

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of October 15, 2012 in which the ministry denied the appellant disability assistance for September, 2012 because the ministry determined that the net income deposited in the appellant's bank account in July, 2012 was in excess of the appellant's assistance rate; that is, the appellant's net income exceeded the limits on income set out under the Employment and Assistance for Persons with Disabilities Regulation, section 9(2).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 11, 14.1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 9, 29, Schedule B

PART E – Summary of Facts

The evidence includes:

- The ministry's reconsideration decision of October 15, 2012, which states that
 - the appellant is a single recipient of disability assistance with no dependants
 - income received in July is to be reported in August and affects September's assistance
 - the appellant's monthly assistance rate is \$906.42
 - in addition to a disability check received from the ministry, there were 5 deposits in the appellant's account for July, 2012. The 5 deposits totaled \$4,610.
 - in his request for reconsideration the appellant submitted an explanation to the ministry of 4 of the 5 deposits
 1. \$750, July 3. Cash borrowed from the appellant's sister for his mortgage payment.
 2. \$1,200, July 3. Cash borrowed from the appellant's mother for his mortgage payment.
 3. \$660, July 4. Cash from the appellant's brother for helping him with new windows.
 4. \$1,000, July 14. Cash deposit from the appellant's brother for windows. The appellant stated he had paid for his brother's windows, which were charged to the appellant's account at the store on July 14, so he could get his brother a 15% discount.
 - The fifth deposit in the appellant's account, dated July 19, was for \$1,000. The ministry states that the appellant did not provide any verification of the source of this deposit.
- Bank statements from the appellant's account from March 2011 to July 2012
- A 1-page submission by the appellant dated October 1, 2012 indicating that he had submitted items requested by the ministry. The letter also summarizes the appellant's discussions with his advocate regarding further information he believed the ministry required.
- A 5-page undated document but stamped as received November 6, 2012 providing a detailed account by the appellant of his health history since 2012, the support his friends and family have provided and his concerns about the ministry's expectations. He wrote that he had learned that selling his home in an attempt to reduce some of his living expenses would only worsen his financial situation.

After the date of the reconsideration decision, additional information was submitted:

- The appellant's Reasons for Appeal, dated November 2, 2012. The appellant claims that his total July income was \$2,610 not the \$4,610 determined by the ministry. He states that his "real actual income" was \$660.
- Information from the appellant accepted as a late submission by the panel chair. The information was submitted on December 4, 2012. In his late submission, the appellant repeats the information

which he provided in his request for reconsideration as summarized in the ministry's reconsideration decision, points 1-4 above. The appellant also refers to a \$1000 withdrawal from the appellant's account on July 16, 2012, which the appellant claims the ministry erroneously added as part of his income for the month instead of subtracting it.

- A late submission by the ministry on December 5, 2012. The ministry states:

"The amounts considered by the ministry to be deposits to [the appellant's] account for July 2012, as specified in the reconsideration decision, were as follows:

July 03, 2012 - \$750.00

July 03, 2012 - \$1200.00

July 04, 2012 - \$660.00

July 14, 2012 - \$1000.00

July 19, 2012 - \$1000.00

The ministry does not dispute that the \$1000.00 transaction on July 16, 2012 was a withdrawal, not a deposit."

The panel found that the items received after the date of the reconsideration decision contained information in support of the information and records that were before the minister when the decision being appealed was made; and therefore the panel determined that the items were admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision in which the ministry denied the appellant disability assistance for September, 2012 was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the net income deposited in the appellant's bank account in July, 2012 was in excess of the appellant's assistance rate; that is, the appellant's net income exceeded the limits on income set out under the Employment and Assistance for Persons with Disabilities Regulation, section 9(2).

• EAPWDR section 1(1) sets out 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 partythat 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;

"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;

"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 as defined in the *Real Estate Development Marketing Act*;
- (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 Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) widows' 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)*.

• EAPWDR, section 9(2) sets out the limits on net income

A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

• Schedule B sets out the net income calculation

1. Deduction and exemption rules [when calculating net income]
2. Deductions from earned income
3. Exemption - earned income
4. Small business exemption
5. Withdrawals and expenditures from [small business] reserve account
6. Deductions from unearned income
7. Exemptions – earned income
8. Minister's discretion to exempt education related unearned income
9. Application of deductions and exceptions
10. Backdated family bonus treated as unearned income
11. Backdated CPP treated as unearned income

With respect to EAPWDR, section 9(2), the ministry's position is that the appellant's net income for July was in excess of the \$906.42 the appellant receives monthly for disability assistance. The ministry considered the following deposits as "unearned income" to be deducted from the appellant's assistance.

• Two deposits on July 3, one \$750 and the other \$1,200. The appellant states that these amounts are respectively from his sister and his mother deposited as loans for his mortgage payment. The ministry considers these amounts as unearned income, not loans as the appellant contends. The position of the ministry is that to be considered a loan, repayment terms must exist prior to acceptance, and the appellant provided no details about such an arrangement. The ministry states "there is not sufficient documentation provided to confirm the deposits from your family satisfy the criteria to be considered a loan and therefore must be considered 'unearned' income and deducted from your assistance."

- \$660, July 4. With respect to this deposit, the appellant's position is that it is money from his brother for helping him with his new windows. The ministry states that this amount appears to be money received in exchange for work or the provision of a service and as such could be treated as earned income and could be considered under the \$500 earnings exemption. However, the ministry's position is that it does not have confirmation from the appellant's brother of the arrangement and payment for services, and therefore must treat this amount as unearned income.
- \$1,000, July 14. With respect to this deposit, the appellant's position is that it was from the appellant's brother for windows. The appellant claimed that he paid for his brother's windows, which were charged to the appellant's account at the store on July 14, so he could get his brother a 15% discount. The ministry's position is that no verification was provided by the appellant's brother that this deposit to the appellant's account was to be specifically used as repayment for the appellant's purchase of windows. Therefore the ministry contends it must treat this amount as unearned income.
- \$1,000, July 19. The ministry's position is that there is no verification from the appellant of the source of this deposit and therefore it must be treated as unearned income.

The panel finds that with respect to the 5 amounts above, given the lack of documentation from the appellant, the ministry's determination that they are all unearned income is reasonable. The panel also finds that there is no evidence that any of the deductions and exemptions in Schedule B, sections 1-11 apply to the appellant.

The panel notes that in its reconsideration decision of October 15, 2012, the ministry cited the lack of sufficient documentation from the appellant regarding his claims that:

- the cash deposits from his mother and sister were loans for his mortgage payments
- the first deposit by his brother was money for helping him with his new windows
- the second deposit was from his brother for the windows the appellant had purchased for his brother.

In that decision the ministry also noted the lack of documentation verifying the source of the \$1,000 deposit of July 19.

The panel notes that subsequent to the ministry's reconsideration decision, the appellant provided a Reason's For Appeal on November 2, 2012 with a 1-page attachment. The appellant also provided a 1-page late submission dated December 4, 2012. The panel finds that these documents do not provide any of the information identified by the ministry in its reconsideration decision as required from the appellant. The panel therefore finds that ministry's reconsideration decision denying the appellant disability assistance for September, 2012 due to unearned income received in July 2012 in excess of the appellant's disability assistance pursuant to section 9 of the EAPWDR, was reasonably supported by the evidence, and the panel confirms the ministry's decision.