

**PART C – Decision under Appeal**

In a reconsideration decision dated 04 May 2012, the Ministry denied the Appellant income assistance (IA) pursuant to Employment and Assistance Regulation (EAR), Section 10 because it concluded her net income was in excess of the maximum amount of eligible IA for her family unit as set out in the EAR, Schedule B.

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR) Section 1, Definitions “earned income”  
Employment and Assistance Regulation (EAR) Section 1, Definitions “unearned income”  
Employment and Assistance Regulation (EAR) Section 10(1)(2)  
Employment and Assistance Regulation (EAR) Section 28  
Employment and Assistance Regulation (EAR) Schedule A and B

## PART E – Summary of Facts

Preliminary Matter: The Ministry requested a trainee listen in as an observer to the hearing. The Appellant did not object to the observer. The Panel proceeded with the hearing with the observer listening in.

Evidence before the Ministry at the time of the reconsideration decision included:

- A Request for Reconsideration dated April 23, 2012 that includes 2 letters from the Appellant, one entitled "Request for Reconsideration", the second entitled "To Whom It May Concern".
- A letter to the Appellant from the Victim Safety Unit dated February 17, 2011.
- A Victim Impact Statement letter to the Appellant dated June 23, 2011.
- A copy of a newspaper clipping reporting on the assault of the Appellant by her estranged husband.

The Appellant writes in her reasons for reconsideration that she wants a reconsideration for her request for support because of her extreme circumstances, that is the attempted murder by her estranged husband. She states that she needs support to live on while looking for work and waiting for her divorce. She says she cannot sell anything or dispose of any assets until she is divorced. She states that she is no longer getting assistance from victim services. Furthermore, due to a shoulder injury she cannot work at the ship yard where she had worked for 22 years.

She explains that she is short \$200 every month towards her mortgage and has exhausted all other sources of help. She concludes that she desperately needs help for the basic necessities of life.

In the letter entitled "To Whom It May Concern" the Appellant states that she is in need of a crisis check to pay for food, the remainder of her mortgage payment, gas and cell phone. She says the monies from her tenants in her 3 residences do not fully cover the mortgages.

Other evidence includes a letter from the Appellant dated June 5, 2012 that states as time goes by her situation is not getting any better and she is in desperate need of assistance. She includes the 2012 property assessments for her three residences which are:

- Primary residence at \$335,000,
- Condo at \$122,200,
- Mobile Home at \$41,700.

The Panel finds the letter of June 5, 2012 supports the fact that the Appellant does own three properties and therefore supports the information that was before the Ministry at the time of the reconsideration decision. The Panel admits the new document as set out in EAA, Section 22(4).

In the reconsideration decision, the Ministry states the Appellant receives rental income per month from her properties. The Appellant has 2 roommates living with her in the primary residence who pay a total of \$1,650 per month, the condo is rented at \$850 per month and the mobile home is rented at \$950 per month.

The Ministry considers the \$1,650 from her roommates under the definition of "earned income" under Section 1 of the EAR and the \$1,800 rent money from the other two residences as "unearned income".

The Ministry states as a single recipient of IA, the Appellant would be eligible for \$235 support allowance and \$375 shelter allowance for a maximum total of \$610.

The Ministry calculated under Schedule B, Section 2(c), 25% (in this case \$412.50) of the gross rent received from the Appellant primary residence is exempt. The Ministry states the Appellant's income balance of \$1,237.50 (\$1,650 - \$412.50) exceeds her eligible IA of \$610. Furthermore, the unearned income from her condo and mobile home rent increases her monthly income to \$3037.50 per month. Under the legislation, operating expenses may be subtracted from the gross rent however the Ministry did not receive any documentation of these expenses.

Based on this income, the Ministry determines the Appellant has a monthly income in excess of IA rates for a single person and is therefore ineligible for IA.

At the hearing, the Appellant stated she applied for help from the Ministry 4 months ago and is only asking for temporary help until her divorce is finalized and / or she is able to find work. She has completed a retraining course in a new area of work because she is unable to do the physical work her previous job required. The Appellant says she is confused because the Ministry has approved her eligibility concerning her assets but denied her eligibility due to excess income.

The Panel finds the Appellant's oral evidence supports the information that was before the Ministry at the time of the reconsideration decision and admits the testimony as set out in EAA, Section 22(4).

At the hearing, the Ministry clarified the reconsideration decision under appeal addressed excess income, and that the Appellant's assets were considered in second reconsideration decision that is not under appeal. The Ministry stated that it is sympathetic to the Appellant's situation, but the legislation allows no discretion, all income must be deducted for the eligible IA and in this case the Appellant's income exceeds her eligible IA.

From the information submitted, the Panel finds:

- The Appellant receives \$1,650 per month of rent from roommates in her primary residence.
- The Appellant receives \$1,800 per month of rent from her condo and her mobile home.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant income assistance (IA) pursuant to Employment and Assistance Regulation (EAR), Section 10 because it concluded her net income was in excess of the maximum amount of eligible IA for her family unit as set out in the EAR, Schedule B, Section 10.

The relevant legislation as set out in the EAR is as follows:

### **Section 1(1) "earned income" means**

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

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

*(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;*

**Section 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.*

**Section 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 B**

**2** The only deductions permitted from earned income are the following:

*(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.*

The Minister argues the Appellant is not eligible for IA because her net income of \$3,037.50 is greater than her eligible IA amount of \$610.

The Appellant argues the money she receives does not fully cover the mortgage payments and she is desperate for financial need for basic necessities.

The Panel has found the fact is undisputed that the Appellant receives a monthly income of \$1,650 from her roommates. The legislation defines this rent under EAR, Section 1(1)(e) as "earned income" and the allowed deductions within the EAR, Schedule B only include 25% of the income from a primary residence. The Panel finds the Ministry reasonably applied the applicable definition "earned income" and the applicable deduction to the Appellant's monthly income of \$1650 from her primary residence, resulting in an "earned income" of \$1,237.50.

The Panel has found the fact is undisputed that the Appellant receives a monthly income of \$1,800 from the rent of her condo and mobile home. The legislation defines this rent under EAR, Section 1(1)(n) as "unearned income". Expenses that may be subtracted from this gross rental income were not made available to the Ministry. The Panel finds the Ministry reasonably applied the applicable definition "unearned income" to the Appellant's monthly income of \$1,800 from her rental properties.

Furthermore, under EAR Section 28 the Ministry must subtract the Appellant's net income from her eligible amount of IA as a single recipient. The Ministry calculated the Appellant's eligible IA as a single recipient at \$610 and her net income of \$3,037.50. The Panel finds the Ministry reasonably concluded that the Appellant's net income is in excess of her eligible IA.

On this basis the Panel finds the Ministry made a reasonable decision to determine the Appellant ineligible for IA. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.