

## PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision, dated Dec. 18, 2012, which denied the appellant Disability Assistance, (DA), for Dec. 2012 as the ministry found the appellant had income in excess of the rate allowed. The ministry determined the appellant received a settlement of \$33,000 which put her above the income and asset limit allowed under the Employment and Assistance for Persons with Disabilities Regulation.

## PART D – Relevant Legislation

EAPWDA	Employment and Assistance for Persons with Disabilities Act-Sec 5
EAPWDR	Employment and Assistance for Persons with Disabilities Regulation Sec. 1, 9, 10, 24 and Schedule B

## PART E – Summary of Facts

The evidence before the ministry was that the Appellant was a recipient of DA, with one dependent, and as such her DA rate was \$1242.08. In October, the appellant received \$33000.00 from a discrimination tribunal, which was duly reported to the ministry. In her report the appellant stated: "Discrimination settlement: exchanged vehicle/reduced mortgage." On her banking records the appellant also wrote "discrimination settlement" several times. The ministry classified this settlement as unearned income and found the appellant ineligible for her Dec. 2012 DA payment. The appellant asked for reconsideration and advised that the monies received should not be considered income as it was a tuition refund as part of a discrimination tribunal settlement from the MCFD and an education provider. She described it was compensation for courses paid for, but for which she did not get credit for, and for additional courses she must now take.

The reconsideration decision determined that the award was "unearned income" under the EAPWDR and that the amount received over \$10,000.00, must be included in income under Schedule B, sec. 7(1)(c). As the appellant had received \$23,000.00 more than the limit, her net income for October was \$23,000.00. As this amount exceeded the rate of DA, she was not eligible for DA for Dec. 2012. The decision also went on to say that she was not eligible for DA as the income received exceeded the asset limit set out in sec. 10 of the EAPWDR.

At the hearing the appellant gave evidence that she had paid for an educational program, but when she came to do the internship necessary to complete her degree, she was unable to participate as she could not purchase insurance coverage, due to her disability. The appellant commenced a human rights complaint, which was protracted, and which the appellant eventually settled.

While this was ongoing the appellant started attending another university, resulting in her tuition costs increasing significantly. The appellant has finished her courses, wishes to start working in her field, become independent and get off assistance, but she has had multiple setbacks. For instance, she can't afford to pay money she owes to the last university so she can actually get her degree, as she has run out of funds from her student loans. She needs funds/assets to set up an office and carry expenses, but the legislation governing small business exemptions makes this very difficult. She does not get the medical attention she needs that would allow her to work longer hours. She can't do what she needs to do to gain the financial inertia to break free from DA. She feels she is being discriminated against.

The appellant states that the money she received in her settlement was a refund for courses she paid for, but for which she could not participate. It is the equivalent of returning goods purchased to a store. She no longer has these funds as \$20,000.00 went to a mortgage payment, \$12,000.00 to a daily use vehicle, and \$1,000 went to a new business license. The ministry keeps limiting her DA and this only puts her further behind in her attempts to become independent.

The ministry stated that the legislation is clear that "unearned income" includes "any other financial awards or compensation." As such, that portion of the funds received that was not exempt, \$23,000.00, had to be included in the income calculation for that month. The ministry reiterated the reconsideration decision.

When asked by the panel, the ministry confirmed that the reason for the ineligibility for the one month was that the appellant had excess income, not because she had assets above the allowable limit. A person could be ineligible because they have income above the appropriate level and also because they have assets above the appropriate level, but in this instance the former was the reason for the ministry's decision.

## PART F – Reasons for Panel Decision

The issue in this matter is whether the ministry reasonably determined that the appellant had unearned income of \$23,000.00 resulting her in being ineligible to collect DA for the month of Dec. 2012.

The relevant legislation is as follows:

### **Employment and Assistance for Persons with Disabilities Regulation**

#### 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:

...

(t) any other financial awards or compensation;

...

#### **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.

#### **Asset limits**

10 (1) The following assets are exempt for the purposes of subsection (2):

(a) clothing and necessary household equipment;

(b) one motor vehicle generally used for day to day transportation needs;

(c) a family unit's place of residence;

...

(2) A family unit is not eligible for disability assistance if any of the following apply:

(a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$5 000;

(b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000.

....

### **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.

...

### **Schedule B**

...

### **Exemptions — unearned income**

**7** (1) The following unearned income is exempt:

...

(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;

...

The position of the appellant is that the funds received were not "income" but were a refund for courses she paid for but was not allowed to complete due to being discriminated against. The ministry position is that this is unearned income as per the legislation and results in the appellant being ineligible for DA for Dec. 2012.

Sec. 9(2) of the EAPWDR states that 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. The appellant's family unit was entitled to \$1242.08 per month if eligible under the legislation.

Under the EAPWDR, unearned income includes, without limitation, money or value received from any other financial awards or compensation. Under Sched. B, Sec. 7 (1)(c), a criminal injury compensation award or other award, is exempt, at the time the award is received, to the limit applicable under section 10 of the regulation. Under sec. 10(2)(b), this exemption would be up to \$10,000.00 in the appellant's case.

Was it reasonable for the ministry to find that the monies received by the appellant were a financial award or compensation? The appellant originally described the funds received as a discrimination settlement. Later she advised this was repayment for courses she was not able to take that she had paid for. It is of some interest to note that these funds did not go to repay money owed to the second university or to student loans as one might expect if they were to pay for those things as claimed by the appellant. The bulk of the funds was used to pay a mortgage and for a vehicle. This seems to indicate that the funds were not then necessary to pay for the courses. Either way, on the ordinary meaning of "compensation", the panel finds this is "other compensation" under the EAPWDR. To compensate someone includes putting them back in the position they were before an event. It includes counterbalancing or offsetting. This is what happened to the appellant. She received compensation through her claim at a discrimination tribunal for her losses. The legislation states any financial award or compensation must be included in unearned income unless it is exempted.

The legislation exempts a number of awards or compensation, such as settlements for certain Hepatitis C Settlements and Indian Residential School abuse claims. It does not exempt discrimination or human rights settlements, awards or compensation. The appellant commented in her submissions that this type of claim may have been overlooked when the legislation was drafted. That may or may not be the case, but the Tribunal must follow the legislation as drafted.

The panel finds that the appellant received compensation through a discrimination tribunal for losses she suffered. The legislation applies an exemption up to \$10,000.00; it does not exempt the amount of this compensation that is over \$10,000.00; sec. 10(2)(b). As such, it was reasonable for the Ministry to find that the appellant had \$23,000.00 in income and as such, her income exceeded that allowable under sec. 9 of the EAPWDR by almost \$22,000.00. This being the case, it was reasonable for the ministry to find she was not eligible for DA for Dec. 2012.

Therefore the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the appellant and confirms the decision.