

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the Ministry) reconsideration decision dated September 11, 2023, which determined the Appellant does not meet the income test for income assistance or disability assistance and is therefore not eligible for either.

Part D – Relevant Legislation

Employment and Assistance Act (EA Act) sections 2, 3 and 4
Employment and Assistance Regulation (EA Regulation) sections 1, 10, 28 Schedules A and B
Employment and Assistance for Persons with Disabilities Act (EAPWD Act) sections 3, 4 and 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWD Regulation) sections 24, Schedules A and B

(Relevant Legislation follows the decision in Appendix A)

Part E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act (EAA).

The Appellant and her spouse do not receive income assistance or disability assistance and their reported family income is variable.

Information Before the Ministry at Reconsideration

- A Request for Reconsideration submitted by the Appellant on August 24, 2023. The Appellant wrote (in summary):
 - The money they make is not enough to cover their basic requirements for two people.
 - The Appellant is not able to work due to her mental health disease and the spouse has to cover her expenses.
 - The spouse works as a delivery courier which is seasonal and there is no guarantee to make consistent money like at a usual job.
 - The spouse works hard to take care of the Appellant and consequently made more money than the specified rate for the family, however it does not change the fact that the Appellant is still sick, and they have no close family or friends to help.
- Bank Statements for period June 14, 2023 to August 15, 2023.
- Pay Statements, from two companies, for period June 5, 2023 to August 6, 2023. The pay statements total \$3,740.10 for June; \$4,935.80 for July and \$1,034.04 to August 6.

Information Submitted After Reconsideration

A Notice of Appeal form on which the Appellant wrote (in summary):

- Their net income was above the specified rates simply because the Appellant has been struggling with mental health disease and the spouse must cover her expenses as she is not able to work.
- To cover rent and bills (cell phone, hydro, car insurance) they must make approximately \$3,000 per month. This does not include food, medication, or health products.
- The spouse must care for the Appellant and drives as a delivery courier because they need to check on her all the time. She often rides in the car during deliveries because she uses medications which make her dizzy.
- The Appellant's illness has affected the spouse's physical and mental health. The spouse's eye surgery has been delayed and they are losing vision in one of their eyes because of this.
- The spouse has been working every day for the past year to save the family from becoming homeless and does not know how much longer they can continue to do this.
- They ask that the Appellant's severe mental health issue for the past two years, and the impacts and sufferings which they have been through, to be taken into consideration.

The Appellant provided a written submission, noting that they are including the updated income for the past 60 days. They write that the type of job they are doing is sporadic and their net income for the last 60 days has decreased in comparison to the period which was evaluated by the ministry and better shows the fragility and instability of their income source. Included with the submission are:

- Pay statements, from two courier companies, for the periods of August 6, 2023 to October 1, 2023. The pay statements total \$2,427.13 for August and \$3,637.47 for September.
- Bank statements for the period August 1, 2023 to October 1, 2023.
- Bank statements for the same period as provided in the Record of Appeal.
- An invoice for \$1,830.72 from a car dealership showing repairs made.
- A tenancy agreement from December 1, 2020, shows rent of \$1,950 monthly.
- A copy of a portion of a Persons With Disabilities application form in the Appellant's name.

The Ministry's submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of Additional Information

The panel admits the appellant's Notice of Appeal and evidence submitted with their written submission under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry decision dated September 11, 2023, which determined the Appellant does not meet the income test for income assistance or disability assistance and is therefore not eligible for either, is reasonably supported by the evidence or is a reasonable interpretation of the legislation.

The Appellant's position is that although their income exceeds the Ministry's rates, it barely covers their monthly expenses. The Appellant is not able to work to bring in her share of family income and the spouse must work additional hours, to the detriment of their health, to make enough to cover expenses.

The Ministry's position is that because the family's monthly income exceeds the legislated rates for income assistance, there is no eligibility for it. In addition, because the Appellant has not yet had a determination made regarding their application for Persons with Disabilities designation, and the family's monthly income exceeds the legislated rates for disability assistance, there is no eligibility for disability assistance either.

Panel Decision

At the time of application for assistance, the Appellant was also applying for Persons with Disabilities designation. The Ministry initially determined the application for this designation could not be adjudicated because the family's income is higher than both income assistance and disability assistance rates. At reconsideration, the Ministry determined the application for disability designation could be forwarded for adjudication and the application has apparently been forwarded.

Because the reconsideration decision indicates the appellant would not be eligible for either income assistance or disability assistance, the Panel will review both the income assistance and disability assistance legislation.

Income Assistance

Section 28 of the EA Regulation sets out that the amount of income assistance that may be provided is not more than the support and shelter listed in Schedule A minus the family's net income determined under Schedule B.

The rates set in Schedule A indicate that two persons who are under 65 years of age, which is the Appellant's circumstance, could receive a support allowance of \$955.00 and a shelter allowance of \$695.00, for a total of \$1,650.00 monthly.

When calculating the net income of a family, section 1 of Schedule B allows for exemptions. None of the exemptions listed are applicable in the Appellant's circumstance.

Section 2 of Schedule B allows for deductions from earned income, however, the only deductions permitted are for income, tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues. The paystubs submitted by the Appellant do not show any of these deductions.

Section 3 of Schedule B allows for a monthly earnings exemption. However, a family unit applying for income assistance is not eligible for this exemption in the first month for which the family becomes eligible for income assistance, unless a family member has received at least income or disability in one of the six calendar months immediately preceding. This means there must be at least one month where a person receives even partial assistance from the Ministry. Because the Appellant is not currently in receipt of any income assistance, this earnings exemption does not apply.

Section 4 of Schedule B allows for exemption of the family's income, if the family has been approved for a small business exemption, by participating in a pre-approved self-employment program with the Ministry. The Appellant is not currently a recipient of income assistance and there is no evidence in the Appeal Record that they had previously been approved for the self-employment program which would allow exempting business-related expenses.

Therefore, the Panel must consider that the paystubs, as submitted, are the Appellant's net income. The paystubs submitted at the time of reconsideration show income of \$3,740.10 for June and \$4,935.80 for July. With the written submission the Appellant noted that their income is variable and is now less than what was previously submitted. The paystubs provided show income of \$2,427.13 for August and September \$3,637.47. Because the family's net income exceeds the legislated rate of \$1,650, the panel finds the Ministry was reasonable to determine the Appellant is not eligible for income assistance.

Disability Assistance

Before a person may receive disability assistance, they must first be determined to be a Person with Disabilities. The Appellant has not yet been designated as a Person with Disabilities. Because the reconsideration decision decided that, even if the Appellant were to receive the designation, they would still not be eligible for disability assistance, the Panel will review the decision.

Section 24 of the EAPWD Regulation sets out that the amount of disability that may be provided is not more than the support and shelter listed in Schedule A minus the family's net income determined under Schedule B.

In the Appellant's circumstance, the legislated rates set in Schedule A are \$1,378.50 for support and \$695 for shelter, for a total of \$2,073.50. The Appellant's net income (as written above) exceeds that amount.

As with the EA Regulation, the EAPWD regulation allows for the same exemptions, which the Panel has already determined does not apply in the Appellant's circumstance.

In addition, the EAPWD Regulation Schedule B section 3 does allow for an annual income exemption, rather than a monthly income exemption as permitted in EA Regulation. However, this exemption only applies to family units in which one or more persons have the Persons with Disabilities designation, which the appellant and her spouse do not. Also, in accordance with Schedule B section 3(5) if a family member were to receive Person With Disabilities designation, there would be a month waiting period for the annual income exemption to apply unless a member of the family unit had previously received disability assistance or a member of the family unit received income assistance for the immediately preceding month.

Because the family has not been designated as a Person with Disabilities and their net income exceeds the legislated rate of \$2,073.50, the panel finds the Ministry was reasonable to determine the Appellant is not eligible for disability assistance.

Conclusion

The panel finds that the Ministry's determination that because the Appellant's family net income is higher than legislated rates they are therefore not eligible for income assistance or disability assistance was a reasonable application of the legislation. The panel therefore confirms the ministry's decision. The appellant is not successful on this appeal.

Appeal Number 2023-0282

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APPENDIX A RELEVANT LEGISLATION

EA Act

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement 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 income assistance, hardship assistance or supplement under this Act.

Act does not apply to persons with disabilities

3 A family unit that includes a person with disabilities is not eligible for income assistance or hardship assistance under this Act.

Income assistance and supplements

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

EA 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

10 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Schedule A

Amount of income assistance

28 Income 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.

Monthly support allowance

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
7	Two applicants / recipients and no dependent children	Both applicants/recipients are under 65 years of age	955.00

Monthly Shelter Allowance

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter \$
2	2 persons	695

Schedule B**Net Income Calculation****Deduction and exemption rules**

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(a) the following are exempt from income:
..... (none of the exemptions are applicable)

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;

Exemption — earned income

3 (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

(2) A family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance or income assistance in at least one of the 6 calendar months immediately preceding that first calendar month.

(3)–(5) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 16.]

- (6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:
- (a) \$500, if the family unit is not described in paragraph (b), (c) or (d);
 - (b) \$750, if the family unit
 - (i) includes a recipient who
 - (A) has a dependent child, or
 - (B) provides care to a supported child, and
 - (ii) is not described in paragraph (c) or (d);
 - (c) \$900, if
 - (i) the family unit includes a recipient who
 - (A) has a dependent child, or
 - (B) provides care to a supported child,
 - (ii) the child has a physical or mental condition that, in the minister's opinion, precludes the recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week, and
 - (iii) the family unit is not described in paragraph (d);
 - (d) \$900, if the family unit includes a person who has persistent multiple barriers to employment.

EAPWD Act

Eligibility of family unit

- 3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement 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 disability assistance, hardship assistance or supplement under this Act.

Application of Act

- 4** To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

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.

EAPWD Regulation

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A Disability Assistance Rates

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

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

Monthly Shelter Allowance

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter \$
2	2 persons	695

Schedule B

Net Income Calculation

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:

.....(none of the exemptions are relevant)

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

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

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

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,
- (b) \$1 500, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 500, in the case of a family unit that includes two recipients who are designated

as persons with disabilities.

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 191 [temporary total disability] or 192 [temporary partial disability] of the Workers Compensation Act;

"qualifying month", in respect of a family unit and a calendar year, means

- (a) the initial qualifying month for the family unit in the calendar year, and
- (b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

- (a) forms during the calendar year, and
- (b) includes at least one person who
 - (i) is designated as a person with disabilities, and
 - (ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

- (a) the qualifying income of the family unit for the qualifying month;
- (b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

- (a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);
- (b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

- (a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of
 - (i) the base amount for the family unit, and

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;

(b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of

(i) the base amount for the recognized family unit,

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;

(c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).

(5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:

(a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is

(i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if

(A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or

(B) a member of the family unit received income assistance under the Employment and Assistance Act for the calendar month immediately preceding that first calendar month, or

(ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;

(b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;

(c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is (i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or

(ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act

....

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

(a) nil, and

(b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:

(i) by deducting the qualifying income of the family unit in that last qualifying month;

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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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023/10/24

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2023/10/24

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)