

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated July 16, 2013 which held that the appellant was ineligible for income assistance for July 2013 due to the money paid to the appellant by her insurance carrier on May 21st to compensate for extra living expenses. The compensation was determined to be unearned income and not exempt under section 1(d) of the Employment Assistance Regulation. As a result, the appellant was not eligible for income assistance for the month of July 2013 because of the May 21st insurance payment, her net income under Schedule B was greater than her benefit under Schedule A.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR)
Section 1 Definitions "unearned income"
Section 10 Limits on income
Section 28 Amount of income assistance
Section 33 Monthly reporting requirement
Schedule A Income Assistance Rates
Schedule B Net Income Calculation

PART E – SUMMARY OF FACTS

The evidence before the minister at reconsideration was the appellant has been in receipt of benefits since December 2012, as the sole recipient with no dependants she receives \$610.00 a month (\$235 support and \$375 shelter).

The appellant received \$2640.00 on May 21, 2013 from an insurance carrier for living expenses in relation to a homeowner's insurance claim. The insurance carrier confirmed the payment was for increased living costs while the appellant's residence cannot be occupied due to fire damage from a fire in a neighboring townhome.

In the request for reconsideration the appellant had indicated that:

- The residence was being rebuilt and should be ready to occupy in October 2013.
- The insurance carrier will pay the appellant's rent while her residence is being rebuilt.
- As of June 15, 2013 the appellant moved to a new location, her rent is now \$742.00/mo.
- The appellant will receive approximately \$12,000.00 to replace all her belongings lost in the fire.
- The appellant is still required to pay \$620.00/mo. mortgage payments.

The following documents were reviewed by the ministry as part of the reconsideration.

- A letter dated June 10, 2013 from the insurance carrier confirming:
 - the appellant is unable to live in her townhouse due to a fire that occurred on February 18, 2013, and
 - the appellant is entitled to claim living expenses under her policy for increased cost of living while her own unit cannot be occupied.
- Bank deposit account history screen printouts with handwritten notes for the period from March 1, through May 21, 2013.
- Account statements for the months of January through May 2013.

Attached to the Notice of Appeal dated July 22, 2013, the appellant provided the copies of the following additional documents:

- A letter dated June 21, 2013 from the Ministry informing the appellant that she may have been paid assistance in the amount of \$610.00 for which she was not eligible, and requesting she attend a meeting.
- A letter from the Ministry dated June 21, 2013 notifying the appellant that the ministry has completed an audit of her file and informing her that she is no longer eligible for assistance because of payments received from the insurance carrier for living expenses.
- A letter dated June 28, 2013 from the bank stating that the appellant requested her mortgage payments be suspended but this is not an option, the appellant is required to continue to make the mortgage payments.
- A letter dated June 28, 2013 from the insurance carrier which provides the following information:
 - Confirms the appellant has insurance coverage as a result of a fire that occurred in her complex on February 18, 2013.

- The fire occurred through no fault of the appellant and has forced her out of her home.
 - The insurance coverage provides for loss of personal property and additional living expenses.
 - The payment for additional living expenses is to cover increased costs while her own premises cannot be occupied, she remains responsible for her normal living expenses including mortgage, strata, hydro and phone expenses arising from ownership of the townhouse.
 - The amounts paid out are strictly to reimburse the appellant for the rental expenses which she would not have to pay, had it not been for the fire.
 - An inherent principle of insurance is that you cannot profit from a loss and clearly any payments which have been made to date are not resulting in a profit to the Insured.
- Bank drafts showing payment of damage and pet deposits and rent for March-June, 2013.
 - A Resident Ledger from a property management company showing deposits and rent paid from February 25, through May 2, 2013.
 - A notification dated June 10th from the property management company that the appellant's lease expires on June 30th and it will not be renewed.
 - A tenancy agreement for a rental property starting July 1, 2013 setting out a rental rate of \$742.00 per month and a damage deposit of \$371.00.
 - A letter dated July 3rd from the appellant's bank notifying her that her Mortgage Account is past due.

In the Notice of Appeal the appellant provided written statements saying that she has not received income assistance since May 2013, she has been denied further benefits and is expected to pay back \$610.00 received in April 2013. The appellant's evidence is that she had not paid her mortgage \$620/mo., strata fees \$226.87/mo., hydro or phone \$40/mo., since May and she had been getting food from the food bank. She also provided a list of items purchased including clothing, linens and some household goods.

The appellant stated she is a single mother who has owned her townhouse for 13 years. Since the fire the following payments that have been made:

- Feb 25, - cheque for \$3450.00 rent for apartment plus damage and pet deposit
- March 7, - cheque for \$3500.00 emergency funds to replace burned items
- May 21, - cheque for \$2640.00 rent for apartment

The appellant stated that the \$2640.00 was for 2 month's rent at the first rental property at \$1150.00 per month and a damage deposit on the new rental property of \$340.00. The bank statement shows a bank draft dated May 21st for \$2307.50 with a hand written notation "May + June rent @ (the address)".

On May 15th the appellant's daughter started paying \$200/mo. towards rent which the appellant uses to pay hydro and phone. On June 15th the appellant said she moved to another apartment because her lease was up July 1st, the new apartment had a rent of \$742/mo., plus \$371 damage deposit. There are no bank statements after May.

APPEAL #

The panel determined the oral and documentary evidence submitted in the Notice of Appeal was admissible under section 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's decision dated July 16, 2013 which held that the money paid to the appellant by her insurance carrier to compensate for rent was unearned income and therefore not exempt under section 1(d) of the Employment Assistance Regulation, resulting in the appellant being ineligible for assistance for the month of July 2013 was reasonable.

The applicable legislation is set out as follows.

Employment and Assistance Regulations

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) ...
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) ...

The ministry argues that "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from insurance benefits, except insurance paid as compensation for a destroyed asset. The insurance carrier confirmed the payment received was for extra living expenses, the payment is not exempt and must be deducted from the appellant's assistance, causing an overpayment. Ministry argues that because the money was not required to rebuild the residence or replace the contents that were destroyed it is not compensation for a destroyed asset.

The appellant argues that the ministry has taken what the insurance adjuster said out of context. The insurance money she received to pay for rent was payment for a destroyed asset, namely her townhouse which she cannot live in until the repairs from the fire are completed.

The panel is of the view that the term "living expenses" as used by the insurance carrier cannot be determinative without looking at the circumstances giving rise to the payment. The appellant's home was destroyed by fire to the point that she and her daughter cannot live there. The payment made by the insurance company for living expenses was payment for rent because the townhome was inhabitable. The appellant has supplied documents showing the rental agreements, her bank statement and the draft used in making \$2300.00 of rent payments from the May 21st insurance cheque. The appellant has not provided documentation showing payment of the damage deposit or half-month's rent (for June 15-30) for the second rental property.

When considering the application of the regulation in the circumstance of the appellant the panel is of the view that an asset must be considered more than the townhouse's structure, its roof, walls and cupboards; an asset such as a townhome must also be a residence, a place where someone can live. The destroyed asset is the townhome that was habitable; it is destroyed month over

month because it is not habitable. The insurance funds paid for rental payment are compensation for a destroyed asset because the appellant cannot live in the townhome. The insurance payments do not compensate the appellant for any other living expenses except providing rent for a place to live while her asset, the townhome is destroyed to the point that it is not habitable. The insurance company has confirmed the appellant continues to be responsible for all her living expenses including her mortgage, strata fees, utilities, phone and food. The funds paid to the appellant are not putting her in a place of advantage.

In the unique circumstances of this matter, the panel finds that \$2300.00 of the insurance payment of \$2640.00 received by the appellant on May 21st to provide her housing because her townhome was destroyed by fire and inhabitable should be exempt under the *EAA*, section 1, definition of "unearned income"(d) when calculating assistance for the month of July 2013.

The panel therefore finds the ministry's determination was not a reasonable application of the applicable enactment in the circumstances of the appellant and thus rescinds the decision.