

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated February 6, 2023, denying February disability assistance.

The Ministry found that the appellant had unearned income that exceeded the ministry's monthly rate of assistance.

Part D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (Regulation) – Section 1, 9, and 24.

Schedule A Section – 1, 2, and 4.

Schedule B – Section 1, 2, and 3.

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The appellant is a sole recipient of disability assistance.

The evidence before the minister at reconsideration included the following:

- The appellant had submitted her February monthly report declaring private pension income of \$3171.16.
- The ministry had advised the appellant the \$3171.16 pension income she had received in December was not exempt income and as a result her net income exceeded the \$1358.50 rate of assistance. She was therefore ineligible for February disability assistance.
- The appellant submitted her Request for Reconsideration. She noted she thought the pension income went toward her \$12,000 (sic) Annual Earnings Exemption and has spent the money on dentures, transportation costs, vehicle parts and repairs, education costs, and paying off some personal debts. Copies of receipts were attached showing auto repairs, education costs and dental work.
- The appellant stated she will be forced into financial stress and will have to use payday loans and pawn personal items to get through February. The appellant needs money for food and wood. If she is denied the February cheque, she will be forced back into this distressing cycle with no end in sight.
- In the handwritten submission in the request for reconsideration, the appellant refers to the monies received variously as pension payment, pension money and pension payout money.
- The appellant states that the purposes to which she put the funds, (paying off debts and fixing her vehicle etc.) are because she knew it was going to take some time to build up enough new income from the new career she was starting, to make a difference in her budget.

Evidence received after reconsideration.

Documentary

In the Notice of Appeal, the appellant writes:

- This money was income that I earned while working. (Payer) is a union and I paid into my personal pension from every pay cheque I received for 2 years. It is part of the union contract. The pay stubs I submitted on a monthly basis prove that. The T4A I'm sending with this paperwork proves that, and
- I have added my T4A from work. The reconsideration was refused on the grounds that I had not proved this pension payout came from income earned.

With the NOA the appellant submitted a copy of a T4A Statement of Pension, Retirement, Annuity and Other Income form showing the Payer's Name as (Payer) Union Pension Plan, (Banker services name), for the year 2022. The appellants name and address are shown as the recipient.

The T4A contains boxes that can be completed as they relate to Line numbers on income tax returns. Box 18 is titled Lump-sum Payments and this box shows \$3523.51. Box 22 is titled Income Tax deducted, and this shows an amount of \$352.35. The panel notes that Box 18 minus Box 22 equals a payment to the appellant of \$3171.16. This amount is the amount the ministry has stated was paid to the appellant in December and that, at the hearing, the appellant confirmed receiving.

Hearing

The hearing was held as a videoconference with the panel, a ministry representative, the appellant and an advocate for the appellant attending.

Appellant

At the hearing the appellant provided oral testimony supported by some statements and questions from the advocate. The appellant stated she had never been asked where the money she received in December 2023 came from. That is why she had only provided information to show how she had used the funds. It was not until she received the reconsideration decision that she realised her disability payment was refused because the ministry believed the funds to be unearned income. As she has now received a T4A, she has submitted it to prove that the funds were a reimbursement of contributions she paid into her union pension plan as they were too small for a pension.

The appellant stated that she spoke to a lady on the telephone from the pension company who told her the amount was less than the normal amount of \$5,000 required to establish a pension and advised her payments would be refunded. The appellant stated that the refund was money that had been deducted from her weekly paycheque over the period of her employment, and in questioning she stated that was from 15 March 2020 until 9 March 2022.

The appellant stated she could not understand the ministry's decision; reading directly from a portion of the decision, that "as there is no evidence to support you received pension plan contributions that have been refunded because of insufficient contributions to create a pension, the ministry finds the \$3171.16 lump sum pension income you received to be "unearned income" as set out in Section 1(j) of the EAPWD Regulation and is not exempt from disability assistance." The appellant explained she could not understand this as the deductions were shown on the pay stubs she presented to the ministry during her employment and also on the February record of income, where she had indicated that these funds were originally taken from her employment income.

The appellant stated that as the money was returned contributions, she should be allowed to have this included in the \$12,000 (sic) she is allowed annually under the legislation. This money was in addition to CPP deductions and was for a compulsory private company pension plan; she had no choice but to contribute.

In answer to a question from the ministry as to whether the appellant had spoken to the ministry before withdrawing the funds to see how the ministry would treat the income, the advocate answered no, and stated that the ministry provides a definition of earned income within the decision, which includes direct contributions returned.

In answer to a question if the funds included an employer contribution the appellant stated that it was only her income, taken directly from her weekly pay in the amount of fifty-five dollars (\$55) or so, that was paid into the pension and the refund was only a return of her own contributions.

In answer to a question regarding the importance of the figure of \$5,000 and if it is written anywhere, the appellant stated that this was the amount the lady stated was the normal minimum amount and that any potential pension amount may only be in the amount of possibly ten dollars (\$10) per month. She stated that this minimum figure is probably written down somewhere in the union agreement that if \$5000 was not reached, it would be returned.

The appellant stated she had not received any written notification on the return of funds, they were simply paid into her bank account.

In answer to a question from the panel as to whether the appellant was offered a choice of receiving a pension or having the funds returned the appellant replied that she was. However, the lady advised it would cost them more to pay the pension than it was worth so, for anything under \$5000, the company policy was to pay a lump sum. The panel notes that the appellant was inconsistent in her wording, sometimes referring to the payment as a return of her contributions and, other times, referring to it as a lump sum payment. Despite the confusion, it was clear that, in her mind, it was a refund of what she had contributed.

Ministry

At hearing the ministry relied upon the reconsideration decision and stated that the basic concept here is whether the monies are earned income or unearned income. The ministry had looked at the large payment and had to decide if the money was either a pension payout or a return of contributions and there can be a fine line here. As the appellant stated she was offered a monthly pension of \$10 the ministry holds the money is a pension payout, and the T4A shows a superannuation payment. The appellant chose to take a payout rather than a pension. When asked to elaborate on the use of the term "superannuation" the ministry explained that the term had been looked up by a ministry representative and it is defined as a pension payment.

In answer to questions on how the ministry believed the payment of less than \$5,000 was a "pension payout" and not a "return of contributions" the ministry stated their decision was mainly based on the appellant's comment in a phone call, and repeated by the appellant at hearing, that she was told it would possibly work out to a \$10/month pension, which was so small they would pay a lump sum rather than set up monthly payments. The phone call comment was not included in the appeal package, but the Ministry rep was able to find in the appellant's file. The ministry stated it did appear clear at the time but admitted there is no written clarification provided as such.

The appellant asked why, as she had no choice as to whether to take the \$10 per month pension, the ministry thinks it was not earned at the time received as it was earned income at the time it was paid into the pension.

In answer to a question from the panel if there was clear written evidence that the funds were being returned then would that make a difference, the ministry replied that it would.

When asked what information the ministry had received from the appellant, as there is no information included on pay stubs or the February 2023 report in the reconsideration decision, the ministry provided several examples. A pay stub dated 26 February 2021 showed an amount of \$52.42 deduction to the union pension fund and a 19 February 2022 pay stub showed a \$39.23 deduction to the same pension fund.

Admissibility of new information

Section 22(4) of the Employment and Assistance Act (“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 a document defining the source and amount of funds and a written explanation of the source of the funds, and both parties provided oral testimony on the dollar amount of contributions paid. The panel finds that this information is relevant because it relates directly to the type of income and its eligibility as rejected by the ministry.

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

Although there was no mention of the \$10/month pension in the appeal record, the Ministry stated that the appellant had commented on it in a telephone call. The appellant also referred to this calculation during the hearing.

Findings of Fact

The panel reviewed the T4A and noted that Box 16 is titled “Pension or superannuation”, and this box is blank, and that Box 18 shows a “Lump sum payment” of \$3523.51. The panel finds the appellant received a Lump sum payment of \$3523.51 in December of 2023, of which \$352.35 was withheld as income tax and an amount of \$3171.16 was paid directly to the appellant’s bank account.

The panel notes that the ministry did not provide copies of the appellant's monthly report, nor copies of any monthly pay stubs that were reportedly submitted by the appellant. However, the panel finds from oral testimony of both the appellant and the ministry that the appellant received employment income and paid pension contributions for the early part of 2022.

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that denied February disability assistance because the appellant has net income that exceeds the ministry's monthly rate of assistance. In particular, was the ministry's decision that the appellant's lump sum pension income is "unearned income," and therefore not exempt from the calculation of disability assistance, 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 income received was a return of earned income paid by salary deduction from her pay cheques into a union pension plan as demonstrated in the T4A document. The appellant believed that these funds are therefore qualifying income under the Annual Earnings Exemption described in the legislation. The appellant's advocate argued that the lump sum payment was a refund of pension plan contributions made because the total contribution amount was too little to create a pension. As such, the payment fell under the Regulation's definition of earned income.

Ministry Position

The ministry argues that as there is no evidence to support the money received has been refunded because of insufficient contributions to create a pension, rather the funds received are a lump sum pension income and are considered unearned income. As the amount exceeds the rate of disability assistance the appellant is not eligible for February disability assistance in accordance with Section 9(2) of the Regulation.

Panel Decision

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

Section 1(1) of the Regulation defines earned and unearned income. Earned income includes pension plan contributions that are refunded because of insufficient contributions to create a pension. The panel notes that the legislation does not provide a definition of how to calculate what is insufficient contributions.

The definition of unearned income means any income that is not earned income and includes superannuation benefits. The panel notes the ministry argued at hearing that the appellant had received a superannuation lump sum payment.

The panel has noted the reports submitted by the appellant were not provided to the panel therefore the panel was unable to verify how the appellant's income was reported and for what amount. This includes the monthly report to the ministry and to monthly pay stubs the appellant stated to having submitted. The panel notes however, that there is no disagreement between the parties as to the amount reported.

The panel has found the appellant received a "Lump sum payment" of \$3523.51 in December of 2023, of which \$352.35 was withheld as income tax and an amount of \$3171.16 was paid directly to the appellant's bank account.

The panel notes the statements by the appellant, both in her handwritten request for reconsideration regarding the number of terms used to define the source of funds, and in the new information, that she paid into a union pension plan direct from her pay cheque for a period of two years, and that the monies received were a refund of those contributions.

The panel has noted that the amount or sufficiency of contributions to a potential future pension is not defined in legislation. The ministry has not provided any information as to how it would calculate this amount other than to confirm that clear written evidence of funds being returned would have made a difference.

The panel was not provided with information as to what amount must be contributed for a pension to be formed. It is possible that each entity forming a pension gets to set this amount. The appellant has argued that the pension company told her in a telephone call that the value of her contributions was below their threshold of \$5,000 to form a cost-effective pension. The company asked her to accept a return of contributions.

As no payment information has been provided by either party the only determination of the actual value of contributions is provided by two individual examples provided by the ministry, and agreed to by the appellant, of \$52.42 and \$39.23 per week. The panel notes that this equates to contribution values of \$4080 and \$5452 over a two-year employment period (assuming contributions each week for 52 weeks each year). The amount received by the appellant of \$3523.51 is below both these values.

The panel considered the new information from the T4A and found the appellant received a “Lump sum payment” of \$3523.51 in December of 2023, and not a “Pension or superannuation” payment.

When considering the available evidence, the panel finds that evidence has been provided both in the request for reconsideration and in oral testimony by the appellant, that the money was a return of contributions. At the hearing, the appellant stated that she was told the funds were a return of contributions because the amount was less than the normal amount of \$5,000 required to establish a pension. The panel finds therefore, the ministry was not reasonable in its finding that there was no evidence to support the received pension plan contributions have been refunded because of insufficient contributions to create a pension.

The standard of proof in this hearing is the balance of probabilities. The panel accepts that not all evidence is created equal, and that evidence may be more or less *relevant* to the issue being dealt with and may be more or less *reliable*. The more relevant *and* reliable evidence is, the more weight it will be given.

After reviewing all the evidence, the panel finds that in the circumstances of the appellant, the testimony regarding the discussion of a normal contribution limit of \$5,000, and the T4A document showing a lump sum payment and not a pension or superannuation payment to be both relevant and deserving of a high weighting.

Therefore, the panel finds the funds received were pension plan contributions that were refunded because of insufficient contributions to create a pension, and therefore the full amount of \$3523.51 would be “earned income” under Section 1 of the Regulation. The panel finds the ministry was not therefore reasonable in its determination that the \$3171.16 lump sum pension income was “unearned income”.

The panel has not been provided with enough evidence to determine the net income of the appellant, in particular, any potential application of the annual earning exemption.

Therefore, it is not possible for the panel to determine if the net income is more than the amount calculated for support and shelter under schedule A and finds the calculation of any potential exemption must be referred back to the ministry.

Therefore, based on the evidence, the panel finds the ministry was not reasonable in its determination that the appellant’s net income exceeds the ministry’s rate of assistance and that the appellant is therefore not eligible for disability assistance.

Summary

The panel found the money received by the appellant to be a refund of pension plan contributions and therefore earned income; and that the refund and income tax amounts may be eligible for exemption subject to prior earnings and as an allowable deduction from the calculation of net income under the legislation. The net income calculation cannot be determined without information on other 2022 earned income and must be referred back to the ministry.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision to be not supported by the evidence and was not a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is rescinded and referred back to the ministry for determination of amount. The appellant is 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,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

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

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
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,
- (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

- (a) \$1 250, in the case of a family unit that includes only one recipient,

"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

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)

2023/03/14

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/03/14

Print Name

Wesley Nelson

Signature of Member

Date (Year/Month/Day)

2023/03/14