

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated November 20, 2012, denying the Appellant disability assistance for the month of November due to her receiving a \$4000 family maintenance payment and so having income in excess of the allowable amount in accordance with section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

The relevant legislation is the EAPWDR sections 1, 9 and 24 and Schedule B sections 1, 6 and 7.

PART E – Summary of Facts

The Appellant has been receiving disability assistance as a single parent with one dependant since November 2010. Currently, the Appellant receives \$1,242.08 per month in assistance (\$672.08 in support and up to \$570.00 in shelter).

In September 2012 the Appellant was awarded a \$4,000 family maintenance payment by the courts. She received this payment sometime in early to mid October.

On October 24, 2012, the Appellant was advised by the Ministry that she was ineligible for November disability assistance as she had received income in excess of the legislated limit.

At the hearing the Appellant indicated that it was her understanding that she was allowed \$10,000.00 in assets and \$800.00 per month in income before any deductions were made from her disability assistance payments.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated November 20, 2012 to deny the Appellant disability assistance for the month of November because she had received income in excess of the legislated amount.

The relevant legislation is the EAPWDR sections 1, 9 and 24:

Limits on income

9 (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 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.

Amount of disability assistance

24 Disability 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 Schedule B sections 1, 6 and 7:

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

...

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

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 (1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family

- unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (2) [assets held in trust for person with disabilities] of this regulation if
 - (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 12 (1) of this regulation, and
 - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if
 - (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 12 (1) of this regulation, and
 - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula (A-B) x C, where

- A = the gross monthly amount of Canada Pension Plan
- B = (i in respect of a family unit comprised of a sole a) section 118 (1) (c) of the *Income Tax Act* (Can
 = (i in respect of any other family unit, the amount
 = i) section 118 (1) (a) (ii) of the *Income Tax Act* (C
- C = the sum of the percentages of taxable amounts set
 = *Act*.

- (2) Subsection (1) (d.1) applies in respect of a person only if
 - (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and
 - (b) the settlement agreement requires the defendant to
 - (i) make periodic payments to the person for a fixed term or the life of the person,
 - (ii) purchase a single premium annuity contract that
 - (A) is not assignable, commutable or transferable, and
 - (B) is designed to produce payments equal to the amounts, and at the

times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

(3) In this section, "**structured settlement annuity payment**" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

Section 1 of the EAPWDR defines maintenance payments as "unearned income". Section 9(2) of the EAPWDR states that a person is ineligible for disability assistance if their net income is in excess of their assistance rate.

The Ministry argues that, as the Appellant's net income of \$4000.00 in October exceeded the \$1242.08 of assistance to which she was entitled as calculated under section 24 of the EAPWDR, the Appellant was ineligible for assistance in November.

At the appeal hearing, the Appellant indicated that she had spoken to Ministry workers regarding the possibility of a maintenance payment and had not been told that it would affect her eligibility for disability assistance. In fact, her understanding was that she was allowed \$10,000.00 in assets and \$800.00 per month in income before any deductions were made from her disability assistance payments.

Based on this she used the \$4000.00 to pay off debts.

Unfortunately, the Appellant's understanding of how the legislation operates was incorrect. The \$4000.00 is unearned income not assets, so there can be no exemption on that basis. The only deductions and exemptions allowable on unearned income are set out in sections 6 and 7 of Schedule B to the EAPWDR. There is was no proof before the Ministry at the time of the reconsideration decision, nor was there any before the panel, that the Appellant qualified for any of these deductions or exemptions.

As the Appellant received unearned income as defined in section 1 of the EAPWDR in excess of the amount of assistance to which she was entitled, according to section 9 of the EAPWDR she is not entitled to receive disability assistance for the month of November. The panel finds that the Ministry's determination that the Appellant was not eligible to receive assistance for the month of November was a reasonable application of the applicable legislation.

Accordingly, the Panel confirms the Ministry's decision.