

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated October 26, 2023 (the Decision), which determined that the Appellant was not eligible for income assistance at the time because her net income might exceed the rate of assistance for a family unit of her size, and that further information was required to determine her net income.

However, contrary to its finding in the original Ministry decision, the Ministry also determined that the Appellant could ask to have a Persons with Disabilities (PWD) application adjudicated.

Part D – Relevant Legislation

Employment and Assistance Act (the Act), sections 1, 2, and 4

Employment and Assistance Regulation (the Regulation), sections 1, 10 and 28, Schedule A, sections 1, 2, and 4, and Schedule B, sections 1, 2, 3(2), and 4(1)

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below

Part E – Summary of Facts

According to the information provided by the Ministry in the appeal record:

- The Appellant is a PWD applicant, whose family unit, if eligible, would qualify for monthly PWD benefits of \$2,073.50. Without a PWD designation, the Appellant's family unit, if eligible, would be entitled to income assistance totalling \$1,650 a month;
- On January 25, 2023, the Appellant and her spouse applied for income assistance. The Appellant also indicated that she intended to apply for the Persons with Disabilities (PWD) designation. The Appellant said she had a job beginning the following week and had applied for employment insurance (EI) benefits. Her spouse was self-employed and a student in post-secondary school until April 2023, and her spouse had a student loan;
- On February 13, 2023, the ministry determined that the family unit had assets that exceeding the allowable amount to qualify for income assistance, but the Appellant could apply for a PWD designation because her asset limit was less than \$100,000;
- On April 12, 2023, the Appellant submitted a PWD application, but the ministry noted it was unable to assess her PWD application because she wasn't receiving assistance, and "*a financial review of (her) circumstances*" was required;
- On August 1, 2023, the Appellant contacted the Ministry to ask about the status of her PWD application and was told a financial review was required before the Ministry could proceed with her PWD application; and,
- On August 21, 2023, the Ministry denied the Appellant's request for a PWD designation because it determined that, based on the Appellant's bank statements, the family unit's income for May, June and July 2023 exceeded the Appellant's disability assistance rate for a family unit of her size. The Ministry noted that, based on information provided by the Appellant, some electronic funds transfers (E-transfers) appearing on her bank statements were payments from business clients. But the Ministry also determined that some other "*undefined deposits*" should be considered income.

The evidence the Ministry had when it made the Decision included:

- The Appellant's request for reconsideration, dated September 19, 2023 (the Reconsideration Request), in which the Appellant sought an extension of the deadline to ask for reconsideration "*to maximize the amount of time I have to organize my Reconsideration Request. Part of my disability makes it difficult for me to focus on tasks like this ...*";

- Seventeen pages of copies of the Appellant's monthly statements from a bank for the months from April 2023 through June 2023 inclusive (the Bank Statements from the First Bank);
- Two pages of screen shots from a bank website showing transactions posted to an unidentified bank account between July 6, 2023 and July 16, 2023 (the July Screenshots); and,
- Fifteen pages of copies of monthly bank statements from a different bank showing transactions between March 1, 2023 and July 12, 2023 (the Bank Statements from the Second Bank).

Additional Evidence After Reconsideration

In the notice of appeal, dated November 3, 2023, the Appellant wrote *"My financial situation had changed at the time of (the Ministry's) decision and what (the Ministry) based (its) decision (on) was not an accurate representation of my finances."*

Evidence Presented at the Hearing

The Appellant was also represented at the hearing by her Spouse.

At the hearing, the Appellant asked for an adjournment because she was very sick. Part 4.4(c) of the Employment and Assistance Appeal Tribunal (the Tribunal) practices and procedures manual says that if a party requests an adjournment within one business day prior to the hearing, the adjournment request must be made to the panel at the hearing. A panel chair may adjourn the hearing at a party's request *"where the Panel Chair determines that an adjournment is required to permit an adequate hearing to be held."* In determining whether an adjournment might be required, the panel may consider, among other things, whether the request was made at the earliest opportunity, whether the adjournment would cause unreasonable delay, and the impact granting or refusing the adjournment would have on both the parties and on the public interest.

Considering that:

- The Panel confirmed with the Appellant at the hearing, before an adjournment decision was made, that the Spouse was familiar enough with the appeal to speak on behalf of the Appellant;
- The Appellant had indicated in the release of information form that the Spouse could make decisions on the Appellant's behalf;
- The Appellant did not notify the Tribunal of her illness until after the close of business on the day before the hearing, which was scheduled for 9:30 am. As a

result, the Panel was not notified of the request for an adjournment until 30 minutes before the hearing was scheduled to start;

- The Ministry, when asked if it would support the Appellant's request for an adjournment, indicated that it would not, due to earlier delays;
- The Ministry had previously granted an extension of the deadline for the Appellant to make its Reconsideration Request; and,
- At the Appellant's request, the hearing date for the appeal had previously been changed to a later date from the originally scheduled date,

the Panel Chair denied the Appellant's request for an adjournment.

At the hearing, the Appellant said that both she and her Spouse have Attention Deficit Hyperactivity Disorder (ADHD), and that their ADHD causes documents and invoices to appear "*really complicated*". The Appellant said her Spouse is a full-time student who also operates a landscaping business, and his clients are sometimes late in paying invoices.

The Appellant confirmed that the Bank Statements from the First Bank were a joint account of both her and the Spouse, which showed family unit financial transactions for their personal living expenses as well as gross income from her self-employment. She also said she "*doesn't have a proper business account*", and that her self-employment work is as a nanny. She said that a family member did her accounting (the Accountant), which involves separating out the self-employment activities from other household receipts and expenses. She also said that the Bank Statements from the Second Bank were her Spouse's bank account

Regarding the Appellant's self-employment income, the Appellant said she is "*registered with a tax program*", and experiences extended periods where she doesn't earn any self-employment income. She said that when she had applied for income assistance in August 2023, she had been asked by the Ministry to provide her most recent bank statements. She thought it was unreasonable for the Ministry to rely on the information in her most recent bank statements to determine her income, because they were not representative, and her situation has changed since then. She said she is now earning less income from self-employment than she was in the three and a half month period for which she had been asked to submit bank statements (April 1, 2023 through July 16, 2023). She also said that the Ministry "*didn't consider her status as unemployed*".

In response to a question from the Ministry, the Appellant said she had not provided the Ministry with any business records because she didn't know that she should do so. The Appellant said she did collect some EI benefits during the three and a half month period from April 1, 2023 through July 16, 2023, and that she was now "*paying into EI*". She also

said she operates her business under "*a small business program*", which she has been enrolled in since April 2023.

The Appellant also said that she has now received a designation from the Ministry as a PWD.

In response to a question from the Panel about eleven highlighted deposit transactions appearing on the bank statements included in the appeal record, the Appellant said they had been highlighted by her and represented her total income from self-employment over that three and a half month period. In response to another question from the Panel, the Appellant said she had not submitted any more recent bank statements to the Ministry, but could do so, and could also arrange for the Accountant to provide additional financial information relating to her small business operations.

At the hearing, the Ministry relied on its reconsideration decision. The Ministry pointed out that it had agreed to extend the deadline for the Appellant to submit additional financial information before the Ministry made its reconsideration decision in September 2023 because the Appellant had said that she needed more time to submit additional information, but that no additional information was submitted.

The Ministry also confirmed that the Appellant had been designated as a PWD, effective November 1, 2023. The Ministry explained that the net income threshold amount for a PWD is \$2,073.50, which is higher than the threshold for a person who applies for income assistance without the PWD designation. In addition, the Ministry said, higher earnings exemptions apply. The Ministry suggested that the Appellant reapply for assistance because her status as changed, but that if she did so she would have to provide enough financial information for the Ministry to determine if she was eligible for any assistance, and if so, how much.

Admissibility of Additional Evidence

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must consider if the new information is relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

The Panel notes that the comment made by the Appellant in the notice of appeal is argument and contains no new evidence.

New verbal evidence provided at the hearing by the Appellant comprised the following information:

- The Appellant uses the family unit bank account for all transactions relating to her small business income, and the Bank Statements from the Second Bank do not include any of her self-employment income;
- The highlighted transactions on the Bank Statements from the First Bank represent the total gross amount of self-employment income earned by the Appellant between March 4 and July 16, 2023;
- The Appellant collected EI benefits for part of the period in which she had provided the Ministry with the bank statements when she applied for assistance in August 2023; and,
- The Appellant was designated as a PWD, effective November 1, 2023.

The Panel admits all the new evidence from the Appellant presented at the hearing, as it is relevant to the Panel's decision.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Decision, which determined that the Appellant was not eligible for income assistance at the time of reconsideration because her net income might exceed the rate of assistance for a family unit of her size, was reasonably supported by the evidence, or a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that her circumstances have changed since she provided her bank statements for the three month period for the period from April through June 2023 to the Ministry at its request in August 2023, as there have been recent extended periods where she hasn't earned any income from self-employment.

Ministry's Position

The Ministry's position is that the family unit's net income might be more than the rate of income assistance to which she would be entitled, based on the information the Appellant provided the Ministry in August 2023. But without clarification of the undefined bank deposits into her account, the Ministry can't determine whether the deposits meet the definition of earned or unearned income.

Panel Decision

The Panel notes that the reconsideration decision under review, which is the subject of this Tribunal decision, relates to an application for income assistance that the Appellant made under the *Act* and Regulation. Since that reconsideration decision, the Appellant has been designated as a PWD. Similar eligibility criteria exist under the legislation for disability assistance relating to a PWD applicant (specifically, the *Employment and Assistance for Persons with Disabilities Act* and the *Employment and Assistance for Persons with Disabilities Regulation*). However, the maximum benefit amount and earned income exemption amount is higher under the PWD legislation. In addition, the application process is generally the same under both pieces of legislation, as are the processes under which the applicant receives the Ministry decision, and, if applicable, asks for and receives a reconsideration decision, or makes an appeal to the Tribunal.

Section 2 of the *Act* says that a family unit is eligible for income assistance if each eligible person satisfies the necessary conditions of eligibility established under the *Act*. Those conditions are set out in the Regulation.

Section 1 of the Regulation defines earned income and unearned income. Earned income includes money received in exchange for work, and unearned income lists the kinds of

income that are not included in the definition of earned income, including, among other things, a Canada Pension Plan (CPP) disability pension, EI benefits, and tax refunds.

The Ministry must take into account all specified earned and unearned income into account when assessing an applicant's eligibility for income assistance. This is because section 10 of the Regulation says a family unit is not eligible for income assistance if the family unit's net income equals or exceeds the amount of income assistance determined under Schedule A of the Regulation. In addition, section 28 of the Regulation says that income assistance provided to a family unit in any calendar month can't be more than the amount to which Schedule A says the family unit is eligible, after deducting the family unit's net income.

Schedule A of the Regulation lists the amounts of the support and shelter allowance available to family units of different sizes and compositions. As the Appellant's family unit comprises the Appellant and the Spouse, both of whom are under 65 years of age, the monthly support amount is \$955.00, and the monthly shelter amount is \$695.00, for a total of \$1,650.00 per month, less their combined net income.

Schedule B of the Regulation provides the deduction and exemption rules relating to the calculation of a family unit's net income by listing all the types of income that are exempt in calculating net income. It also lists the amounts that can be deducted from the earned income calculation. These amounts are any amount deducted at source for income tax, EI, medical insurance, CPP, superannuation, a company pension plan, and union dues.

Section 3 of Schedule B of the Regulation says that a family unit of the size and structure of the Appellant's family unit can earn up to \$500 per month before any deduction is made in the amount of income assistance to which the family unit is eligible.

Section 4 of Schedule B of the Regulation lists the expenses incurred by a person operating a small business that are exempt from the calculation of total income for a person participating in a self-employment program. These expenses include costs of supplies, accounting and legal services, advertising, business insurance, and taxes, fees, licences and dues incurred in the small business, among other types of expenses listed in that section. The Panel notes that the person must be "*participating in a self-employment program*" to qualify for these exemptions.

Given all the above listed calculations, exemptions and adjustments, the Panel notes that the Ministry requires a significant amount of financial information to determine whether an applicant is eligible for income assistance, and if so, how much they are entitled to. Having reviewed all the available evidence, the Panel finds that the Ministry reasonably determined that it did not have enough financial information to determine the Appellant's net income for the purpose of calculating her eligibility for income assistance.

For example, the Panel notes that the following Government of Canada electronic deposits appear on the Bank Statements from the First Bank and the July Screenshots:

Date	Amount
April 5, 2023	\$329.14
June 12, 2023	\$3,793.95
July 5, 2023	\$240.63
Total Amount	\$4,363.72

While no information has been provided by the Appellant to indicate the reason for these electronic deposits, it is possible that they represent unearned income in the form of CPP disability pension, EI benefit, or tax refund payments. In addition, the Panel notes that no information has been provided to indicate which, if any, of the deposits or credits to the Bank Statements from the Second Bank represent the Spouse's income from his landscaping business (which would be part of the family unit's earned income), or whether there are any eligible exemptions or deductions from net income included in the financial information the Appellant has provided.

Also as noted above, the Ministry has designated the Appellant as a PWD, and, as such, the Appellant can apply for disability assistance. However, the Panel notes that the Ministry is likely to require a significant amount of additional financial information regarding the Appellant's family unit's net income in order to assess her eligibility under the PWD legislation.

Conclusion

The Panel finds that the Ministry's Decision, which determined that the Appellant was not eligible for income assistance because her net income might exceed the rate of assistance for a family unit of her size, was reasonably supported by the evidence.

Therefore, the Decision is confirmed, and the Appellant's appeal is not successful.

Schedule of Legislation
EMPLOYMENT AND ASSISTANCE ACT

Interpretation

1(1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants; ...

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person ...

"family unit" means an applicant or a recipient and the applicant's or the recipient's dependants; ...

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

Eligibility of family unit

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

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

Income assistance and supplements

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

EMPLOYMENT AND ASSISTANCE 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, ...

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;

- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation; ...

Limits on income

10(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.

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.

Schedule A

Income Assistance Rates

(section 28 (a))

Maximum amount of income assistance before deduction of net income

1(1) ... 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.

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 ...

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

Monthly shelter allowance

4(2) The monthly shelter allowance for a family unit other than a family unit described in section 15.2 (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 28 (b))

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:
 - (i) any income earned by a dependent child attending school on a full-time basis; ...
 - (lxv) money that is paid under or from an Indigenous financial settlement.

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

...

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(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.

(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.

Small business exemption

4(1) In this section ... ,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;

- (n) equipment purchases or rentals;
- (o) contributions made under the *Canada Pension Plan* in respect of the person's self-employment earnings.

(2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if

- (a) the recipient is participating in a self-employment program, and
- (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

APPEAL NUMBER 2023-0341

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)

2023/12/05

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2023/12/05

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/12/05