

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 8 August 2023. The ministry determined the appellant has reached her Annual Earnings Exemption (AEE) limit for 2023 and denied the appellant August disability assistance, because her family's June 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 (the Act) – Section 5
Employment and Assistance for Persons with Disabilities Regulation (the Regulation) -
Sections 1, 9(2), 24 and 29, Schedule A, sections 1, 2 and 4, Schedule B, sections 1, 2, 3 and 4.

Part E – Summary of Facts**Hearing**

A telephone hearing was held on 6 October 2023.

Evidence before the Ministry at Reconsideration

The appellant and her spouse received disability assistance as a couple in which one person has Persons with Disabilities designation.

The evidence before the ministry at reconsideration included:

- The appellant submitted monthly reports declaring income received in May and June of 2023. After deductions for Federal Income Tax (income tax), Canada Pension Plan (CPP) payments and Employment Insurance (EI) the combined net income shown for May 2023 was \$3466.36,
- The appellant provided employment pay slips detailing family income, for herself and her spouse, showing that their combined Year to Date (YTD) net income, again after deductions for income tax, CPP payments and EI was \$21,757.46 as of May 25, 2023,
- A typed self-report from the appellant stating that she is withdrawing her application for EI benefits and is continuing to work,
- In the request for reconsideration the appellant explained that she had taken time off work when her mom passed away and she overspent trying to feel better, and is now struggling to pay rent and bills,
- Personal chequing account statements for both the appellant and her spouse for the three-month period of April until July 2023.

New Evidence Provided on Appeal

In the notice of appeal, the appellant stated that she has been approved for EI, but it is not much. She stated that money was tight, rent was high, and bills and expenses were overwhelming. She is trying to appeal this decision to get out of debt.

At the hearing, the appellant summarised the information previously provided and provided further testimony on her current situation. The appellant confirmed she was not working just now and was in discussion with her HR department and the Workers Compensation Board (Worksafe) regarding concerns at her place of employment. Her spouse works at the same company.

The appellant advised she was in receipt of EI payments of approximately \$584 every two weeks and understood she had exceeded the AEE. She also agreed that her employment income was higher than her allowable disability income.

In response to questions the appellant stated that she had not applied for hardship allowance, nor had she spoken to the ministry about the details of her specific circumstances.

The ministry at hearing summarised the reconsideration decision and stated that simply because the annual earnings exemption had been exceeded did not mean the appellant was not eligible to receive disability income for the remainder of the year. It would be viewed on a month-to-month basis dependent on income.

Although the appellant has now agreed that her income is greater than the amount of income assistance the ministry explained that the appellant can continue to submit monthly reports. In that way, depending on the amount on family income received, she may be eligible to receive some amount of disability assistance.

Admissibility of new information

The panel finds that much of the oral testimony of the appellant and the ministry summarized evidence already before the ministry at reconsideration and is information in support of the appellant's appeal.

However, where the testimony provided further detail, the panel finds that the testimony was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel admits all the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Findings of Fact

The panel reviewed the employer's pay statements for both the appellant and her spouse, and noting no disagreement from the appellant finds:

- the combined family income for herself and her spouse, net of income tax, CPP and EI contributions of \$21,757.46 as of May 25, 2023, and,

- The amounts stipulated in the employer pay statements agreed with the deposit record in the appellant's bank statements for June of \$1179.14 and \$2287.22 for her spouse for a total of \$3466.36 for the month of June 2023, net of income tax, CPP and EI contributions.

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 AEE limit for 2023 and is not eligible for August disability assistance. In particular, was the ministry's decision that the appellant's family employment income in June 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 she is in debt, is struggling to pay rent and bills and the funds currently received from her spouse's employment and the EI payments are insufficient.

Ministry Position

The ministry argues the money the appellant and her spouse receive from employment is earned income because it is received in exchange for work or the provision of a service. This means it is also qualifying income for the AEE described in Schedule B, Section 3 of the Regulation.

As per the May 25, 2023, pay verification the appellant has exceeded the \$19,440 AEE limit for 2023 employment income because the combined YTD family net income was \$21,757.46. This means any additional employment income earned in 2023 by either the appellant or her spouse is not exempt and must be included in the appellant's net income calculation.

The ministry also argues the appellant's family unit employment income in June was \$3466.36, and as employment income is no longer exempt the appellant is not eligible for August disability assistance because the joint income is more than the \$2073.50 rate of assistance for her family unit size.

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 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 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 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, the panel notes the amount to be \$1378.50 for support allowance and \$695 for the monthly shelter allowance for a total of \$2073.50 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 both the appellant and her spouse are employed and receive employment 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 Regulation. Section 1(c) 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 of Schedule B 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 panel notes no evidence to suggest any other eligible deductions from the incomes received by the appellant and her spouse, other than those already reported for income tax, CPP and EI.

Section 3 of schedule B of the 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 \$1620 per month for an annual exemption of qualified income (AEE) of \$19 440.

Section 4 provides for a small business exemption. The panel sees no evidence to show the appellant or spouse is involved in running a small business under a self-employment program.

The panel has found the combined family income for the family unit, net of income tax, CPP and EI contributions of \$21,757.46 as of May 25, 2023, and finds this amount to be the calculated YTD net income under section 1 of Schedule B of the Regulation.

The panel notes these net earnings of \$21,757.46 exceed the AEE amount of \$19,440. Based on the evidence the panel finds the ministry was reasonable in its determination that the AEE had been reached and that future qualifying income would not be exempt in the calculation of net income.

The panel has found the family unit received a total of \$3466.36 for the month of June 2023, shown as net pay. The panel finds the deposits to account, after all legislated permitted deductions, constitute the employment net income calculated under schedule B of the Regulation for June 2023 for a total of \$3466.36.

In the circumstances of the appellant the monthly net income of \$3466.36 is greater than the ministry's rate of assistance of \$2073.50 for the appellant's family unit. Therefore, under section 9 of the 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 2023 to be reasonably supported by the evidence.

Summary

The panel finds the annual earnings exemption of \$19,440 was reached in May of 2023. The family earnings for June 2023 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 2023.

The panel notes the ministry advice that the appellant continue to submit monthly earnings reports to allow for future eligibility consideration.

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 (\$)
3	Two applicants / recipients and no 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	\$1 378.50

(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
2	2 persons	\$150	\$695

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

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2023/10/10

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2023/10/10

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2023/10/10