

APPEAL #

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated February 21, 2013, in which the Ministry determined that the appellant was ineligible for February 2013 income assistance under section 10(2) of the *Employment and Assistance Regulation* because he received income in excess of the legislated limit.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 1(1), 10, 28, 33(1) and Schedules A & B.

PART E – Summary of Facts

The panel confirms that the Ministry had been notified of the date and time of the hearing; however, the Ministry did not attend the hearing. Accordingly, under s. 86(b) of *the Employment and Assistance Regulation*, the panel heard the appeal in the absence of the Ministry.

The information before the Ministry at reconsideration included the following:

- a copy of the appellant's pay stub from his employment with a security company showing that the appellant earned \$829.54 for the pay period December 1-15, 2012, and that the cheque was dated December 31, 2012 (the pay stub is date stamped received by the Ministry on January 15, 2013);
- a copy of the tenancy agreement between the appellant and his landlord indicating his monthly rent is \$450.00, dated December 22, 2012 (and date stamped received by the Ministry on February 15, 2013);
- a copy of a receipt from the appellant's landlord for the appellant's February 2013 rent in the amount of \$450.00 dated by his landlord February 4, 2013 (date stamped received by the Ministry on February 15, 2013);
- a copy of a letter from the appellant's advocate dated February 15, 2013, inquiring about the appellant's assistance benefits and indicating that he has no money to pay his March 2013 rent and had a fractured rib "and cannot work right now"; and
- a copy of an x-ray report from January 9, 2013, indicating that the appellant has a fractured rib.

At the hearing, the appellant provided the panel with the following additional documents:

- a 2-sided copy of his Ministry reporting card signed by the appellant on December 5, 2012 and date stamped received by the Ministry on December 5, 2012 (this document was also stamped "certified true copy of original document" and dated March 28, 2013); and
- a 2-sided copy of his Ministry reporting card signed by the appellant on December 28, 2012 and date stamped received by the Ministry on December 28, 2012, but on the opposite side, the form is date stamped received by the same Ministry office on January 15, 2013 (this document was also stamped "certified true copy of original document" and dated March 28, 2013).

The panel admitted the additional evidence provided by the appellant at the hearing under section 22(4)(a) of *the Employment and Assistance Act* as information and records that were before the minister when the decision being appealed was made.

The appellant is a sole recipient of income assistance whose file was opened with the Ministry in September 2012. The appellant's monthly income assistance is \$610 - \$235 in monthly support and \$375 for his shelter allowance. The appellant told the panel that he received \$829.54 as income in December 2012 and agreed that he reported this to the Ministry. The reconsideration decision notes that the Ministry applied the \$200 employment exemption to the appellant when calculating his net income for December 2012, and determined that the appellant's net income for December 2012 was \$629.54, in excess of his monthly income assistance rate of \$610.00.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision that the appellant was not eligible for income assistance for the month of February 2013 under section 10(2) of the *EAR* because he received \$829.54 in earned income during December 2012, in excess of his monthly income assistance, is reasonable based on the evidence or a reasonable application of the legislation.

Legislation

The *EAR* defines "earned income" as "any money or value received in exchange for work or the provision of a service" in s. 1(1)(a). Section 10 of the *EAR* sets limits on income and provides in subs. 10(2) the following:

- (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.

The amount of income assistance that a recipient receives is set out in s. 28(1) of the *EAR*, which states that "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."

A recipient of income assistance is required to report to the Ministry on a monthly basis the information set out in s. 33(1) of the *EAR* as follows:

- 33 (1) for the purposes of section 11(1)(a) [reporting obligations] of the Act,
 - (a) the report must be submitted by the 5th day of each calendar month, and
 - (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation,
 - i. whether the family unit requires further assistance;
 - ii. changes in the family unit's assets;
 - iii. all income received by the family unit and the source of that income;
 - iv. the employment and educational circumstances of recipients in the family unit;
 - v. changes in family unit membership or the marital status of a recipient.

Under Schedule A of the *EAR*, the appellant is entitled to receive a maximum amount of income assistance, calculated in s. 1 of Schedule A as "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 section 4 and 5 of this Schedule." Section 2(1)(a) of Schedule A of the *EAR* provides that a sole recipient receives the following monthly support allowance, as set out in the applicable table:

| Item | Column 1 Family unit composition | Column 2 Age or status of applicant or recipient | Column 3 Amount of support |
|------|--|---|-------------------------------|
| 1 | Sole applicant/recipient and no dependent children | Applicant/recipient is under 65 years of age. | \$235.00 |

In addition to the monthly support allowance, a sole recipient of assistance receives a monthly shelter allowance, as provided in s. 4 of Schedule A of the EAR, which provides the following in subs. 4(2):

(2) The monthly shelter allowance for a family unit to which section 15(2) of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

| Item | Column 1 Family Unit Size | Column 2 Maximum Monthly Shelter |
|------|------------------------------|-------------------------------------|
| 1 | 1 person | \$375 |

Schedule B of the EAR provides the deduction and exemption rules in calculating a recipient's net income. Under s. 1(c) of Schedule B of the EAR, when calculating the net income for the purposes of section 28 (b) [*amount of income assistance*], "of this regulation, all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule." The deductions set out in subs. 2(a) of Schedule B include amounts deducted at source for income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues. The deductions set out in subs. 2(b) and 2(c) of Schedule B do not apply to the appellant. Schedule B contains the exemption provision for earned income in section 3, which provides as follows:

3(1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

....
 (3) Unless otherwise provided under subsection (4) or (5), the amount of earned income calculated under subsection (6)(a) is exempt for a family unit that qualifies under this section.

...
 (6) The exempt amount for a family unit that qualifies under this section is calculated as follows:

- (a) in the case of a family unit to which subsection (3) applies, the exempt amount is calculated as the lesser of
 - (i) \$200, and
 - (ii) the family unit's total earned income in the calendar month of calculation;

....
 At the hearing, the appellant focused his argument on the discrepancy between the dates stamped on his monthly reporting form – that he had signed and dated it December 28, 2012 and it was date stamped received by the Ministry on December 28, 2012 on this same side, but that on the other side it was date stamped received by the same Ministry office on January 15, 2013. The appellant did not dispute that he received \$829.24 in income from his employment in December 2012, but told the panel that he could not pay his March 2013 rent because he did not receive his monthly assistance in February 2013. The appellant told the panel that he found the Ministry's denial of his February 2013 income assistance to be unexpected and unplanned.

The reconsideration decision notes that the appellant's employment income is "earned income" as defined in s. 1 of the EAR, and that, based on the appellant's pay stub, the appellant received

\$829.24 in earned income in December 2012. The reconsideration decision outlines the process for reporting earned income under s. 33 of the EAR: that a recipient is required to report earned income by the 5th day of the month following the month in which it is received (which in the appellant's case, was January 2013) and that the reported income then affects the assistance following the month the income was reported (in the appellant's case, his income assistance for February 2013). The reconsideration decision notes that the Ministry applied the \$200 employment earnings exemption under Schedule B of the EAR to the appellant's December 2012 income in reaching its determination that he received \$629.24 in income in December 2012, thereby exceeding his monthly income assistance of \$610.00 as provided in s. 10(2) of the EAR.

The appellant does not dispute that he received \$829.24 in employment income in December 2012 and that he reported this amount to the Ministry. The appellant is of the opinion that he reported this amount to the Ministry in late December 2012 (not January 2013), but agreed that this would not affect the Ministry's determination in January 2013 that he was ineligible for income assistance in February 2013 (given the way in which the Ministry calculates the reported income).

The panel finds that the appellant received \$829.24 in earned income in December 2012, which is in excess of his monthly income assistance of \$610.00. The panel finds the Ministry's determination that the appellant's net income exceeded his monthly assistance allowance under s. 10 of the EAR is reasonable based on the evidence and the application of s. 10 of the EAR to deny the appellant income assistance for February 2013 is reasonable in the circumstances of the appellant. Accordingly, the panel confirms the Ministry's decision denying the appellant's income assistance for the month of February 2013.