

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated July 17, 2013 which held that the appellant was ineligible for income assistance for April 2013 that she received due to money paid to the appellant by her insurance carrier to compensate for 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 April 2013 because in February her net income under Schedule B was greater than her benefit under Schedule A, and therefore received an overpayment.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA)
Section 27 Overpayments

Employment and Assistance Regulation (EAR)
Section 1 Definitions "unearned income"
Section 10 Limits on income
Section 28 Amount of income assistance
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 had been in receipt of benefits since December 2012. As the sole recipient with no dependants she received \$610.00 a month (\$235 support and \$375 shelter).

The appellant received \$3450.00 on February 25, 2013 from an insurance carrier as an advance for living expenses in relation to a homeowner's insurance claim. In addition the insurance carrier confirmed the following payments were made:

- \$3500 March 7th for asset replacement
- \$1047 paid for living expenses
- \$2640 paid for living expenses

The appellant had indicated that the compensation was for a destroyed asset, her home and the money was used for rent and damage deposits.

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.
- 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's request that her mortgage payments be suspended is not an option and that 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, and that 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.
- The appellant's Request for Reconsideration dated July 2, 2013.

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 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

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 with a rent of \$742/mo. Plus \$371 damage deposit.

The appellant stated her townhouse is not expected to be habitable until October, 2013.

The appellant provided the additional documents not previously before the Minister:

- A Resident Ledger from a property management company showing deposits and rent paid from February 25, through May 2, 2013.
- Bank drafts showing payment of damage and pet deposits and rent for March-June, 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.
- A letter dated July 3rd from the appellant's bank notifying her that her Mortgage Account is past due.

The panel determined the 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 17, 2013 which held that the money paid to the appellant by her insurance carrier to compensate for rent was unearned income and not exempt under section 1(d) of the Employment Assistance Regulation, thereby resulting in an overpayment of assistance for the month of April 2013 was reasonable.

The applicable legislation is set out as follows.

Employment and Assistance Act

Overpayments

27. (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [*reconsideration and appeal rights*].

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. As the insurance carrier confirmed the payment received was for living expenses, the payment is not exempt and must be deducted from the appellant's assistance, causing an overpayment.

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, the bank drafts used in making the rent payments and ledgers showing the rent paid at the time. Therefore the ministry unreasonably determined that the appellant received an overpayment.

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 the insurance payment of \$3450.00 received by the appellant on February 25th 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).

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.