

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 27, 2012 which found that the appellant is not eligible for income assistance as the net monthly income of the family unit exceeds the amount of income assistance payable, pursuant to Section 10 of the Employment and Assistance Regulation (EAR), a result of having cash assets which are treated as unearned income for the first month under Section 11(4) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 1, 10, 11, 28 and Schedules A and B

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Whole life insurance summary dated February 2, 2012 which states in part that the appellant is the primary owner, that the insured person is the appellant's daughter, and that the appellant is the primary beneficiary with 100% interest; that the effective date is March 17, 1994 and the total death benefit is \$122,957.53 and the cash surrender value is \$7,482.30; and,
- 2) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided an additional document, being a Line of Credit Statement in the appellant's name dated January 31, 2012 which states in part that the credit amount is \$14,300 and the amount outstanding is \$14,041.04.

The ministry did not raise an objection to the admissibility of this document. The panel reviewed the Statement and did not admit it as it relates to the appellant's debt and is not in support of information or records before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In her Notice of Appeal, the appellant states that she owes the bank \$14,000 on her line of credit as set out in the statement. The appellant explains that after she gets the cash surrender value of \$7,482 from the life insurance to cover her debt, she will still owe \$6,518 and she does not have any money. The appellant states that she is afraid that she will surrender the policy and still not be approved for income assistance. The appellant states that if she must process the surrender transaction, that she be allowed time to complete the transaction with the insurance company.

In her Request for Reconsideration, the appellant states that the original idea for the insurance was a gift for her daughter when she turned 18 but the appellant did not transfer it. The appellant states that if she surrenders the policy, it will be ruined since 1994. The appellant explains that her daughter got cancer in November 2011 and she is now well but she is unable to purchase new life insurance due to the medical requirement. The appellant states that this is the only life insurance on her daughter to protect her mortgage amount. The appellant requests that she not be forced to surrender the life insurance and that she be granted assistance. The appellant states that she worries that the appellant's cancer will come back if she is under pressure with no money.

The evidence of the ministry is that the appellant applied for income assistance on January 5, 2012 as a single employable person. The appellant stated that she had two term life insurance policies through the bank with no cash surrender value and the ministry requested that the appellant provide confirmation of the status of these two policies. On February 8, 2012, the appellant provided the life insurance policy documents. One life insurance policy effective June 1, 2007 has payments of \$234.34 per month. The subject whole life insurance policy showed a cash surrender value of \$7,482, with the appellant as the policy owner and the beneficiary and the appellant's daughter is the insured.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for income assistance as the net monthly income of the family unit exceeds the amount of income assistance payable, pursuant to Section 10 of the Employment and Assistance Regulation (EAR), a result of having cash assets which are treated as unearned income for the first month under Section 11(4) of the EAR, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 1 of the EAR provides that:

Definitions

1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Section 11(4) of the EAR provides that:

Asset limits

11 (4) The following amounts must be treated as unearned income for the first month for which income assistance or hardship assistance is provided to or for a family unit:

- (a) for a sole applicant with no dependent children, the amount by which his or her cash assets exceed \$150;
- (b) for an applicant with one or more dependants, the amount by which his or her cash assets exceed \$250.

Section 28 of the EAR provides that:

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.

Section 10 of the EAR provides that:

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.

The ministry's position is that the cash surrender value of the appellant's life insurance policy consists of funds standing to the appellant's credit at a financial institution since the appellant is the policy owner and she is entitled to the funds if the policy were cashed out. The ministry points out that the cash surrender value therefore falls within the definition of "cash assets" as set out in Section 1 of the EAR. The ministry argues that cash assets available to a single person at the time of application for income assistance are treated as if they were unearned income for the amount by which the cash assets exceed \$150, pursuant to Section 11(4) of the EAR. The ministry points out that the appellant's cash assets which exceed \$150 are considered to be \$7,332 (\$7,482 minus \$150). The ministry argues that funds in a bank account or standing to the credit of a person in a financial institution, including the cash surrender value of a life insurance policy, are not listed as a type of unearned income that may be excluded, under Sections 1, 6 and 7 of Schedule B of the EAR, from the calculation of the amount of income. The ministry argues that as a single applicant the appellant is entitled to \$610 per month in base support and shelter allowance, pursuant to Schedule A of the EAR. The ministry argues that the entire portion of the appellant's cash assets (\$7,482 minus \$150 equals \$7,332) must be treated as unearned income and deducted from the amount of the base support and shelter allowance for a single person (\$610). The ministry argues that as the value of the cash surrender value of the insurance policy (\$7,332) exceeds the amount of the base support and shelter allowance (\$610), the appellant is not eligible for income assistance, pursuant to Section 10 of the EAR.

The appellant does not dispute that she owns a whole life insurance policy insuring her daughter's life, with a cash surrender value of \$7,482. The appellant states that she has held the policy since 1994 and if she surrenders the policy, it will be ruined. The appellant argues that her daughter got cancer in November 2011 and she is unable to purchase new life insurance due to the medical requirement so this is the only life insurance to protect her mortgage amount. The appellant argues that she should not be forced to surrender the life insurance policy and that the amount received will only be applied towards partially paying the amount she owes on a line of credit with the bank in any event. The appellant argues that if she must surrender the insurance, that she should be given time to complete the transaction with the insurance company.

The panel finds that it is not disputed that the appellant owns a whole life insurance policy insuring her daughter's life, with a cash surrender value of \$7,482. The panel finds that the ministry reasonably determined that the cash surrender value of the appellant's whole life insurance policy falls within the definition of "cash assets", as set out in Section 1 of the EAR, as being "...money standing to the credit of the person... with a savings institution or a third party that must pay it to the person or the dependant on demand." The panel finds that as the appellant has applied for income assistance as a sole applicant with no dependent children, the ministry reasonably determined that Section 11(4) of the EAR applies so that the amount by which the cash assets exceed \$150, or \$7,332, must be treated as unearned income for the first month. Although the appellant argues that she should be given time to surrender the life insurance policy with the life insurance company, the panel finds that the ministry must consider the applicable provisions of the legislation at the time that the application for income assistance is made. The panel finds that it is not disputed that the cash surrender value of a life insurance policy is not listed as a type of unearned income that may be excluded,

under Sections 1, 6 and 7 of Schedule B of the EAR, from the calculation of the amount of income. The panel finds that it is also not disputed that the appellant is entitled to \$610 per month in base support and shelter allowance, pursuant to Schedule A of the EAR. The panel finds that the ministry reasonably determined that the value of the cash surrender value of the insurance policy (\$7,332) exceeds the amount of the base support and shelter allowance (\$610). Therefore, the panel finds that the ministry reasonably concluded that the appellant was not eligible for income assistance as the net monthly income of the family unit exceeds the amount of income assistance payable, pursuant to Section 10 of the EAR, as a result of the appellant having cash assets which are treated as unearned income for the first month under Section 11(4) of the EAR.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstance of the appellant and confirms the decision.