

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") December 6, 2013 reconsideration decision in which the Ministry determined, in accordance with section 9 of the EAPWDR, that the Appellant was ineligible for disability assistance in December 2013 because in October 2013 she had unearned income of \$2,457.50 from a lottery or games of chance and this unearned income exceeded the amount of monthly disability assistance the Appellant was eligible for in December 2013.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9, 24 and Schedule B.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from Ministry records that the Appellant's family unit consists of herself and two dependent children and that she is eligible for \$1,332.08 a month in disability assistance; that is, her eligible monthly support allowance of \$672.08 and her monthly shelter allowance of \$660.
2. Information provided to the Ministry by the Appellant consisting of an 87 page statement showing her on-line gaming account transactions from September 19, 2013 through October 4, 2013 and showing multiple games played, her wagers, winnings and losses.
3. Transaction gaming account transaction history statement prepared by the Ministry from the Appellant's 87 page statement, which totaled the Appellant's winnings on October 4, 2013 in the amount of \$2,457.50.
4. Copies of the Appellant's bank statements from September 19, 2013 to October 7, 2013, provided to the Ministry by the Appellant and showing debits and credits to and from the on-line gaming account, including \$901 credited to her bank account from the gaming site on September 23, 2013.
5. Appellant's request for reconsideration in which she wrote that the winnings in her lottery account never at one time were calculated at \$2,457.50. If that was the case she would have withdrawn the money. The Appellant stated that the way the Ministry calculated the winnings is unfair and does not reflect the actual amount of winnings that can be withdrawn by the player. The Appellant wrote that, for example, if she plays with \$5 and she plays for three hours, the balance never exceeds \$20 in her lottery account. She submitted that it would not be fair to add up all the little wins when the most she could ever withdraw is \$20.

In her notice of appeal, the Appellant wrote that the actual winnings that can be withdrawn are not the amount the Ministry claims. She stated that the Ministry never took into account her losses.

At the hearing, the Appellant again argued that she could not withdraw the amount the Ministry claims she won on October 4, 2013 because there was never that much money in her gaming account. She explained that her losses, which the Ministry did not take into account, would bring that total down. The Appellant did admit that she could withdraw more than \$20, if her winnings were higher and acknowledge that in the 87 page gaming statement her winning balances varied. For example, she admitted that after one win she could have withdrawn \$70. The Appellant also stated that she is familiar with the income reporting requirements for receiving disability benefits and how and when income can affect the amount of such benefits. For example, she said she did receive \$901 from the gaming site, which she reported to the Ministry as income.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's oral testimony as being in support of evidence that was before the Ministry at reconsideration.

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant's family unit is eligible for monthly disability assistance for support allowance and shelter allowance totaling \$1,332.08 per month.
2. The Appellant won games of chance numerous times by and on October 4, 2013.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that, in accordance with section 9 of the EAPWDR, the Appellant was ineligible for disability assistance in December 2013 because in October 2013 she had unearned income of \$2,457.50 from a lottery or games of chance and this unearned income exceeded the amount of monthly disability assistance the Appellant was eligible for in December 2013.

The following sections of the EAPWDR apply in this appeal:

Section 1 – Definitions

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

(r) a lottery or a game of chance.

Section 9 – Limits on income

9 (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 dependent.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Section 24 – 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.

Schedule B Net Income Calculation

Deduction and exemption rules section 1 and 7

The Parties' Positions

The Appellant's position is that the Ministry incorrectly calculated her total gaming winnings and that she could not withdraw \$2,457.50 because that amount was not available in her gaming account. She argued that the total winnings she could withdraw at any one time were \$20, but agreed she had withdrawn \$70 at one point. The Appellant submitted that the Ministry did not take into account her losses when it determined what winnings were available to her.

The Ministry's position, as stated in its reconsideration decision, is that, in October 2013, the Appellant had net unearned income in the form of lottery or gaming winnings, which exceeded the amount of monthly disability assistance that she is eligible for. Specifically, the Ministry submitted that the Appellant won a total of \$2,457.50 on October 4, 2013, an amount which exceeded her eligible monthly assistance rate of \$1,332.08. The Ministry acknowledged the Appellant's position about gaming costs, but stated that there is no legislation to support the Ministry in deducting or exempting money that the Appellant puts back into playing. There are no allowable exemptions for costs associated with playing the lottery or games of chance. The Ministry further submitted that this unearned income received in October 2013 was to be reported by the Appellant in November 2013

1

affecting her December 2013 assistance rate, so that the Appellant was not eligible for December 2013 assistance.

The Panel's Findings

Although the Appellant submitted that she may only withdraw \$20 at a time from her gaming account, the Panel finds, based on the evidence, that in September 2013 she received a credit of \$901 in her bank account from the gaming site. She also admitted, as an example, that she could withdraw \$70, if that amount is in her gaming account. Therefore, the Panel finds that although the Appellant may be limited in how much she can withdraw in one transaction based on her gaming account balance, she may nevertheless withdraw money multiple times on any given day or over any period when she has winnings in her account. She may also leave her winnings in her gaming account.

The Panel notes that the definition of unearned income in section 1 of the EAPWDR includes money or value received from a lottery or game of chance. The Panel finds that the evidence in this case establishes that, on October 4, 2013, the Appellant had multiple gaming winnings totaling \$2,457.50, even though she did not withdraw any of the winnings that day. The Panel thus finds that the Appellant received money or value into her gaming account from her winnings from a lottery or game of chance. Therefore, the Ministry reasonably determined that the Appellant had unearned income of \$2,457.50 in October 2013.

The Panel further notes that section 1 and 7 of Schedule B of the EAPWDR provide no exemptions or deductions for lottery or gaming losses or expenses. Therefore, the Panel finds that the Ministry reasonably determined that there are no allowable exemptions or deductions for costs or losses associated with playing the lottery or games of chance. Thus, for the purposes of determining the Appellant's eligibility for disability assistance, the Ministry reasonably determined that the Appellant had unearned income of \$2,457.50 in gaming winnings on October 4, 2013, which exceeded the \$1,332.08 disability assistance the Appellant was eligible for in December 2013.

In conclusion, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the Appellant's circumstances. Therefore, the Panel confirms that decision.