

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated May 13, 2013 which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Regulation (EAR) as the net monthly income of the family unit exceeds the amount of income assistance payable.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 1, 10, 28, and Schedules A and B

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Undated payment stub in the appellant's name for Canada Pension Plan (CPP) benefits of \$632.16;
- 2) Two-month notice to end tenancy for landlord's use of property as of April 30, 2013, dated February 6, 2013;
- 3) Mutual Agreement to End a Tenancy on April 30, 2013, dated February 6, 2013;
- 4) Letter dated February 18, 2013 from the current owner of the appellant's residence stating in part that the owner recommends the appellant as a tenant. The appellant has been living in this residence for many years prior to the current owner taking over in May of 2007. The owner is now selling the residence and the new owners have requested that all 3 basement suites be vacated no later than April 30, 2013. The previous owners vouched for the appellant as a good tenant and the current owner has never regretted his decision to keep him on as a tenant. The appellant has resided at the residence address for a total of more than 20 years. He has been a good tenant;
- 5) Statement for a bank account showing a zero balance as at February 20, 2013;
- 6) Receipt dated March 27, 2013 for the appellant in the sum of \$400 for March 2013 rent;
- 7) Letter dated April 16, 2013 from the appellant to the ministry stating in part that he needs some major help because he is unemployed and receiving early retirement benefits. He has been receiving \$632.15 a month for the last two years and does not have any other cash income. The appellant wrote that he is looking for a single bedroom suite in BC Housing, or a place where they accept early retirees. He has found two local movers who will move him. The appellant requests help paying for the movers and the first month's rent and damage deposit. The appellant wrote that he has less than 15 days before he definitely has to vacate the premises; and,
- 8) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry reconsideration decision and asked where he is going to live when they tell him to get out. He wonders where he is going to put his furniture. In his Request for Reconsideration, the appellant wrote that he has attached a letter explaining what he needs assistance for. He needs help paying for a local mover and to pay for the first month's rent and damage deposit. The appellant wrote that he does not have enough money to pay for the movers, the rent, and a damage deposit. He is being evicted as of April 30, 2013 and has been told by his present landlord that he can stay for another month and that is it.

The ministry relied on its reconsideration decision, which included that the appellant is a single applicant over 60 years of age but under 65. At the hearing, the ministry clarified that the exempt income from CPP benefits is the tax amount for those who are taxable, which is calculated at the corresponding tax rate and divided equally by 12 months, and would be automatically deducted on a data match from the federal CPP program. The ministry stated that the appellant is not taxable and this exemption, therefore, does not apply.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Regulation (EAR) as the net monthly income of the family unit exceeds the amount of income assistance payable, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the Employment and Assistance Regulation (EAR) provides that:

- 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.

Section 28 of the EAR provides that:

Income 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 A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. As a sole applicant with no dependent children, the amount that would be payable to the appellant is \$235.00 in support and \$375 in maximum monthly shelter allowance.

Section 1 of the EAR defines "unearned income" to mean "...any income that is not earned income, and includes, without limitation, money or value received from any of the following:

...

- (f) any type or class of Canada Pension Plan benefits; ..."

In calculating the net income of a family unit under Schedule B, specific exemptions and deductions from unearned income are provided for as follows:

Deduction and exemption rules

- 1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation, ...
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 [deductions from earned income] and 6 of this Schedule,
 - (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
 - (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Deductions from unearned income

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

7 The following unearned income is exempt:

(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 that 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*.

The ministry's position is that the appellant is a single applicant with no dependent children and is therefore eligible for a support allowance in the amount of \$235 per month and a shelter allowance in the amount of \$375 per month, for a total allowance of \$610 per month under Schedule A of the EAR. The ministry argued that the appellant is under the age of 65 and does not have Person with Persistent Multiple Barriers status of Person With Disabilities designation and, therefore, the income assistance legislation and rate are used. The ministry argued that the appellant is in receipt of CPP benefits, which are included in the definition of "unearned income" in Section 1 of the EAR, in the total amount of \$632.16 and that there are no applicable exemptions available in Schedule B to reduce this amount of income. As the monthly net income of the appellant's family unit (\$632.16) exceeds the income assistance rate (\$610), the appellant is not eligible for assistance under Section 10(2) of the EAR. The ministry pointed out that in order to receive supplements for moving costs and a security deposit, the person must be a recipient of income assistance.

The appellant does not dispute that he is in receipt of CPP benefits in the total amount of \$632.16 per month. However, the appellant argued that he needs some major help because he is unemployed and receiving early retirement benefits with no other cash income. The appellant argued that he needs a place to live, and help paying for the movers and the first month's rent and damage deposit. The appellant argued that he has less than 15 days before he definitely has to vacate his current residence.

The panel finds that it is not disputed that the appellant's total monthly income is currently \$632.16, consisting of CPP benefits. Money or value received from any type or class of Canada Pension Plan benefits is specifically included in the definition of "unearned income" under Section 1(1) of the EAR. Section 1(d) of Schedule B of the EAR stipulates that all unearned income must be included in income except the deductions permitted under Section 6 and any income exempted under Sections 7 and 8 of Schedule B. Section 6 relates specifically to income tax deducted from source for employment insurance benefits and essential operating costs of renting self-contained suites and Section 8 provides an exemption for education-related costs. While Section 7(.01)(e) provides an exemption for a portion of CPP benefits, it is for the tax portion when a person is taxable, and the panel finds that the ministry reasonably determined that this exemption does not apply to the appellant. The panel finds that the ministry reasonably concluded that there is no income exemption or deduction available in Schedule B of the EAR to reduce the amount of the appellant's monthly income. The

panel finds that the ministry reasonably concluded that the net income of the family unit (\$632.16) exceeds the amount of income assistance determined under Schedule A of the EAR for a family unit matching the appellant's family unit (\$610) and, therefore, no income assistance is payable pursuant to Sections 28 and 10(2) of the EAR.

The panel's jurisdiction under Section 24 of the *Employment and Assistance Act* (EAA) is limited to a determination of whether the ministry's reconsideration decision was reasonable, and the subject of that decision was the appellant's application for income assistance and not a request for any other supplement under the legislation. The Panel finds that the ministry decision was reasonably supported by the evidence, pursuant to Section 24(1)(a) of the EAA and confirms the decision under Section 24(2)(a).