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PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 10 April 2012 which held that pursuant to section 10 of the Employment and Assistance Regulation the appellant was not eligible for income assistance, for the month of April 2012 because her net income for February, and reported in March, exceeded the amount of income assistance for her family unit determined under Schedule A of the Regulation. The ministry determined that an income tax refund received in February was "earned income" for the purposes of calculating net income under Schedule B of the Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 1, 10, 28, 33 and Schedules A and B

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PART E – Summary of Facts

The ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration is summarized below:

- The appellant is a single person with 4 dependent children.
- As a sole recipient with one or more dependent children, her monthly support allowance is $375.58 (EAR Schedule A section 2). With a family unit size of 5 persons, her maximum monthly shelter allowance is $750 (EAR Schedule A section 5). Her income assistance rate is therefore $1125.58.
- In February, the appellant received an income tax refund of $2476.63. This was in the form of a "fast refund" from a tax preparation company and no Canada Revenue Agency (CRA) Notice of Assessment (NOA) was available.
- In her Request for Reconsideration dated 26 March 2008, under Reasons the appellant writes in part:

  "I am new to income assistance. I have received assistance only since mid-January 2012...
  I don't yet understand how the system works.
  I was at the disability office [location] and talk to the front desk person. I asked if I could use my tax return. She said yes but did not explain the same amount of money would then be taken back. She did not clarify this. Because I am new to the system I did not understand this. I think there may have been a miscommunication as I did not ask the right questions and she did not explain how this worked, she merely said" yes" to my question of whether or not I could use this money. I made a mistake because I did not understand. I am now in a position of not being able to pay my rent or have any money left to feed my children. I used my tax return to pay bills, buy shoes for my children and haircuts - some necessary things for the children. I would have saved my money paid my rent to live off if I had understood. I would not be in this predicament if she had been clear at this information had been available to me about this scenario...."

In her Notice of Appeal dated 24 April 2012, the appellant, the appellant writes:

"... I attended the [location] ministry office before receiving my tax return to inquire as to whether I could spend my tax return. At that time and EAW informed me that I was free to spend my return. However, upon receipt of my return on March 1, 2012 I did spend the money to pay outstanding bills, and purchase some clothing and necessities for my children. Once I declared my return I was informed that I would not be entitled to April's cheque. At that point I was still mailed an April cheque in error and returned it to the [location] office. I was forced to request benefits under appeal in order to cover the basic necessities for the month. I feel I was misled by the original

EAW and should not be required to repay the amount I received under appeal [supplement]."

At the hearing the appellant referred to her two visits to ministry offices, stating that she was given misleading, or at least incomplete information that she was free to spend her tax refund, and not told that the money would be treated as income and deducted from her monthly income assistance. She said she was new to the income assistance program and it had been difficult for her to understand the complexities of the system while at the same time having to cope with the stress of a separation and moving into a transition house.

The appellant provided the panel with her CRA NOA for the 2011 tax year. The NOA shows a credit balance of $2,642.35 (compared to the reported $2476.63 as received from the tax preparation company). Under credits, $817.81 is shown as a working income tax benefit (line 453).

The panel finds that the new information provided by the appellant is in support of the information and records that were before the ministry at the time of reconsideration. The CRA NOA corrects the actual amount of refund paid and shows the components of her credits, including the working income tax benefit. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that pursuant to section 10 of the EAR the appellant was not eligible for income assistance for the month of April 2012 because her net income for February, and reported in March, exceeded the amount of income assistance for her family unit determined under Schedule A of the Regulation. The ministry determined that an income tax refund received in February was "earned income" for the purposes of calculating net income under Schedule B of the Regulation.

The relevant legislation is set out in the EAR:

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.

Limits on income

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(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.

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,

(b) tax refunds,

(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

(d) money or value received from providing room and board at a person's place of residence, or

(e) money or value received from renting rooms that are common to and part of a person's place of residence;

Schedule A describes how the maximum amount of income assistance before deduction of net income is calculated. See Part E above for how this applies in the appellant's circumstances.

Schedule B sets out how net income is calculated. Section 1 provides for deduction and exemption rules. Under section 1(a), there is a lengthy list of exemptions from income, including (v) the basic child tax benefit, (xxx) a Universal Child Care Benefit and (xxxiv) a working income tax benefit provided under the Income Tax Act (Canada). Sections 1(c) and (d) read:

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, and

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

Section 2 of Schedule B sets the only deductions permitted from earned income, including amounts deducted at source such as income tax, employment insurance, etc. Section 3 sets out certain exemptions from earned income, such as $500 for a person who qualifies as a person with multiple barriers to employment.

Except for the working income tax benefit, no evidence was presented or argument made that the any part of the appellant's income tax refund qualified as one of the other exemptions or deductions set out in Schedule B.

The position of the ministry is that the minister does not have the ability to exempt the appellant's income because she did not understand how her tax return would affect her income assistance. The minister is only able to exempt income if the type of income falls within one of the exemption or deduction categories under Schedule B. As a tax refund is not listed as a type of earned income that may be exempted or deducted, the ministry held that her entire tax return is considered income and must be deducted from her income assistance. The ministry further determined that since her income from the tax refund received in February and reported in March was greater than her income assistance rate ($1125.56), section 10 of the EAR stipulates that she is not eligible for income assistance, or for April 2012, the earliest opportunity following the month (March) the income was reported.

The position of the appellant is that she should not have been ineligible for a month's income assistance because she was given misleading or incomplete information by ministry workers, and therefore did not hold money back to pay for rent and food, instead spending the money to pay bills and for necessities for her children.

The panel notes that the appellant feels she was given misleading or incomplete information by ministry staff. However, the panel finds that the minister does not have the discretion to provide income assistance except as stipulated under section 28 of the EAR. When net income exceeds the amount of income assistance calculated under Schedule A, section 10 of the EAR is clear that the family unit is not eligible for income assistance.

The panel notes that, contrary to the assertion by the ministry that the entire amount of a tax return amount is considered income, it is not always the case that this total amount is a "tax refund," or a refund of over-payment of taxes. The panel notes that the ministry did not have available at reconsideration the CRA NOA, with is breakdown of credits. The NOA shows a working income tax benefit of $817.81. This type of benefit, which is essentially a government top-up of income for persons with low earned income, is listed as an exemption in the calculation of net income under Schedule B section 1(a)(xxxiv). This amount must be deducted from the total credit to determine the appellant's net income from the money she received. Thus: $2,642.35 (total credit) minus $817.81 (working income tax benefit) = $1824.54. As this amount is still greater that the appellant's income assistance rate of $1125.56, the panel finds that the ministry reasonably determined that the appellant was not eligible for income assistance for one month. The panel also finds that the ministry reasonably determined that the month of ineligibility would be April 2012, the earliest opportunity after the month the income was reported.

Accordingly, the panel finds the ministry's determination that the appellant was not eligible for income

assistance for April 2012 was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.