

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") reconsideration decision dated February 11, 2014 which held that a two hundred dollar inheritance the Appellant receives each month is considered unearned income and must be deducted from the Appellant's disability assistance under section 24 of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR").

PART D – Relevant Legislation

Section 1 and 24 of the EAPWDR
Schedule A Section 1, 2, 4, and 5 of the EAPWDR
Schedule B Section 1, 6, 7, 7.1, and 8 of the EAPWDR

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

- 1) Application for Disability Assistance (pages 1- 4) dated December 14, 2007 initialed and signed by the Appellant. Under 'My Responsibilities' it states that the Appellant "must report all money and assets that he receives each month" and "report all changes in his circumstances that might affect my eligibility for assistance.
- 2) Letter from the Ministry to the Appellant dated November 13, 2013 requesting documentation including the Appellant's bank profiles with 90 days of transactions for all accounts so the Ministry is able to determine the Appellant's eligibility for assistance.
- 3) Letter from the Ministry to the Appellant dated November 27, 2013 requesting documentation including the Appellant's bank profiles with 90 days of transactions for all accounts so the Ministry is able to determine the Appellant's eligibility for assistance. The letter notes that the Appellant did not provide information as requested in the Ministry's letter of November 13, 2013.
- 4) Ministry form used to assess eligibility dated December 6, 2013 completed by the Appellant's financial institution showing the type of holding the Appellant has which includes a credit card.
- 5) The Appellant's Account activity statement for the last 90 days showing a deposit of \$200.00 for the months of September, October and November 2013.
- 6) Letter from the Ministry to the Appellant dated December 13, 2013 requesting documentation including the Appellant's bank profiles with 90 days of transactions for all accounts so the Ministry is able to determine the Appellant's eligibility for assistance. The letter notes that Appellant did not provide information as requested in the Ministry's letter of November 13, 2013 and November 27, 2013.
- 7) Email from the Appellant's cousin to the Ministry dated January 22, 2014 (the "Email") which stated that the Appellant's mother left the Appellant an inheritance that she was instructed to distribute \$200.00 each month to the Appellant until there is nothing left in his trust account.
- 8) Excerpt from the Appellant's deceased mother's Will stating that that the executor will pay the sum of two hundred (\$200) to the Appellant during his lifetime or until the residue has been wholly depleted.
- 9) Request for Reconsideration form dated January 28, 2014 (the "Request for Reconsideration"):

Section 2 of the Request for Reconsideration completed by the Ministry stated the following:

- a. that the Ministry received a call from the Appellant's cousin who is the executrix of his mother's Will and the Appellant's cousin confirms that she has been depositing two hundred dollars (200) per month into the Appellant's account as directed by the Appellant's mother's Will; and

- [REDACTED]
- b. that the Appellant is advised by the Ministry that the inheritance will be deducted dollar for dollar from his disability benefits.

Section 3 of the Request for Reconsideration signed by the Appellant on January 28, 2014 with an attached letter that stated the tiny amount of money [that the Appellant receives each month from his mother's estate] falls well within the amount of money he was told he could earn [each month].

For the hearing, the appellant provided the following additional written submission and documentary evidence:

- 1) Notice of Appeal dated February 15, 2014 (the "Notice") completed and signed by the Appellant which stated the Appellant is being discriminated against; that his disability is not a reason to deny anything from his parents; and that the Appellant would like the Ministry to consider the money as "plain income from all sources"

The Panel finds that the additional evidence provided by the Appellant clarified his current situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision which held that a monthly two hundred dollar inheritance is considered unearned income under section 24 of the EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstance of the Appellant.

Section 24 of the EAPWDR is the section of the regulation that determines the amount of assistance a recipient is entitled which states as follows:

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.

A recipient of disability assistance is therefore entitled to an amount listed in Schedule A less the family unit's net income which is determined under Schedule B. A recipient's income is to be deducted from their disability assistance. This is determined by calculating the maximum amount of disability assistance which is found in Schedule A of the EAPWDR section 1 MINUS the family unit's income that is determined in Schedule B.

Schedule A of the EAPWDR deals generally with disability assistance rates pursuant to section 24(a). Section 1 of Schedule A addresses the maximum amount of disability assistance before deduction of net income and states the following:

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability 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.

The monthly support allowance plus the shelter allowance for a sole applicant is the maximum amount of disability assistance the Appellant is entitled to before deductions of the net income.

Net income calculations are based on rules listed in Schedule B which provides deductions and exemptions rules when calculating the net income of a recipient. There are a number of deduction and exemption rules within this section depending how the income is classified and whether it is considered earned income and unearned income.

The EAPWDR distinguishes between what is considered "earned income" and "unearned income" to determine deductions and exemption rules.

Part 1 section 1(2) of the EAPWDR defines "earned income" as the following:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"Part 1 section 1(2) of the EAPWDR also defines unearned income" which is to mean "any income that is not earned income, and includes, without limitation, money or value received from ...a trust or inheritance..."

In determining that the \$200 inheritance the Appellant receives monthly was considered unearned income that must be deducted from the Appellant's disability assistance under section 24 of the EAPWDR, the Ministry stated the following:

The definition of "unearned income" includes an inheritance and is not included in the exemptions for unearned income as per Schedule B. Therefore, the \$200 you receive each month from your mother's estate must be deducted from your disability assistance as per section 24 of the EAPWD regulation.

The Ministry relied on a copy of the Appellant's account activities statement showing a monthly deposit of \$200 for the months of September, October and November 2013. The Ministry confirmed the source of the money in an email from the executor of the Appellant's mother's estate stating that the Appellant had been receiving a monthly \$200 dollar inheritance by direct deposit into his account since April 2010. The executor also provided an excerpt of the Appellant's mother's Will showing that the Appellant was to receive a monthly payment of \$200 from the estate of the Appellant's deceased mother.

The Appellant argued that the money should not be deducted from his disability benefits and claimed that he is being discriminated against as having a disability is not a reason to deny the [inheritance] from his parents.

The Appellant requested that the Ministry classify the money as "plain income from all sources" and not deduct it from his monthly disability assistance benefits. The Appellant stated that as earned income he is entitled to earn up to \$800 dollars per month.

The EAPWDR defines earned and unearned income and specifically states that unearned income is "income that is not earned income, and includes, without limitation, money or value received

from...a[n] inheritance.”

The Appellant's mother's Will directs the executor to give to the Appellant a monthly amount of \$200 each month for the Appellant's life or until the funds are exhausted. The payments are confirmed received by the Appellant's from his account activities statement.

If the money that the Appellant inherited from his mother could be classified as earned income, the Appellant would be entitled to make up to a certain amount monthly without the income being deducted from his disability benefits. To classify the funds as anything other than inheritance money, however, is not possible.

Two hundred dollars is deposited directly into the Appellant's account each month and the money comes from the residue of his deceased mother's estate. These funds are paid directly to the Appellant as a result of a trust created within the mother's Will. There is an excerpt of the Will provided by the executor confirming that \$200 is to go to the Appellant each month until the Appellant passes or the funds are exhausted.

Schedule B directs that all unearned income must be deducted from the Appellant's disability assistance benefits unless there is an exemption within the EAPWDR. As there is no exemption that would allow for an inheritance to be exempt from this provision, the \$200 dollar inheritance that is deposited into the Appellant's account is unearned income that must be deducted from the Appellant's disability assistance benefits.

The panel therefore finds the Ministry's determination that the \$200 dollar inheritance received each month is unearned income that is to be deducted from the Appellant's disability assistance benefits was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.