

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of January 24th, 2013 wherein the ministry determined the inheritance received by the appellant in November 2012 had to be considered as unearned income as set out in section 1(I) Employment and Assistance Regulation (EAR) and was not exempt from calculating the family unit's net income under Schedule B EAR which resulted in the appellant being denied income assistance for January 2013 pursuant to section 10 EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 1, 10, Schedule A and B section 7

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Appellant's Shelter Information form completed and dated December 1st, 2012; rent receipt for December 2012 which is attached is signed by landlord.
- Request for reconsideration dated January 18th, 2013 with two notes from appellant attached.

The appellant is a single recipient of income assistance who is eligible to receive \$585 per month. In November the appellant reported to the ministry that she received an inheritance of \$2,495 from her mother's estate. The appellant advised the ministry the executor told her the money was for a celebration of life and the appellant signed a document to that effect. On November 27th, 2012 the ministry contacted the executor and was advised the appellant was given \$2,590 and that the money was given to her to assist with moving expenses and not funeral expenses (celebration of life).

In the appellant's request for reconsideration, the appellant wrote that approximately half the money she received as an inheritance was spent on a celebration of life and the other half was spent on car repairs. The appellant agreed she would provide receipts and agreed that she owed the ministry approximately \$200 for the month of December.

The appellant did not attend the hearing and being satisfied the appellant was notified of the date and time, the hearing proceeded under section 86(b) EAR.

The ministry did not call any witnesses or provide any new evidence.

The panel makes the following finding of fact:

1. In November of 2012 the appellant received an inheritance from her mother's estate.
2. The appellant declared the inheritance to the ministry in December 2012.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the inheritance received by the appellant in November 2012 had to be considered as unearned income as set out in section 1(q) EAR and was not exempt from calculating the family unit's net income under Schedule B EAR which resulted in the appellant being denied income assistance for January 2013 pursuant to section 10 EAR.

The legislation considered: EAR

Section 1 (Excerpts) – Definition of unearned income

(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:

- (l) a trust or inheritance;

Limits on income

Section 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.

Maximum amount of income assistance before deduction of net income – Schedule A

Section 1

(1) Subject to this section and section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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.

Monthly support allowance

Section 2

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit. (B.C. Reg. 197/2012)

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

Monthly shelter allowance

Section 4

(2) The monthly shelter allowance for a family unit to which section 15 (2) of the Act does not apply is the smaller of (B.C. Reg. 73/2010)

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

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

Schedule B – EAR - Net Income Calculation [section 28 (b)]

Deductions from unearned income

Section 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

Section 7

(0.1) In this section:

"disability-related costs", means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [*assets held in trust for person receiving special care*] of this regulation;

"disability-related cost to promote independence", means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust" in relation to a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment", means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection. (B.C. Reg. 197/2012)

(1) The following unearned income is exempt: (B.C. Reg. 83/2012)

- (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 11 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] of this regulation, if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

- (i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation,
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation, or
 - (iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust
- if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence; (B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

(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 the 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*. (B.C. Reg. 57/2003)

(f) a tax refund. (B.C. Reg. 197/2012)

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012)

(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. (B.C. Reg. 83/2012)

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence. (B.C. Reg. 197/2012)

(3) Repealed (B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

The ministry argued that the regulation is very clear and supports the ministry's reconsideration decision. The ministry argued there is nothing on the appellant's file stating the inheritance was given to the appellant for something else, that it was for the appellant to decide how the inheritance would be spent and apparently the appellant decided to spend it on a celebration of life and car repairs. The ministry argued the appellant did not provide the ministry with any receipts to show how the inheritance was spent. The ministry argued the appellant reported the inheritance as income in December 2012 and because the inheritance exceeded the amount of income assistance she was eligible to receive, she was ineligible for income assistance for the month of January 2013.

In the reconsideration decision the appellant argued that she had received a large amount of cash from the executor of her mother's estate and was told the money was for a celebration of life. The appellant was also

given her mother's car which needed repairs and once the repairs were done this only left a small amount of money.

Section 1, EAR defines "unearned income" as any income that is not earned income, and includes, without limitation, money or value received from a trust or inheritance.

Schedule B, section 6 defines exemptions from unearned income and section 7 defines exemptions to unearned income. The panel finds this legislation does not set out expenses that may be deducted from an inheritance or any other exemption or deduction.

The appellant properly reported the inheritance that she received from her mother's estate to the ministry in December 2012. The panel finds the ministry reasonably determined that the inheritance is unearned income as defined under Schedule B, section 1(l) EAR and therefore the ministry's decision that the inheritance must be included in the calculation of the appellant's net income was reasonable.

Section 10(2) EAR states that 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 panel finds that the appellant is eligible for monthly income assistance of \$585.00 and the appellant's net income for the same month was \$2,495.00.

The panel finds that the ministry reasonably determined that the net income of the family unit as determined under Schedule B EAR exceeded the amount of income assistance as determined under Schedule A EAPWDR and therefore the ministry's decision to deny the appellant income assistance for the month of January 2013 was reasonable.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.