

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) dated 06 December 2012 which held that the appellant was not eligible, pursuant to section 10 of the Employment and Assistance Regulation, for income assistance for December 2012 due to income he had received in excess of the rate for which he was eligible. The ministry determined that a \$1500 insurance settlement from ICBC received by the appellant in October 2012 was unearned income, that no exemptions applied and that this amount exceeded the total amount of monthly support and shelter allowance the appellant is eligible to receive.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 1,10 and Schedule B

PART E – Summary of Facts

The appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the EAR.

The evidence before the ministry at reconsideration consists of the appellant's Request for Reconsideration dated 23 November 2012. The section completed by the ministry sets out the following background: the appellant is a single employable recipient of income assistance (IA), eligible for \$235 for support and \$375 for shelter plus a diet supplement of \$40 and less \$20 repayment, for a total of \$630. The appellant received an ICBC settlement of \$1500 on 15 October 2012. As this amount is greater than the above ministry rates and as the \$1500 payment is considered unearned income deducted dollar for dollar from the eligible amount, the appellant was denied income assistance for December 2012. An ICBC "Full and Final Release of all Claims" form is attached, showing the \$1500 payment and signed by the appellant on 15 October 2012.

Under reason for request for reconsideration, the appellant writes:

"I was involved in a car accident and was given \$1500 for pain and suffering due to injuries sustained from the accident. I am an admitted drug user and due to my admission the hospital is hesitant to give me narcotics for pain. I am forced to resort to the street level to get medication to ease my pain as I suffer from acute migraines due to my accident. This is where the majority of my money from my accident was spent I also was in dire need for a proper bed as the bed that was supplied consisted of a single mattress only. I also bought clothes to keep me warm for the winter. I cannot be put out into the streets as I have HIV and arthritis in my left knee that requires surgery. I honestly believe that this money was not declarable as earned money...."

In his notice of appeal dated 10 December 2012 the appellant gives for his reasons for appeal:

"Mainly because I am in the process of waiting for my disability and the money received from the accident was spent appropriately and it was due to pain caused by the accident."

At the hearing, the ministry stood by its position at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry determination that the appellant was not eligible for income assistance for December 2012, due to income he had received in excess of the rate for which he was eligible, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The ministry determined that a \$1500 insurance settlement from ICBC received by the appellant in October 2012 was unearned income, that no exemptions applied and that this amount exceeded the total amount of monthly support and shelter allowance the appellant is eligible to receive.

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;

Limits on income

10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

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 \$1500 ICBC settlement is unearned income under item (d) of the definition of unearned income set out in section 1 (1) of the EAR. No deductions or exemptions apply. The \$1500 exceeds the appellant's eligible monthly support and shelter amounts. As the income was received in October, and was reported in November, it needs be included in the calculation of the December amount. Therefore, under section 10 of the EAR, the appellant was not eligible for income assistance for December 2012.

The position of the appellant as argued in his Request for Reconsideration and Notice of Appeal is that the ICBC settlement was for pain and suffering arising from a motor vehicle accident and that the money was spent appropriately. Therefore he should not be penalized for the money he received as compensation for the results of an accident that was not his fault.

The panel finds that the ministry reasonably concluded that the ICBC settlement was unearned income under item (d) of the definition -- i.e. "insurance benefits, except insurance paid as compensation for a destroyed asset." The panel has carefully reviewed the legislation and can find no provision that would provide an exemption or deduction from unearned income of the type received by the appellant, or a change in how such a payment is treated as income, based on how the money was spent. The panel therefore concludes that how the appellant spent the \$1500 is not a relevant factor in this appeal. The panel finds the ministry reasonably applied section 10 of the EAR in circumstances of the appellant in determining that the appellant was not eligible for income assistance for December 2012 as the \$1500 unearned income exceeded the appellant's rate of income assistance. Accordingly, the panel confirms the ministry's decision.