

PART C – Decision under Appeal

The decision under appeal is the reasonableness of the Ministry's reconsideration decision dated December 21, 2012, finding the Appellant ineligible to continue to receive a shelter allowance and that the Appellant has "earned income" of \$375 per month.

PART D – Relevant Legislation

The relevant legislation is the Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 13 and the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 24, 27, Schedule "A" section 1, and Schedule "B" section 2.

PART E – Summary of Facts

The Appellant is in receipt of assistance as a person with disabilities. He resides in a 1977 travel trailer which he purchased in September 2007 for \$14,000. His monthly payments for the trailer were \$375 for 38 months. The Appellant received a shelter allowance from the Ministry in the amount of \$375 from October 2007 to October 2012 while he was making these payments. When the payments ceased, the Ministry discontinued the shelter allowance as the Appellant no longer had any shelter costs.

On November 21, 2012, the Appellant wrote to the Ministry informing them that he intended to sell his trailer to his sister for \$200 and that she would then be charging him rent of \$375 per month.

On November 26, 2012, the Ministry wrote to the Appellant informing him that as, in the Ministry's opinion, he had disposed of assets for inadequate consideration in contravention of section 13 of the EAPWDA, he would not be receiving any shelter allowance.

Based on this reply, the Appellant decided not to sell his trailer, but he did apply to the Ministry to reconsider its decision not to provide him with a shelter allowance. In his request for reconsideration, the Appellant indicated that instead of selling the trailer to his sister that she had moved in with him and he was charging her \$375 per month in rent.

In its reconsideration decision, the Ministry acknowledges that the Appellant has decided not to sell the trailer, but confirmed that to do so would violate section 13 of the EAPWDA as the Ministry considered the true value of the trailer to be between \$5000 and \$8000. At the hearing the Appellant stated that the trailer is in poor condition and cannot be licenced because the transfer and ownership papers are missing so that, in his estimation, is not worth more than a few hundred dollars.

The reconsideration decision then goes on to find that the rent being paid to the Appellant by his sister qualifies as "earned income" under section 1 the EAPDWR and so is subject to the deduction and exemption provisions of Schedule "B" of the EAPWDR. Specifically, the Ministry states that the \$375 he is receiving from his sister in rent, less a 25% exemption, will be deducted from his assistance payments.

At the hearing the Appellant stated that he did indeed have ongoing shelter costs as he had remortgaged the trailer some time in 2012 in order to repair its windows, adding \$10,000 to the mortgage. The Appellant submitted that the Ministry was aware of this remortgaging, but the Ministry denied any knowledge of it. (It was agreed that the Appellant would submit proof of the remortgage and ongoing shelter costs as soon as possible.)

There was also some discussion at the hearing regarding certain repair and maintenance costs for the trailer that the Appellant had submitted for approval to the Ministry. Regarding these the Ministry clarified to the Appellant that they are considered "shelter costs" and can be reimbursed up to the legislated maximum monthly shelter allowance amount.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the Ministry's reconsideration decision dated December 21, 2012, finding the Appellant ineligible to continue to receive a shelter allowance and that the Appellant has "earned income" of \$375 per month.

The relevant legislation is the EAPWDA section 13 and the Employment and EAPWDR sections 1, 24, 27, Schedule "A" section 1, and Schedule "B" section 2:

Consequences of not accepting or disposing of property

- 13** (1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at while disability assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:
- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of disability assistance, hardship assistance or supplements;
 - (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.
- (2) A family unit is not eligible for disability assistance for the prescribed period if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has disposed of real or personal property to reduce assets.
- (3) In circumstances described in subsection (1), the minister may
- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
 - (b) declare the family unit of the person ineligible for disability assistance or hardship assistance for the prescribed period.

Definitions

1 (1) In this regulation:

"earned income" means

- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (n) rental of land, self-contained suites or other property except the place of residence of an

applicant or recipient;

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.

Effect of failing to pursue or accept income or assets or of disposing of assets

27 (1) For the purposes of section 13 (3) (a) [*consequences of not accepting or disposing of property*] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 13 (3) (b) of the Act for disability assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the period of ineligibility is,

- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 13 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,

- (a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and
- (b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.

(4) For the purposes of section 13 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2 000 of the value of the forgone consideration.

(5) For the purposes of section 13 (2) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce

assets.

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 earned income

2 The only deductions permitted from earned income are the following:

- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

There are a number of issues with which the panel had to deal in this appeal in order to be clear what its responsibilities were.

The first of these was whether it should consider the matter of the original denial of a shelter allowance on the basis of disposing assets for inadequate consideration given that this was dealt with but not relied upon in the Ministry's reconsideration decision. In this matter, the panel determined that it should not render a decision, as the sale did not proceed so that the matter is moot.

(Parenthetically, however, the panel points out that section 27 of the EAPWDR does not provide authority for the Ministry to deny a recipient a shelter allowance for disposing of assets for inadequate consideration. Rather, subsection (3) allows for a maximum deduction from income assistance of \$100 for a period of one month for each \$2000 of the value of the foregone consideration.)

The second issue was whether the Ministry's determination in the reconsideration decision that the Appellant has no ongoing shelter costs was reasonable. The Appellant brought up the fact that he had remortgaged the trailer for first time at the appeal hearing. He did not provide either the Ministry or the panel proof of this new mortgage. More importantly, at the time of the reconsideration decision, the Ministry was not aware that he had ongoing mortgage payments. In these circumstances, the Ministry's decision to discontinue shelter allowance payments was reasonable.

The third issue was the Ministry's actual determination in the reconsideration decision that the \$375 per month that the Appellant is receiving from his sister for rent is "earned income" and must be

deducted from his assistance payments less a 25% exemption. This determination was not a reconsideration of a decision previously made by the Ministry, but a new determination based on new evidence provided to the Ministry by the Appellant in his request for reconsideration. Although this is unusual, the panel decided that, as its mandate is only to assess the reasonableness of the Ministry's reconsideration decision, it was appropriate to treat this issue the same as any other.

The definition of "earned income" in section 1 of the EAPWDR includes "money or value received from renting rooms that are common to and part of a person's place of residence". Section 24 sets the amount of income assistance available as the applicable calculated under Schedule "A" minus any applicable deductions found in Schedule "B". In this case, the Appellant is entitled to the single person support allowance amount of \$531.42 (Schedule "A" section 1(a)) less the "earned income" of the rent payment minus 25% (Schedule "B" section 2(c)). As this is the Ministry's analysis in the reconsideration, the panel finds that the Ministry's decision is reasonable.

As the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation to the circumstances of the Appellant, the Panel confirms the Ministry's decisions.