



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of December 30, 2013 wherein the ministry determined the appellant had unearned income, in the form of retroactive Employment Insurance (EI) payments, in excess of the legislated limit and accordingly was ineligible for December 2013 disability assistance pursuant to Employment Assistance Persons With Disabilities Regulation (EAPWDR) Section 9. Section 24 and Schedules A and B of the EAPWDR specify the amount of disability assistance that may be provided to eligible recipients. The ministry held that retroactive EI payments did not fall under the exemption for "other awards" set out in Schedule B section 7(1)(c).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9 and 24, Schedule A and Schedule B, section 7(1).

PART E – Summary of Facts

With the consent of the parties, this hearing was conducted in writing pursuant to section 22(3)(b) of the Employment and Assistance Act.

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

- The appellant has been a sole recipient of disability assistance since an April 2013 reopening of her file, receiving monthly disability assistance of \$906.42.
- On October 9, 2013 the appellant received retroactive employment insurance benefits (EI) totaling \$2,175; the ministry became aware of this on November 13, 2013 and advised the appellant by voice message on November 14, 2013 that this would be deducted from the appellant's December 2013 assistance.
- The appellant's advocate wrote to the ministry on November 20, 2013 and November 26, 2013 disputing the deduction of retroactive EI benefits from the December 2013 disability assistance, arguing that the money should be dealt with under Schedule B section (7)(1)(c) of the EAPWDR.
- The EI payments received by the appellant covered a period of time when the applicant was not receiving disability assistance, in particular, the 15 week period of August 19, 2012 ending December 1, 2012.
- The appellant's 2012 EI claim was initially denied by the EI Commission, and following the rectification of errors made by a prior employer, the claim was paid out retroactively to the appellant.
- The EI payments were deposited into the appellant's bank account on October 9, 2013 and consisted of 8 separate deposits, as confirmed by a photocopy of the appellant's bank statement for October 9, 2013.
- No December 2013 assistance was paid to the appellant, and the advocate was advised of this by telephone on November 26, 2013.
- A request for reconsideration was made by the appellant on November 28, 2013, and a reconsideration decision was completed on December 30, 2013 by the ministry.

The appellant filed a Notice of Appeal of the reconsideration decision, received by the Employment and Assistance Appeal Tribunal on January 17, 2014. A written hearing was requested.

The written submissions of the appellant and the ministry went to argument and contained no new evidence. These will be addressed under Part F below.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision to deny the appellant disability assistance for the month of December 2013. The decision was based on documentation establishing that the appellant received retroactive EI payments in October 2013, exceeding her eligibility for disability assistance in December, 2013. Specifically, the Panel must determine whether the Ministry's decision to deny the EI payments as exempt income under EAPWDR Schedule B, section 7(1)(c) is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the claimant.

Section 1 of the EAPWDR offers the following definition of unearned income:

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 list of numerous types of payment, including]

- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (g) employment insurance;
- (t) any other financial awards or compensation;
- (w) tax refunds.

Section 24 of the Regulation explains how the amount of disability assistance is calculated; it reads: 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 next income determined under Schedule B.

Section 1 of Schedule B of the Regulation goes on to specify how the ministry calculates net income. It states in part:

1. When calculating the net income of a family unit for the purposes of section 24(b) [amount of disability assistance] of this regulation,
 - (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 9.

Section 6, 7 and 9 do not list employment insurance as an allowable exemption.

Section 7(1)(c) of the EAPWDR concerns exemptions to unearned income, and reads, in part,

(1) The following unearned income is exempt:

- (c) a criminal injury compensation award or *other award* except that the amount would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [asset limits] of this regulation...

The appellant's position was set out in a written submission dated January 30, 2013:

- The retroactive EI award relates to an EI claim for the period August 19 through December 1, 2012; during this timeframe the appellant did not receive any form of welfare benefits.
- The appellant agrees with the ministry's finding that the retroactive award falls under paragraph (g) (employment insurance) of the definition of "unearned income" in section 1 of the EAPWDR.
- The appellant agrees with the ministry findings that the retroactive EI award must be treated as

unearned income in the month in which it was received, and not the period of time for which it was issued.

- The appellant maintains her position that this unearned income is exempt as an "other award" under section 7(1)(c) of Schedule B of the EAPWDR.
- Ministry policy concerning Section 7(1)(c) provides examples of one time awards that are exempted as unearned income; this includes insurance settlements. The retroactive EI award is directly analogous to other monies paid out based on insurance principles, and it unreasonable and contradictory to treat the award differently than other insurance settlements.
- A plain reading of section 7(1)(c) does not define "other award" and a lump sum need not fall under paragraph (t) of the definition of unearned income in section 1 of the EAPWDR in order to be exempted under section 7(1)(c) of Schedule B.

The position of the ministry, as set out in the reconsideration decision, acknowledged the appellant's position that the lump sum retroactive EI payment should be exempt as an "other award" under Schedule B section (7)(1)(c), but found that because Section 1 of the EAPWDR specifically lists "employment insurance" (g) as unearned income, and as there are no exemptions for EI payments regardless of the retroactive nature of the payment, the entire amount was to be considered as income. As the \$2,175.00 October 2013 net income exceeded the appellant's \$906.42 assistance rate, no December 2013 assistance was payable to the appellant.

The ministry elaborated on its position in two written submissions:

Ministry submission (written) February 7, 2014

- EI payments are clearly defined in subsection (g) of the definition of "unearned income" under section 1 of the EAPWDR.
- Because these are addressed specifically, EI payments cannot and do not meet the definition of any other financial awards or compensation in subsection (t).
- As the income does not meet the definition in subsection (t), the income cannot be exempted as an "other award" under Schedule B, section 7(1)(c) of the EAPWDR.

Ministry submission (written) February 11, 2014

- The policy for financial awards applies to one time awards. The retroactive EI was not a one-time award, but multiple, consisting of monthly EI payments received in a lump sum.
- Funds are not considered an 'award' simply because they are given to an appellant in a lump sum.

Panel decision

The appellant agrees with the ministry's finding that the retroactive award falls under paragraph (g) (employment insurance) of the definition of "unearned income" in section 1 of the EAPWDR but also argues that it should be captured under EAPWDR Schedule B, section 7(1)(c) – "a criminal injury compensation award or "other award". The appellant writes that the unearned income does not need to fall under paragraph (t) (any other financial awards or compensation) of the definition of "unearned income" in section 1 of the EAPWDR in order to be exempted under section 7(1)(c) as being an "other award".

Employment insurance is listed in section 1 of the EAPWDR as one of the types of payments treated as unearned income. The panel notes that there are items contained within the EAPWDR section 1

definition of unearned income that are also contained within EAPWDR Schedule B section 7(1) -- exemptions for unearned income. For example, awards under the Criminal Injury Compensation Act (now repealed) and its successor the Crime Victim Assistance Program, as well as tax refunds and a tax-related adjustment to Canada Pension Plan benefits are addressed under section 7(1). It is also noted that each exemption is specifically identified by name, and it is reasonable to expect that if employment insurance benefits were intended to be exempt, these would be specifically identified in the same fashion. There is no EI related exemption in Schedule B section 7(1).

The appellant argues that ministry internal policy lists insurance settlements as an example of a lump sum that is both specifically listed under EAPWDR section 1, and by policy, may be considered exempt under "other awards" under Schedule B, section 7. The panel notes that Section 1 of the EAPWDR lists (g) "employment insurance"; this broad wording allows for all types of EI payments, whether monthly or retroactive. Section 1 of the EAPWDR lists (d) "insurance benefits" as plural implying regular payments; this is consistent with the exemption under ministry policy for an insurance settlement (a one-time payment), and why it may be captured as an "other award" under Schedule B section 7(1).

The Panel finds that the ministry reasonably determined the appellant's retroactive EI payments are not exempt income under section 7(1)(c) of Schedule B to the EAPWDR and denied her December 2013 disability assistance in accordance with Sections 9 and 24 of the EAPWDR and that this decision is a reasonable application of the applicable enactment in the circumstances of the claimant. The Panel therefore confirms the ministry's decision.