

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 18 July 2012, which held that the appellant was not eligible for income assistance for July 2012. The ministry determined that the \$5000 reported by the appellant as a refund of a retainer paid to a lawyer was unearned income and that there was not an applicable unearned income exemption under section 7 of Schedule B of the Employment and Assistance Regulation. Therefore the appellant's net income for the month determined under Schedule B of the Regulation included the \$5000, and as this exceeded the applicable amount of support and shelter allowances under Schedule A, under section 28 of the Regulation the eligible amount for the appellant for July 2012 was \$0.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 1 and 28 and Schedule B.

PART E – Summary of Facts

The first hearing on this appeal took place on 11 September 2012. As the appellant was not able to attend in person as scheduled, the panel gave consent for him to appear by telephone. As explained below, this hearing was adjourned. A subsequent hearing was convened on 02 October 2012. The panel chair was not able to attend and a substitute chair was appointed. The appellant failed to attend this hearing. The panel decided not to proceed under section 86 (b) of the EAR as, in the absence of the appellant, this would have involved the substitute chair being party to a decision without being able to weigh evidence from the appellant at the first hearing. That hearing was adjourned. The next hearing convened on 06 December, 2012, with the original panel chair as chair.

The evidence before the ministry at reconsideration consisted of:

- The appellant's Request for Reconsideration dated 13 July 2012.
- Numerous receipts submitted by the appellant.

In section 2 of the Request for Reconsideration, the ministry notes that on 26 June 2012 the appellant advised a ministry worker that he had received \$5000. He further stated the funds were from a lawyer he had previously hired. When that lawyer determined that she could not accept his case, she refunded his retainer of \$5000. On 04 July 2012 the appellant advised the worker that he had spent the \$5000. He stated that he paid \$3500 to another lawyer as a retainer, purchased numerous office supplies, a camcorder and a money order for birth certificates. On 06 July 2012 the appellant submitted documents/receipts for the funds he had spent. These included a receipt from another lawyer as a retainer, and receipts for office equipment, supplies and copying, gasoline, a camcorder and cell phone bills for April and May 2012.

In section 3 of the Request for Reconsideration, the appellant states that the \$5000 belongs to a corporation and another organization. "Other people have contributed money to the cause besides me." There are other people (9) who are pursuing a civil action. The money was refunded to him by their lawyer because the case has a high profile and involves a different kind of law than what she practices. He states there are more expenses to come and others will contribute to them.

In his Notice of Appeal dated to 6 July 2012, the appellant writes:

"There is more than one shareholder and I am just the financial agent of the organization. I did not actually get to keep any money. The money was contributed for legal fees only, not for me to live on. Do you want me to be homeless? I have a daughter and no money."

At the hearing the appellant reviewed the background to the civil action. Several years ago, a group of 10 parties, including the appellant and the organization he represents, became involved in a business transaction. One of the parties brought into the enterprise allegedly defrauded the group. The appellant stated that when this came to light he ended up managing the finances of the group's resulting civil action. So far the group has spent about \$15,000 on legal expenses, including the \$5000 retainer to the group's former lawyer. In answer to a question, the appellant stated that he had not personally contributed any funds to the legal expenses.

In answer to a question, the appellant stated that when the former lawyer returned the retainer, the cheque was attached to a letter explaining why she was withdrawing from the case. He stated that he had given this letter to the ministry when he reported that he had received the \$5000. The ministry

representative stated that the ministry had no record of this document. The appellant read this letter to the hearing. As he was attending by telephone, and since the ministry requested an opportunity to study the letter and comment on its admissibility and relevance, the panel adjourned the hearing so that the appellant could fax the document to the Tribunal for circulation to the panel and the ministry.

After the first hearing, the appellant submitted the following documents:

- A letter from the appellant's lawyer to the appellant dated 16 May 2012. (see below).
- Copies of a term note, a letter referring to attachments relating to incorporation, and a share certificate in the name of the appellant, all dated in the mid-1990's and all related to the business transaction at issue in the civil action referred to above.
- A certificate issued by the head of a national organization certifying that the local association and its agents are authorized to issue official receipts.

In her letter, the lawyer explains why she is not able to take on the appellant's case at this time and states: "I am also returning your retainer of \$5000 which you had provided and have not billed you for the numerous hours I have already spent collecting the information and interviewing with you to date."

At the 06 December 2012 hearing, the appellant presented other documents. These related to the original transaction that subsequently gave rise to the civil action. Also submitted was a share certificate, with the name of the share-holder crossed out and another name hand-written over. In answer to questions, the appellant stated that:

- He would be considered the "majority" shareholder of the group and would benefit the most from any award in the group's favour as a result of the civil action.
- The group began paying the lawyer legal costs in 2009. The retainer was paid in early 2011. A total of about \$15000 has so far been paid in legal costs to the lawyer, including the \$5000 retainer in early 2011.
- In the years before the events leading up to his civil action, he was comfortably well off, but when things came to a head he ended up on the street with nothing.
- The appellant began receiving income assistance in mid-2011, after the retainer had been paid.
- The \$1500, left over out of the \$5000 cheque from the lawyer after paying \$3500 as a retainer to a new lawyer, was spent on supplies and costs for the ongoing civil action. This included money to pay for gas and for a birth certificate necessary for identification to retain a lawyer.

The ministry stood by its position at reconsideration.

With the exception of the letter from the lawyer, the ministry objected to the introduction of the other documents introduced by the appellant as not relevant to the decision under appeal. The panel finds that the letter from the lawyer is in support of the information before the ministry at reconsideration, confirming the source and nature of the \$5000. The panel therefore admits as evidence this document pursuant to section 22(4) of the Employment and Assistance Act. The panel does not admit as evidence the other documents presented by the appellant after the first hearing and at the 06 December 2012 hearing, as the relevance of these documents to the decision under appeal is not clear; they appear to be related to the appellant's civil action but the panel finds that these documents cannot be considered to be directly in support of any evidence before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible for income assistance for July 2012 because the ministry held that the appellant's net income for the month determined under Schedule B of the Regulation included \$5000, and as this exceeded the applicable amount of support and shelter allowances under Schedule A, under section 28 of the Regulation the eligible amount for the appellant for July 2012 was \$0.

More specifically, the issue is whether the ministry was reasonable in determining that the \$5000 reported by the appellant as a refund of a retainer paid to a lawyer was unearned income and that there was not an applicable unearned income exemption under section 7 of Schedule B of the Employment and Assistance Regulation.

The relevant legislation is set out in the EAR:

Definitions

1 (1) In this regulation:

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

[a list of examples, such as]

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (l) a trust or inheritance;
- (r) a lottery or a game of chance;

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.

And from Schedule B of the EAR:

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 The following unearned income is exempt:

[A list of 6 exemptions relating to mortgage interest, veterans benefits, criminal injury compensation or other awards, payments made from certain trusts, structured settlement annuity payments and a portion of CPP benefits. None of these exemptions are applicable in the present appeal]

The position of the ministry is that the appellant received unearned income in the amount of \$5000 in the form of funds from his lawyer which the appellant indicated was a refund of a retainer paid to the lawyer. The ministry noted that there is no applicable exemption available in Schedule B to reduce this amount of income applied against total eligible allowances. Therefore his non-exempt income is \$5000. Income is declared monthly as per section 33 of the EAR, and applied against the following month's income assistance. The ministry found that the appellant's non-exempt income impacts his July 2012 income assistance eligibility, as follows under section 28:

(a) Schedule A: \$610 minus

(b) Schedule B: \$5000

Therefore the July eligible amount as \$0.

The ministry stated that its decision is not to establish how the funds were spent or whether or not those funds had been spent. Even though the funds have been spent it does not change the fact that the appellant received the income.

The position of the appellant is that the \$5000 is not his money at all; rather, it belongs to a group of which he is a member and for which he is acting as the financial agent. Others in the group contributed to the funds used for the retainer; he personally did not contribute. He argues that the others in the group are long time friends and they would take exception to his using the funds for other than pursuing the civil action. He submits that under these circumstances the \$5000 cannot be considered his income and therefore should not be deducted from his eligible income assistance.

The panel is guided by the general principle that it is the responsibility of the recipient of public benefits to provide the information required to substantiate continued eligibility to receive the benefits. In the present appeal, the appellant has not substantiated the contribution of others to the amount paid to the lawyer as a retainer. As "financial agent" for the group it does not appear that the appellant operated a separate bank account for the group, nor did he provide any records of any contributions from others. Moreover, the letter from the lawyer is addressed to the appellant in his personal capacity and does not mention any group, but refers to "your case," and "your retainer of \$5000 which you had provided..." Further, while \$3500 of the \$5000 was used for a retainer with another lawyer, some of the funds were used for what might be seen as personal expenses, such as monthly cell phone bills. The panel also notes that the \$5000 retainer was paid before the appellant's financial circumstances led him to apply for income assistance, raising doubts as to whether he might not have made a contribution to the retainer fund at that time. These doubts are compounded by the conflict between the appellant's statement in his Request for Reconsideration that "other people have contributed money to the cause besides me" and his testimony at the hearings that he did not contribute to the retainer fund.

For all these reasons, the panel finds that, without documented information that would substantiate the funds belonging entirely to others, the ministry reasonably determined that the \$5000 was

unearned income accruing to the appellant in June 2012. In reviewing the legislation, the panel also finds that the ministry reasonably determined there were no applicable exemptions or deductions. The panel therefore finds that the ministry's decision that the appellant was not eligible for income assistance for July 2012 was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.