



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 24, 2014, wherein the ministry decided that:

- the appellant was ineligible for income assistance because his income was in excess of the assistance rate, as provided in section 10 of the Employment and Assistance Regulation (“EAR”); and
- the appellant was ineligible for hardship assistance because he had been denied income assistance for having excess income and had no dependent children in the family unit, as provided in section 44 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (“EAA”) sections 1, 2, 5 and 29;
EAR sections 1, 8, 10, 28 and 44;
EAR Schedule A sections 1, 2, and 4;
EAR Schedule B sections 1, 6, 7, and 8.

PART E – Summary of Facts

Preliminary Matters

On submitting his Notice of Appeal to the Tribunal, the appellant warned that several judges and other persons who had participated in a “criminal conspiracy” against him “suddenly died in circumstances that suggest they were murdered.” While stating that he did not wish to alarm anyone by referring to “these sudden deaths”, he indicated it raised personal security issues that potential panel members may wish to consider before accepting an assignment to the appeal panel. The appellant also suggested that persons with certain professional or political ties should be excluded from the panel.

In response to this information, the Tribunal Chair ordered that the members of the appeal panel would remain anonymous and would not be revealed to the parties. The panel members are subject to the usual strict requirements regarding bias and conflict of interest.

The appellant did not attend the appeal hearing. Having confirmed that he had been notified of the hearing, and having waited an additional 10 minutes for the appellant to appear, the panel proceeded with the hearing in accordance with section 86(b) of the EAR.

Admissibility of New Information

Prior to the appeal hearing the appellant submitted to the Tribunal offices his written outline of argument and a copy of a court order date-stamped by the court registry on December 13, 2013 (the “Court Order”). He explained that the Court Order had not been available for the reconsideration decision that is the subject of this appeal. The Court Order indicates that the appellant’s Canada Pension Plan benefits (“CPP”), Old Age Security benefits (“OAS”), and Old Age Income Supplement (“GIS”) (collectively referred to herein as the “federal benefits”) are subject to attachment. The panel admitted the Court Order as written testimony in support of the information and records that had been before the ministry at reconsideration, in accordance with section 22(4) of the EAA.

The ministry relied on its reconsideration decision and submitted no new information.

* * *

The documentation in the appeal record indicates that in December, 2013, the appellant applied for income assistance as a sole applicant who had reached the age of 65. He stated to the ministry that he had been supporting himself with his federal benefits, but that these benefits had been ordered garnisheed for child support. His federal benefits amounted to \$1,332.18 per month, consisting of OAS/GIS in the amount of \$877.48 and CPP in the amount of \$454.70.

Included in the appeal record are approximately 200 pages of affidavits and other documents related to the appellant’s child support litigation and other litigation.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision which determined that:

- the appellant was ineligible for income assistance because his income was in excess of the assistance rate, as provided in section 10 of the Employment and Assistance Regulation ("EAR"); and
- the appellant was ineligible for hardship assistance because he had been denied income assistance for having excess income and had no dependent children in the family unit, as provided in section 44 of the EAR.

The relevant legislation is as follows:

EAA

1 (1) In this Act:

...

"child" means an unmarried person under 19 years of age;

"dependant", in relation to a person, means anyone who resides with the person and who

(a) is the spouse of the person,

(b) is a dependent child of the person, or

(c) indicates a parental role for the person's dependent child;

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

...

"family unit" means an applicant or a recipient and his or her dependants;...

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

Hardship assistance

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

(a) is eligible for it, and

(b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

No garnishment, attachment, execution or seizure

29 (1) Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.

(2) Subsection (1) does not prevent income assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the *Financial Administration Act* or a prescribed enactment.

Power to make regulations

35 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

...

(f) governing eligibility for income assistance, hardship assistance or a supplement;

(g) prescribing rules for determining the income and assets of a family unit;...

EAR

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:

...

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

...

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

...

Effect of applying for other sources of income

8 (1) For the purposes of subsection (2), **"income"** does not include

(a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or

(b) income exempt under section 1 of Schedule B.

(2) A family unit is not eligible for income assistance if an applicant in the family unit has applied for income from another source.

Limits on income

- 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.

Amount of income assistance

- 28** 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.

Applicants who have applied for income from another source

- 43** The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant has applied for income from another source if
- (a) the minister considers that undue hardship will otherwise occur, and
 - (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

Family units that have excess income

- 44** The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the income of the family unit exceeds the limit under section 10 [*limits on income*] if
- (a) the minister considers that undue hardship will otherwise occur,
 - (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
 - (c) the family unit includes one or more dependent children, and
 - (d) the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

Schedule A

Income Assistance Rates

(section 28 (a))

Maximum amount of income assistance before deduction of net income

- 1 (1)** Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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...

Monthly support allowance

2 ...

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00
2	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age and is a person who has persistent multiple barriers to employment	\$282.92
3	Sole applicant/recipient and no dependent children	Applicant/recipient is 65 or more years of age	\$531.42

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

...

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Schedule B

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 and 6 of this Schedule,

...

(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 ...

(1) 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*; ...

* * *

Income Assistance

The appellant's position is that section 24 of the EAA directs the panel to determine whether the ministry's decision was reasonable, not whether it was "legal", "lawful", "in accordance with the act" or "in accordance with regulations." He argued that the application of section 10 of the EAR may be a technically lawful application of the EAR, but that it results in a decision that is not reasonable as it is not "fair or sensible", is not based on "sound thinking" or "sound judgment", and defies "common sense". He said that it is not "fair" or "sensible" to deny assistance simply because a person's income is subject to attachment or garnishment, and that it is contrary to "sound judgment" to deny assistance to a person based on the cause of his impoverishment.

The appellant stated that the unfairness and unreasonableness of the reconsideration decision is compounded by the fact that his impoverishment is a direct result of abuses of power, sometimes criminal in nature, by employees and officers of the government. He alleged that a criminal organization within the government has carried out a scheme of financially destroying him.

The appellant also argued that section 10 of the EAR is inconsistent with the intent of the EAA, which he described as being "to protect all residents of the province who may fall on hard times regardless of the cause of their impoverishment." He said that section 29 of the EAA (which prevents third parties from attaching income assistance, hardship assistance and supplements) demonstrates the legislative intent that assistance should not be impeded by various forms of attachment or garnishment.

The ministry's position, as set out in its reconsideration decision, is that the appellant's federal benefits constitute unearned income to which none of the legislated deductions or exemptions apply. The ministry argued that the appellant's net income (\$1,332.18) exceeds the assistance rate (\$906.42), so he is ineligible for income assistance as per section 10 of the EAR.

Panel Decision

The appellant's position that the "reasonableness" of the ministry's reconsideration decision is to be determined without considering the lawfulness of the decision is untenable. His argument essentially invites the panel to ignore the legislative framework from which its jurisdiction and the eligibility criteria for income assistance flow, and to substitute the panel's own notion of what is "fair" or reasonable. The panel does not have the jurisdiction to assess the "fairness" of the legislation. It is also not within our jurisdiction to assess claims of criminal wrongdoing against an appellant. Our jurisdiction is to determine the legislative intent and to apply the legislation reasonably and fairly to the facts and circumstances of the appellant's case so as to reflect the legislative intent.

In the panel's view, section 10 of the EAR is not inconsistent with the intent of the EAA. The EAA does not reveal an intention to provide an unconditional right to income assistance for anyone who is impoverished. Eligibility for income assistance is determined through statutory criteria primarily set out in the EAR in accordance with the regulation-making powers granted to the Lieutenant Governor in Council under section 35 of the EAR. In particular, section 35 authorizes the Lieutenant Governor in Council to make regulations "governing eligibility for income assistance, hardship assistance or a

supplement" and to prescribe "rules for determining the income and assets of a family unit", among other things.

According to section 1 of the EAR the appellant's federal benefits constitute unearned income. Under EAR Schedule B section 1(d) the appellant's net income includes the unearned income constituted by his federal benefits, excluding any applicable prescribed deductions or exemptions. None of these deductions or exemptions apply in the appellant's circumstances. Section 10 of the EAR provides that "income" includes an amount garnished or attached. Section 1(b) of Schedule B provides that any amount garnished or otherwise attached from income is considered to be income, except for deductions permitted by sections 2 [*earned income*] and 6 [*unearned income*] of Schedule B. None of these deductions apply in the appellant's case.

The appellant's income of \$1,332.18 exceeds the amount of income assistance for which the appellant may otherwise be eligible (\$906.42). According to section 10 of the EAR this makes him ineligible for income assistance.

The appellant argued that section 29 of the EAA demonstrates the legislature's intent that income assistance should not be "impeded" by various forms of attachment or garnishment by third parties. The panel notes that section 29(2) of the EAA provides that in specified circumstances income assistance may be retained by government as a deduction or setoff. This does not demonstrate an intention that receipt of income assistance is generally an unconditional right. With respect to attachment or garnishment by non-government third parties, in the panel's view there is no inconsistency in the legislative scheme treating unearned income from outside sources (which is used to assess eligibility for income assistance) differently than it treats income assistance (which becomes payable - subject to legislative requirements - after eligibility is determined).

Based on the foregoing analysis, the panel concludes that the ministry's decision finding the appellant ineligible for income assistance was a reasonable application of the legislation in the circumstances of the appellant.

Hardship Assistance

The appellant advanced no argument with respect to hardship assistance on appeal. At reconsideration the appellant had argued that he had been denied income assistance because he'd applied for income from another source (section 8 of the EAR) and that he should therefore be eligible for hardship assistance in accordance with section 43 of the EAR.

The ministry's position is that the appellant was denied income assistance because of having income in excess of the legislated limit (section 10 of the EAR), and that accordingly section 44 of the EAR determines eligibility for hardship assistance. The ministry argued that having dependent children in the family unit is one of the legislated criteria under section 44, and that since the appellant is a sole applicant he is ineligible for hardship assistance.

Panel Decision

Sections 8 and 43 of the EAR are applicable in circumstances where an individual has applied for income from another source and is waiting for a determination to be made on that application. The appellant falls squarely within the circumstances contemplated by section 44 of the EAR, and it is the appropriate section to apply in the appellant's case. It is a condition of eligibility under section 44(c) that the family unit must contain one or more dependent children. The evidence before the panel

indicates that the appellant has applied as a sole applicant, so his family unit does not satisfy the requirements of section 44(c) since it contains no dependent children. Accordingly, the panel finds that the ministry reasonably determined that the appellant is not eligible for hardship assistance.

Conclusion

For the reasons detailed above, the panel concludes that the ministry's decision is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.