their means. She has a child who is hospitalised frequently and the appellant herself now has a dietary change and they have joint custody of one child who has been moving back and forth between parents, for which travel costs fall to the appellant and her husband. The appellant was asked if the AEE was a higher amount would that help, and the appellant responded it could help depending on the economic situation.

The appellant stated that she received four or five monthly disability assistance payments this year and then the \$18 000 annual exemption was used up and she was not paid for August.

In answers to questions from the panel the appellant clarified that the \$10 800 was the disability assistance received from February, including a partial payment in July of 2022. The appellant had no concern with the amount of \$2545.42 monthly rate of assistance for her family size.

The appellant provided further information on the previous disqualification for disability assistance. The appellant has been through various stages of medical services only support since 2014 and got back on full disability assistance in 2020. In 2021 the disability assistance was discontinued for a period due to the exhaustion of the AEE.

The appellant stated that she was a former nurse and was not receiving any disability income from a private or work plan.

The appellant stated that the RRSP payments her spouse pays are paid into a company plan, which is matched by the company at 50%. The plan is locked in, and it would be difficult to cease contributing to the plan. The ministry has provided conflicting information to the appellant over the last few years, sometimes advising that the RRSP deductions are not income and in fact emailed the appellant telling her to take the payment off the monthly report. In some cases, she has been advised the deduction is in fact income and needs to be reported as such.

With regards to joint custody the appellant stated that there are two children in the family unit. In one case a court order provides primary custody to the spouse and the child is classified as a dependant on her file. The family pays all bills for housing, food and clothing for the child and receives the child tax credit for both children.

In response to a question on the changes to her dietary needs and to whether any support or supplements are being received the appellant stated that she is lactose and gluten intolerant and requires costly, specific iron pills that are not available locally and are not covered under the medical support provided by the ministry.

The appellant later commented that the amount of the AEE, at \$18 000 for the year is below the accepted value of the poverty line in BC of \$24 000.

The appellant stated that her spouse's health benefit plan provisions do not help very much due to their residence location. The appellant claimed to be suffering from Scoliosis of the spine, which requires massage therapy and paying in advance and claiming the costs back. There are a limited number of authorised paid visits.

Ministry

The ministry relied upon the reconsideration decision. At the hearing the ministry explained that the AEE was exhausted in July as a form of exemption and therefore the July disability assistance amount was reduced to \$954, and that the appellant was found not eligible for disability assistance for August. Further, the appellant will not be eligible until the rollover period of March 2023 which will be issued in February 2023. The appellant is eligible for the transportation supplement and is still receiving that.

The ministry stated that the child tax credit is a federal government program however they believe the variance may be due to age and income. They note from the file that last month the amount was \$360 and this month it rose to \$423.

The ministry stated that the RRSP contribution by the appellant's spouse is a voluntary contribution, privately deposited and is correctly assessed as earned income.

In response from questions from the panel the ministry stated that it is a common occurrence for a family with only one member designated as PWD to lose disability assistance by exceeding the amount of the AEE.

The ministry stated it did not have any discretion in applying the legislation with regards to the amount of the AEE, and that the RRSP should be included according to the legislation. The ministry also clarified the appellant's file shows the family size to be four persons and that the family was receiving the appropriate shelter allowance of \$715 for four persons.

The ministry stated that there is no mortgage assistance supplement other than emergency items such as repairs or unexpected bills. The appellant and the family unit will continue to be eligible for medical services only (MSO) assistance.

Admissibility of new information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In this case the appellant provided oral information on her disability and the status of primary custody, and the ministry provided information on supplements provided and the status of the size of the family. The panel finds that this information is relevant because it relates directly to the original request for disability assistance and the dollar values related to the AEE.

The panel admits the new information under section 22(4) of the Employment and Assistance Act (“EAA”) as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Findings of Fact

The panel finds the appellant’s family unit is a two-parent family with two dependent children, comprising four individuals.

The panel reviewed several statements of earnings and deductions provided in the name of the appellant’s spouse and finds the spouse was paid, after all deductions, \$1943.66 for 10 June 2022 statement and \$2071.98 for the 24 June 2022 statement.

The panel notes the appellant’s explanation of the RRSP payment with a matching company contribution and finds that the spouse pays a monthly amount into a locked-in RRSP company pension plan.

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that the appellant has reached her Annual Earnings Exemption (AEE) limit for 2022 and denied the appellant's request for August disability assistance. In particular, was the ministry's decision that the appellant's spouse's employment income is more than the rate of assistance for her family unit size supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant?

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that the cost of living for a family of four is greater than the family income with all the increased bills. The appellant already has five unpaid bills in a month, is unable to bring in a second income and may lose the family home if unable to pay the mortgage. The appellant argues that the AEE for their situation at \$18 000 per year is less than the BC poverty level of \$24 000.

Ministry Position

The ministry argues the money the appellant's spouse receives is earned income because it is money received in exchange for work or the provision of a service. It is also qualifying income under Annual Earnings Exemption (AEE) described in the legislation, which in the case of the appellant allows the first \$18,000 of qualifying income to be exempt.

The appellant's file indicates that on May 27, 2022, the spouse's Year to Date net earnings were \$20845.06, which exceeds the AEE limit for 2022 employment income and any amount received after reaching this limit is not exempt and must be included in the appellant's net income calculation.

The ministry determined the spouse's employment income in June to be \$4171.62, which includes the net pay received on June 10 and 24 as well as the amounts deducted from the spouse's earnings for an RRSP contribution as this is not a permitted deduction for earned income under the legislation.

Because the appellant's family unit income of \$4171.62 is more than the \$2545.42 rate of assistance for her family unit size she is not eligible for August disability assistance.

Panel Decision

Section 5 of the EAPWD Act states the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Section 29 of the Regulation says a person must report income by the fifth of the month after the month in which they receive it. The reports submitted by the appellant provide the information needed to calculate net income and continuing eligibility for disability assistance.

The requirements include the amount of earned income received by the family unit in the calendar month and the source of that income.

The calculation of monthly disability assistance is defined in section 24 of the EAPWD Regulation and states the amount cannot be more than the amount determined under Schedule A, minus the family unit's net income determined under Schedule B. Further, section 9 of the EAPWD Regulation states that a person 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.

Sections 2 and 4 of Schedule A provide the rates for support and shelter. In the appellant's case for a family unit of two recipients and two dependent children, the panel notes the ministry has provided a rate of \$2545.42 per month.

Section 1 of the EAPWD Regulation defines earned income as any money or value received in exchange for work or the provision of a service. It is not in contention that the spouse is employed and receives employment income. The panel has noted the appellant submitted several statements of earnings and deductions for her spouse showing earnings of \$2684.62 and \$2884.23 for the periods of 22 May to 4 June 2022 and 5 June to 18 June 2022. The panel therefore finds these monthly incomes to be earned income.

In the calculation of net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of the regulation, the legislation provides exemptions from income under section 1 of schedule B of the EAPWDR. Section 1(c) of the EAPWD Regulation requires that 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 states that the only deductions permitted from earned income include any amount deducted at source for income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, and company pension plan.

The ministry has argued that the Registered Retirement Savings Plan (RRSP) deductions are not permitted under the legislation. The panel has found that the spouse pays a monthly amount into a locked-in RRSP company pension plan. The statements show the RRSP contribution as a *deduction* from the period total earnings. The panel notes the legislation does not require source deductions for company pension plans to be contributed by any specific individual or entity, simply stating "any amount deducted at source". The panel finds therefore, in the circumstances of the appellant, that the RRSP contributions are permitted deductions under section 2 of the EAPWD Regulation, and the ministry was not reasonable in its determination that the RRSP contribution should be added to the salary amounts received by the spouse.

Section 3 of the EAPWD Regulation provides for an annual exemption to earned income based on qualifying income, which is defined as earned income, except the deductions permitted under section 2. For the appellant's family unit this is provided as a base amount of \$1500 per month for an annual exemption of qualified income of \$18 000.

The earnings statements discussed earlier show that on May 27, 2022, the appellant's spouse had received year to date net earnings of \$20845.06 and the ministry used this figure to determine that the AEE had been exceeded. The panel notes the ministry did not include any RRSP deductions however finds the ministry was reasonable in its determination that the annual net exemption had been reached and that future qualifying income would not be exempt in the calculation of net income.

In the circumstances of the appellant, the panel finds the deposits to account, after legislated permitted deductions, of \$1943.66 on 10 June 2022 and \$2071.98 on the 24 June 2022 constitute the employment net income calculated under schedule B of the EAPWD Regulation for June 2022 for a total of \$4015.64.

The panel finds this monthly net income amount exceeds the ministry's rate of assistance of \$2545.42 for the appellant's family unit. Therefore, under section 9 of the EAPWD Regulation, as the appellant's net income exceeded the ministry's rate of disability assistance the panel finds the ministry's determination that the appellant is not eligible for disability assistance for August 2022 to be reasonably supported by the evidence.

Summary

The panel finds the spousal RRSP contributions to be exempt from the calculation of net income for the qualifying month, however the statement of earnings and deductions clearly shows the annual earnings exemption of \$18 000 was reached in May of 2022. The spousal earnings for June 2022 are therefore not exempt and the net income exceeds the disability assistance rate. As such the family unit is not eligible for disability assistance for August 2022.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision to be supported by the evidence, and a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed. The appellant is not successful on appeal.

Appendix A

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

**EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES
REGULATION**

Definitions

1 (1) In this regulation:

"earned income" means

(a) any money or value received in exchange for work or the provision of a service,

Limits on income

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.

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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a)the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i)a change that is listed in paragraph (b) (i) to (v);

(ii)a family unit receives earned income as set out in paragraph (b) (vi);

(iii)a family unit receives unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b)the information required is all of the following, as requested in the monthly report form specified by the minister:

(i)change in the family unit's assets;

(ii)change in income received by the family unit and the source of that income;

(iii)change in the employment and educational circumstances of recipients in the family unit;

(iv)change in family unit membership or the marital status of a recipient;

(v)any warrants as described in section 14.2 (1) of the Act;

(vi)the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii)the amount of unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act* received by the family unit in the calendar month.

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.

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
 - (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 (\$)
6	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$1 478.50

(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

- (a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus
- (b) the sum of
 - (i) the family bonus, if any, paid to the family unit for the preceding month,
 - (ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children,

(2.1) If the amount calculated under subsection (2) is less than zero, it is deemed to be zero for the purposes of this section.

(3) In calculating the adjustment under subsection (2), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus or the Canada child benefit must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

- (a) apply for the family bonus or the Canada child benefit for the preceding calendar month, or
- (b) accept the family bonus or the Canada child benefit for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada).

Monthly shelter allowance

4 (1) For the purposes of this section:

(2) The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

- (a) the minimum set out in the following table for the family unit, and
- (b) the lesser of
 - (i) the family unit's actual shelter costs, and
 - (ii) the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
4	4 persons	\$225	\$715

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,

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

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;

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

(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;

"qualifying income" means

(a) earned income, except the deductions permitted under section 2, and

"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).

(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:

- (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;

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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)

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

Part H – Signatures

Print Name Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2022/09/21

Print Name Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2022/09/21

Print Name Glenn Prior

Signature of Member

Date (Year/Month/Day)

2022/09/21