

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 7, 2012 which found that the appellant is not eligible for disability assistance for the month of December 2012, pursuant to Section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), as a result of receiving income in excess of the legislated limit.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9 and Schedules A and B

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Print out dated November 21, 2012 of the ministry Cheque History Query for the appellant, indicating in part that the appellant receives \$531.42 in support and \$375.00 for shelter, for a total of \$906.42 and the deducted income is \$3,300;
- 2) EI Benefit Statements for the weekly periods from June 17 through September 29, 2012 and print-out with handwritten note stating "claimant currently waiting for payments; please allow 4-5 weeks of processing time"; and,
- 3) Request for Reconsideration- Reasons.

In her Request for Reconsideration, the appellant stated that she applied for Employment Insurance (EI) benefits in early June 2012 due to an injury she suffered at work. These benefits were refused and it took four months for EI to allow her benefits. Instead of paying her monthly, EI ended up paying her the 15 weeks maximum allowable in one day. The appellant stated that if EI had paid her from the beginning every month, she would not be in this mess and she should not be penalized for EI not paying her monthly. The appellant stated that her daughter did not pay her half of the rent so the appellant was required to pay her portion. Her car window was smashed and she had to pay a \$300 deductible to have it repaired. The appellant stated she has to pay an extra \$45 per month to park her car underground to avoid another incident. She had additional food and pet costs she paid on behalf of her daughter. The appellant stated that she was diagnosed with cancer in October 2012, underwent surgery, and has also had additional expenses for her son.

In her Notice of Appeal, the appellant added that in November 2012 she was told the surgery did not remove all the cancer and a second surgery has been booked. The stress of the financial nightmare is not helping her health issues.

At the hearing, the appellant stated that she injured her knee at work and had to quit so she applied for EI on June 2, 2012. She was repeatedly denied EI benefits and then in October it was decided that she was eligible and should have been paid from the beginning. The 15 weeks of benefits (\$3,300) was all paid at once, less the \$1,168 deducted and she had \$2,132 left. Her daughter has drug addiction problems and did not pay her portion of the rent and also smashed the window on the appellant's car, causing \$600 in damage. The appellant stated that she had other necessary expenses and she did not "go on a shopping spree" with the money she received from EI. The appellant stated that she is going through a divorce and, with all this stress, her health has been deteriorating. The appellant stated that if EI had paid each month, there would not have been this issue.

The ministry relied on the facts as set out in its reconsideration decision which included that the appellant is a single recipient of disability assistance. The ministry explained at the hearing that prior to receiving disability assistance, the appellant was issued repayable hardship assistance in the amount of \$945.58 per month. On October 19, 2012, the appellant received a \$3,300 EI payment (\$220 X 15 weeks) and \$1,168 had been garnished and given to the ministry as repayment. The ministry explained that an amount was deducted by EI and remitted to the ministry for the repayable hardship assistance prior to payment to the appellant of the balance of the funds (\$2,132). The ministry stated that as the amount payable to the appellant (\$3,300) is in excess of the disability assistance amount of \$906.42, which was payable to her in November 2012, the appellant is not eligible for disability assistance for the month of December 2012. The ministry clarified that even if the EI benefits had been paid to the appellant monthly, this amount would be deducted from her assistance dollar-for-dollar and she would only be paid the amount remaining in each month, if any.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant is not eligible for disability assistance for the month of December 2012, pursuant to Section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), as a result of receiving income in excess of the legislated limit is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 9 of the EAPWDR provides that:

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.

Schedule A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

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

- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Section 1 of the EAPWDR defines "unearned income" to mean:

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)*.;
- (w) tax refunds.

The ministry's position is that Section 9(2) of the EAPWDR states that a family unit is not eligible for disability assistance if their net income exceeds the amount of their disability assistance. The ministry points out that the appellant does not dispute that, in October 2012, the appellant declared that EI issued \$3,300 and that \$1,168 was deducted and given to the ministry. The ministry argues that, under Section 9(1) of the EAPWDR, any amount that is garnished, attached, seized, deducted, or set off from income is still counted as income. The ministry points out that as a sole recipient of disability assistance, the appellant is eligible for a support allowance of \$531.42 per month and a shelter allowance in the amount of \$375 per month for a maximum total monthly allowance of \$906.42, as per Schedule A of the EAPWDR. The ministry argues that in determining net income under Schedule B, all unearned income must be included, which has been defined in Section 1 of the EAPWDR to include employment insurance benefits. The ministry argues that the appellant's income from employment insurance (\$3,300) exceeded her assistance rate for the month (\$906.42) and, therefore, she is not eligible for assistance for the month of December 2012 pursuant to sections 9 of the EAPWDR.

The appellant acknowledges that she was in receipt of EI benefits in October 2012 in the total amount of \$3,300 as she herself reported these payments to the ministry, and it is also not disputed that she is eligible for the amount of \$906.42 in disability assistance each month as a single recipient. However, the appellant points out that instead of paying her monthly, EI ended up paying her the 15 weeks maximum allowable in one day. The appellant argues that if EI had paid her from the beginning every month, she would not be in this mess and she should not be penalized for EI not paying her monthly. The appellant also points out that she did not use the funds to go on a shopping spree, but had a number of additional expenses as her daughter did not pay her half of the rent, the appellant had to pay a \$300 deductible to have her car repaired and an extra \$45 per month to park her car underground to avoid another incident, as well as additional food and pet costs she paid on behalf of her daughter. The appellant also argues that she is under considerable stress since she was diagnosed with cancer in October 2012 and has further surgery booked, and these financial issues are not helping her health issues.

The panel finds that the appellant admits that, in October 2012, she was paid EI benefits in the total sum of \$3,300, from which \$1,168 was deducted and remitted to the ministry for the repayable hardship assistance. Under Section 1 of Schedule B of the EAPWDR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 1(g) of the EAPWDR, "unearned income" is defined to mean any income that is not earned income and includes, without limitation, money or value received from any of the following: "...employment insurance." Section 9(1) of the EAPWDR stipulates that, for the

purposes of the Act and the regulation, "income" , in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of a recipient. The panel finds that the ministry reasonably determined that the total amount of the appellant's EI benefits (\$3,300) must be included in the calculation of her income received in October 2012 and that, given the directory language of the applicable provisions, the ministry does not have the discretion to do otherwise. The panel finds that the ministry reasonably concluded that the amount of the appellant's income exceeded the amount of assistance determined under Schedule A for the appellant's family unit and that, therefore, the appellant is not eligible for disability assistance for the month of December 2012, pursuant to Section 9 of the EAPWDR.

The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.