

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development ("Ministry") reconsideration decision dated November 14, 2012, which found the appellant is ineligible to receive disability assistance for November 2012, because he had received income in excess of the legislated limit as defined and outlined in Sections 1, 9 and Schedule B (1) (6) (7) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 9

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule B - Section (1)(6) and (7)

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of copies of the following:

1. 9 pages of the -----Trust. A two page Statement of Account for -----from (bank) dated Sept. 28, 2012.
2. A (bank) Mutual Fund transaction document dated Sept. 28, 2012.
3. A Quit Claim document from the Supreme Court of Canada dated Sept. 21, 2012.
4. A Request for Reconsideration document dated October 29, 2012, signed by the appellant, inclusive of a three page submission from the appellant's representatives and signed by the appellant's representatives.
5. The Appellant's current rate of assistance is \$906.42 which is comprised of \$531.42 support and \$375 shelter.

On December 14, 2012, the Tribunal office received the Ministry's written submission for this hearing and the submission was both, mailed to the Appellant on December 17, 2012 and securely emailed to the Panel the same date. The Ministry's submission reflected the findings in the Reconsideration Decision of November 14, 2012, and did not raise new evidence, and as such, the Panel accepted it as argument.

At the commencement of the hearing, the Appellant's representatives presented two documents to the Panel:

1. A letter from the Ministry of Social Development dated November 27, 2012, to the Appellant advising the Appellant of the Ministry's trust review decision; and,
2. A letter from the Ministry, dated December 10, 2012, outlining the Appellant's responsibilities to annually report to the Ministry, all trust transactions for the Appellant's trust account for the year.

The Ministry did not object to the submitted information. The Panel finds the letters contain information regarding the Appellant's trust that was before and is in support of information that was before the Ministry at the time of the Reconsideration Decision and admits the submitted information as set out in the Employment and Assistance Act, Section 22(4).

In the Notice of Appeal dated November 26, 2012, the Appellant's parents were acting as advocates for the Appellant. The Appellant's advocates stated that an individual under the receipt of IA should not have to reconcile contradictory information between the Ministry website regarding the PWD Act, Regulations or policy and the PWD Act itself. The advocates further asserted that a person should be able to rely on statements in the Ministry information pamphlet to explain clearly and simply what the facts are regarding trusts and the receipt of a large amount of monies, such as from an inheritance.

The Appellant's Advocate submission included the following:

1. That they had, upon receipt of inheritance monies on September 21, 2012, conscientiously followed the directions on the Ministry information pamphlet and promptly deposited the full inheritance amount into a trust fund that same date; that the appellant did not receive any

monetary benefit from the monies he received.

2. That the said trust fund has been in place since 2010 in anticipation of the appellant receiving inheritance monies, and the trust fund had been established in consultation with a lawyer in order to ensure the appellant's future, financial well being.
3. That they had not spoken directly to the Ministry in regards to what the specific steps they should take, with respect to dealing with the appellant's bequest. They expressed that it was difficult to get through to the Ministry by telephone to speak to someone in person. They thought it was sufficient, they had relied on the Ministry information pamphlet as 'a promise' of what was to occur as well as their legal counsel and the executor of the will that provided the inheritance funds.

The Ministry's submission included the following:

1. On October 2, 2012, the Ministry received a letter and documentation regarding a trust for the Appellant. The letter and attached documents reported that the Appellant had received an inheritance in the amount of \$-----, in his name, which was deposited into his bank account on September 24, 2012. The documentation verified that the Appellant deposited the full amount of the monies into a trust account for the Appellant, entitled 'The -----Trust'.
2. On October 18, 2012 the Ministry advised the Appellant that he would be ineligible for his regular rate of disability assistance for November 2012 as calculated under Schedule A of the EAPWDR. The decision of ineligibility for November 2012 disability assistance was due to the Appellant receiving monies unearned income as outlined in Schedule B of the EAPWDR that were in excess of the legislated limit per Section 9 of the EAPWDR. When a situation such as this occurs, the Ministry calculates income at the earliest opportunity: the month after the income is reported. The income received in September was reported in October and therefore affects November assistance. Accordingly, the Appellant was deemed ineligible for disability assistance for November 2012.
3. Upon being advised of his eligibility for November 2012 disability assistance, the Appellant requested a reconsideration of the decision.
4. The Ministry acknowledges that the trust information on its website seems contradictory in that it states "If the money is not put in a trust within a reasonable period of time, it will be considered unearned income when it is received and will be deducted from your IA.

PART F – Reasons for Panel Decision

The issue to be decided at appeal is whether the Ministry reasonably concluded that the Appellant was not eligible for November 2012 disability assistance based on Section 1, 9 and Schedule B of the EAPWDR. The applicable legislation is as follows:

Part 1 — Interpretation

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) 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).

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

Disability Assistance Rates

(Maximum amount of disability assistance before deduction of net income)

1 Subject to sections 3 and 6 to 9 of this Schedule, **the amount of disability assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the**

sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Schedule B

Net Income Calculation

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 $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

= (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax 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.

The legislation provides:

In Section 1, that inheritance is defined as 'unearned income'.

In Section 9, that a person is not eligible for assistance if their net income (calculated under Schedule B) exceeds their assistance rate (calculated under Schedule A)

In Schedule B, all unearned income is included in the calculation of net income, except that which can be exempted under Section 1, 6 and 7 of the same schedule.

The Ministry argues that there are no exemptions for an inheritance, and all of the Appellant's

inheritance income is included in the calculation of his net income. Since the Appellant's net income exceeded his maximum assistance rate, he is ineligible for disability assistance.

The Appellant argues that they went to great lengths to find out what to do in terms of how to manage the Appellant's inheritance in a way that the appellant's financial future would be taken care of. They consulted a lawyer, the executor of the will where the inheritance monies came from and sought out information from the ministry on the Ministry's website and in the Ministry's information pamphlet on Trusts. The Appellant asserts that the information from the Ministry pamphlet and website is incongruent with the legislation the Ministry has relied upon in this case; and, the Appellant should not be 'penalized' for the information being unclear in the pamphlet and on the website.

The Panel finds the Appellant and his Adovcates willingly disclosed the trust and inheritance information to the Ministry and, conscientiously took steps, which they understood, were required of them, based on their consultation with a lawyer, the executor of the relevant will and a Ministry of Social Development's information pamphlet regarding trusts. The appellant's representatives state they did attempt to contact the Ministry by telephone; however, every time they called in, the phone lines were busy. They stated they believe they had done everything they could to research what was necessary to ensure their son's financial best interests; including relying on the Ministry information pamphlet as their guideline for the steps they must take to advise the Ministry the appellant received a large sum of money.

Having said that, the Panel acknowledges that a general information pamphlet can not to be relied upon to provide a blanket statement of the legal steps that must be taken in every case that a large sum of money is received by an individual, especially where details of each case can potentially be very different, and this is where the pamphlet, as written, is misleading and ambiguous.

The Ministry is obligated, by law, to follow the requirements of the EAPWDR when processing information that determines client eligibility for disability assistance upon receipt of a large sum of money.

In this case, the Panel finds the Ministry reasonably determined that the monies received by the appellant, were from an inheritance and inheritance monies are considered to be unearned income per Section 1 of the EAPWDR.

The Panel finds the Ministry's decision was a reasonable application of Section 1 of the applicable enactment (EAPWDR) in the circumstances of the Appellant.

The amount of the inheritance was \$38,710.00, which is in excess of the Appellant's maximum monthly disability benefits of \$906.42. Section 9 of the regulation states that a person is not eligible for assistance if their net income (calculated under Schedule B) exceeds their assistance rate (calculated under Schedule A). Schedule B states that all unearned income (the inheritance monies) is included in the calculation of net income, except that which can be exempted under Schedule B (1)(6) and (7). There are no exemptions in these sections that apply to the appellant's situation as there are no exemptions specifically for an inheritance.

APPEAL #

The Panel finds the Ministry's decision was a reasonable application of Section 9 of the applicable enactment (EAPWDR) in the circumstances of the appellant and confirms the Ministry's Reconsideration Decision of November 14, 2012.