

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated September 7, 2022, which determined that the Appellant was not entitled to Disability Assistance (DA) because his income exceeds the Ministry's rate of assistance.

Specifically, the Ministry determined that the Appellant reported that he received \$2,651.00 in Employment Insurance (EI) income in July 2022, which exceeds the amount of DA that he was entitled to for the month of September 2022 (\$1,358.50), and as a result he was not eligible for September DA, in accordance with the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 9(2).

Part D – Relevant Legislation

Employment and Assistance Act (EAA) Section 22.

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 3

EAPWDR Sections 1, 9(2), 24, 29, and Schedule A, Sections 1, 2 and 4, and Schedule B, Sections 1, 6, 7 and 9

The relevant legislation is provided in the Appendix 1

Part E – Summary of Facts

The Appellant is a sole recipient of DA.

The evidence before the Ministry at reconsideration included:

- The Appellant’s Request for Reconsideration (RFR), dated August 29, 2022, in which the Appellant said that the reason he was asking for reconsideration was that:
“The EI came all at once. It was so late I had only 3 payments of one week left on the claim. EI did not give me the money every two weeks so I could balance things out. I was given no options to work with. I waited so long for EI. When it came, it was already spent. There was no way for me to know what EI would do. I haven’t used EI before. I went from job to job. I have never been told EI would be deducted from my cheque. Not being told how it works doesn’t help. I talked to friends that are not on disability and they don’t have a month of bills save(d) either. This is too much of a surprise, a shock the way it works. Knowing this, I’m going to be short next month too. I still have 3 weeks left at this point. Right now I have no EI. My claim has ended.”;
- A Ministry Monthly Report prepared by the Appellant on August 2, 2022 for the month of July 2022 and stamped “Received” by the Ministry on August 3, 2022 (the Monthly Report). In the Monthly Report, the Appellant indicates that he is still in need of assistance and is looking for work, and he reports EI totalling \$2,651.00 and tax credits of \$91.64 for the month of July 2022;
- A one-page bank statement with debit and credit transactions between July 4, 2022 and July 29, 2022 showing an opening balance of \$373.44 and a closing balance of \$964.22 on August 2, 2022 (the Bank Statement); and,
- A two-page statement dated August 22, 2022 in the name of the Appellant titled “*EI / MSDPR Common Claimant Report*” (the EI Report). The EI Report shows “*Benefits Paid*” totalling \$1,308.50 for each of the months of July and August 2022 (total amount for the two months combined: \$2,617.00); an “*EI Benefit Amt*” of \$2,651.00 in September 2022; and 14 weekly payments of \$241.00 for each consecutive week starting on May 8, 2022 and ending with the week starting August 7, 2022, with “*Cheque Dates*” for nine of the payments showing as July 15, 2022 (totalling \$2,169.00), two cheques dated July 22, 2022 (\$482.00), two cheques dated August 5, 2022 (\$482.00), and one cheque dated August 19, 2022 (for a grand total of \$3,374.00).

Additional Information

In his Notice of Appeal (NOA), dated June 7, 2022, the Appellant indicates that he disagrees with the Ministry’s decision because no one told him that his EI would be deducted from his DA.

Evidence Presented at the Hearing

At the hearing, the Appellant said that prior to a serious car accident he suffered a few years ago he was earning \$60,000 a year, but as a result of the impact of his disabilities on his employability his earned income is now under \$15,000 per year. He said that he is “*allowed to*

make \$12,000 a year” before his monthly DA allowance of about \$900 per month (excluding the shelter amount) is reduced. He also said that he was never told by the Ministry that any EI income would impact his monthly DA amount. He said that he had had conversations with Ministry staff about his EI application before he received the EI benefits and no one told him that it would be offset against the DA amount to which he would otherwise be entitled.

The Appellant explained that the work he had been doing was contract work as an industrial cleaner, and that immediately before applying for EI he had just finished the second of two short-term work contracts with the same employer.

The Appellant also said that his EI benefit was \$241.00 per week, but the payment of his benefit was delayed due to a dispute with EI staff about his eligibility. Once he had convinced the EI office of his entitlement to EI benefits, *“EI decided to give it all in one cheque”*. When asked for clarification as to the number of EI payments he received in July and the amount of each payment, the Appellant confirmed that he had received a total of \$2,651.00 in two July 2022 payments (representing 11 weeks of benefits @ \$241.00 per week). Because of the delays and the large payment amount in July 2022, his entire support allowance amount was withheld in September 2022, depriving him of DA for that month which he had assumed he would be receiving to help him pay his bills.

The Appellant stated that *“no one can survive on \$900 a month”*, and that he relied on the extra income he had been earning to help with his monthly expenses. He stated that it was five weeks from when he received the EI benefits in July 2022 before he was told by the Ministry that he would not be receiving any DA for September 2022, and that it was also unfair that he didn't have the option of declaring the EI benefits in the months that each EI benefit payment related to.

In response to a question from the Panel the Appellant said that the Ministry's RD was accurate in saying that he had submitted his July 2022 Monthly Report declaring he had received \$2,651.00 in EI income and a copy of the Bank Statement showing that he had received \$2,169.00 in EI benefits on July 19, 2022 and \$482.00 in EI benefits on July 26, 2022. He also said that he always files his Monthly Reports before the deadline and always reports any extra income he receives.

In response to another question from the Panel about whether he had received any EI income after the end of July 2022, the Appellant said that he did receive an additional 5 weeks in EI benefits in August 2022 and that he had reported the EI income on his August 2022 Monthly Report. Because of that additional income he said his DA amount for the month of October 2022 was reduced to \$110. When asked whether he also planned to appeal the Ministry decision to reduce his DA amount he received in October 2022, the Appellant said that he had assumed that this appeal would cover both decisions of the Ministry. In addressing the amount of the reduction made by the Ministry for the month of October, the Ministry said that on a review of the benefit amounts, a mistake had been made. The Ministry said that the deduction affecting the Appellant's October 2022 DA amount was made based on his receiving three weeks of EI benefits (\$723.00), but because two weeks of those benefits totalling \$482.00 had already been considered in the July 2022 income reporting period, a smaller deduction should have been made to his October 2022 DA amount, and he was entitled to an additional amount

for October. The Ministry undertook to explain this in more detail to the Appellant in a separate phone call after the hearing.

At the hearing, the Ministry relied on its RD and said that the Ministry's RD was made based on the legislation which requires that the adjustment to the Appellant's DA benefit amount in September 2022 be "*based solely on the amount he received in July*".

In response to a question from the Panel, the Ministry said that the shelter portion of the Appellant's unadjusted DA (normally totalling \$375.00) was paid directly to the Appellant's landlord, and that his support allowance amount, after any adjustment for any non-exempt income, was paid directly to the Appellant.

In response to a question from the Appellant, the Ministry also said that the Ministry is not fully aware of any other income that a client might have earned in any given month until the information is provided in the following Monthly Report, and that in this case it was unfortunate that the Appellant was not told that EI income would affect the amount of the DA to which he was entitled for the month of September 2022.

The Ministry also said that if the EI benefit had been paid to the Appellant on a timelier basis, he would have actually received a net total reduction of more than the \$1,358.50 that was made in the month of September 2022. Using the weekly benefit amounts of \$241.00 per week, and starting in the first benefit payment periods (four weeks in May 2022), if the EI income had been received by the Appellant when he was eligible for it, he would have reported \$964.00 in EI income for each of the months of May 2022 and June 2022, and \$1,205.00 in July 2022 (when 5 weeks of EI benefits would have been paid). This would have reduced his DA amount over the three months by a total of \$3,133.00 over that three-month period (a total of 13 weeks @ 241.00 per week). But because he received most of the EI benefit in July 2022, his DA was only reduced by \$1,358.50 in the month of September 2022, and he received the full DA amount in June, July and August.

The Ministry also said that the earned income exemption amount for a Person with Disabilities receiving a DA is \$15,000 per year.

Admissibility of New Evidence

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers "*reasonably required for a full and fair disclosure of all matters relating to the decision under appeal*" (emphasis added). Once a panel has determined if any additional evidence is admissible, 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 the requirements set out in the legislation and on all admissible evidence.

The Panel finds that the NOA contains no new evidence.

New oral evidence presented at the hearing comprised the details concerning why the Appellant had applied for EI (specifically that two short-term consecutive work-term contracts had expired leaving him out-of-work at the end of the second work-term), and that the Appellant's DA for the

month of October 2022 was also reduced because in his September 2022 Monthly Report the Appellant reported an additional \$723.00 in EI earnings that he received in the month of August 2022.

The Ministry decision under appeal in this instance is the Ministry's decision determining that the Appellant was not entitled to DA for the month of September 2022 because his income in July 2022, as reported in August 2022, exceeded the Ministry's rate of assistance. The Appellant appealed the decision made by the Ministry affecting his DA amount for the month of September 2022 before his income for the month of August 2022 was subsequently reported in early September 2022 (which affects his DA eligibility amount for the month of October 2022). Because the Ministry's decision in this appeal relates to the amount of DA that the Appellant received in September 2022, any decision by the Ministry to reduce a client's DA for any subsequent month would have to be the subject of a different appeal. As information regarding any reduction in the amount of DA the Appellant received after September 2022 does not relate "*to the decision under appeal*", the Panel does not admit this new information.

The Panel does not admit the additional new information about the reasons why he had applied for and received EI at the end of his second work-term contract because it relates to his EI eligibility, which has no impact on (i.e. does not relate to) the decision under appeal. In other words, the Appellant is not arguing that he did not receive EI; he is appealing the Ministry's decision to reduce his DA amount for September 2022 because of the EI income he received in July 2022.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD, which determined the Appellant was not entitled to DA for the month of September 2022 because his July 2022 income reported in August 2022 exceeds the amount of DA to which he is entitled, was reasonable based on the evidence or was a reasonable interpretation of the legislation in the circumstances of the Appellant.

Position of the Parties

The Appellant's position is that the Ministry should have told him in advance that EI income would be offset against his DA, and that he is having difficulty paying his bills because his entire DA amount for the month of September 2022 was not paid to him. The Appellant also argues that if he had received his EI benefits on a timelier basis, he would have been in a better position to manage his monthly expenditures.

The Ministry's position is that EI is defined in the legislation as unearned income, which is not exempt income, and as a result the legislation requires that any EI paid in a given month must be deducted from their DA amount.

Panel Decision

As to Whether EI Benefits are Considered Exempt Unearned Income

EAPWDR Section 1 defines "*unearned income*" to be any income that is not earned income, and includes money or value received from EI. EAPWDR Schedule B Section 7(1)(g) provides an exemption in determining net income for the purpose of calculating the impact of EI benefits on the DA amount for certain types of EI benefits. These exemptions apply to "*benefits ... payable to a claimant who proves her pregnancy*", "*benefits ... payable to a claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant ...*", and "*benefits ... payable to a claimant who is a family member of a critically ill child in order to care for or support that child ...*".

Sections 1, and 8 of EAPWDR Schedule B list additional exemptions from unearned income that are permitted for the purposes of calculating a recipient's net income. The only other deductions permitted are any income tax deducted at source from employment and EI benefits and the essential operating costs related to renting self-contained suites. No evidence was presented to suggest that income tax was deducted from the EI benefits that the Appellant received.

The Panel finds that the Ministry reasonably determined that the Appellant's EI benefits are classified under the legislation as non-exempt unearned income.

The Amount, Impact and Timing of EI Benefits on a Recipient's DA Amount

Both the Ministry and the Appellant acknowledge that the Appellant received a total of \$2,651.00 in EI benefits in the month of July 2022, so the amount of the Appellant's EI benefit received in July 2022 is not disputed in this appeal.

EAPWDA Section 11 says that a DA recipient must submit a report to the Ministry notifying of a change in information that may affect their eligibility for DA within the timeframe specified in the regulations. EAPWDR Section 29 says that a recipient is required to submit that report by the 5th of the calendar month following the calendar month in which there is a change in their income and the source of that income. Because this information is to be reported by the 5th of the following month (the 5th of August in this case), and because benefits for a given month are paid just before the end of the previous month (late July in this case), the effect of any income earned in a given month results in an adjustment to the amount of DA that a recipient receives the month after the Monthly Report is submitted (September in this case). In other words, as a result of the timelines for the Appellant to report unearned income and the Ministry to assess that report, income received in July affects DA received in September.

EAPWDR Schedule A Sections 2(1) and 2(2) set the assistance rates for a sole recipient of DA with no dependents as \$983.50 for the support allowance component and \$375.00 for the shelter allowance component for a total of \$1,358.50 per month. This amount is not at issue in this appeal.

Section 9(2) of the EAPWDR Section 9(2) says that a family unit is not eligible for DA if the family unit's net income (in this case, EI benefits) equals or exceeds the amount of DA for a family unit matching that family unit. The Appellant is a sole recipient of DA with no dependents, meaning that he represents the entire family unit in this case. In July 2022, the Appellant's non-exempt unearned income (i.e. his net income) was \$2,165.00, which exceeds his total DA amount of \$1,358.50 for that month.

Section 24 of the EAPWDR Section 24 says that a person's income must be deducted from their DA amount. Schedule B explains that all unearned income must be deducted from DA except for any exempt amount.

Considering all of the relevant legislation, the Panel finds that the Ministry reasonably determined the amount of the Appellant's EI benefits on his DA amount for the month of September 2022.

Conclusion

Having considered all the evidence and legislation, the Panel finds the Ministry's RD, which determined that the DA the Appellant received in EI benefits in July 2022 is unearned income that is not exempt and must be deducted from his DA in September 2022, to be reasonable application of the applicable enactment in the circumstances of the Appellant and to be reasonably supported by the evidence. Accordingly, the Panel confirms the Ministry's decision. Consequently, the Appellant is not successful in his appeal.

EMPLOYMENT AND ASSISTANCE ACT

Panels of the tribunal to conduct appeals

22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance ... if

- (a) each person in the family unit on whose account the disability assistance ... is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance ... under this Act.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions

1 (1) In this regulation:

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: ...

- (g) employment insurance ...

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); ...

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

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

Schedule A

Disability Assistance Rates

(section 24 (a))

Maximum amount of disability assistance before deduction of net income

1 (1) ... 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 (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

Monthly shelter allowance

(2) The monthly shelter allowance for a family unit ... 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
1	1 person	\$75	\$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:

(i) any income earned by a dependent child attending school on a full-time basis; ...

(lxvii) money that is paid or is payable to or for a person from a settlement under an agreement to settle claims relating to the transfer of the Seabird Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band and the distribution of shared trust funds on a per capita basis, ...

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under section ...7.

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.

Exemptions — unearned income

7 (1) The following unearned income is exempt: ...

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act (Canada)* to any person in the family unit.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

(a) the date the income is payable;

(b) the period for which the income is payable;

- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

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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
Simon Clews

Signature of Chair

Date (Year/Month/Day)
2022/10/04

Print Name
Vivienne Chin

Signature of Member

Date (Year/Month/Day)
2022/10/04

Print Name
Rubina Sidhu

Signature of Member

Date (Year/Month/Day)
2022/10/04