

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "Ministry") reconsideration decision dated January 3, 2014, which held that the appellant was not eligible for income assistance in January because the appellant's unearned income exceeded the allowable limit to qualify for income assistance under section 10(2) of the Employment Assistance Regulation (EAR). The Ministry held that the appellant's rate of income assistance is \$1015.58 and that in the November the appellant deposited \$3324 in maintenance income and declared the same in December.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 10, 28, Schedule A, sections 2 and 4 and Schedule B, sections 1, 6 and 7.



PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

The evidence before the minister at reconsideration was that as a sole employable recipient with two dependent children the appellant receives \$1015.58 in income assistance and that on November 25, 2013 the appellant deposited \$3324 of maintenance payments in the appellant's bank account and declared the same on December 19, 2013 on her stub submitted to the ministry.

This evidence was supported by:

- copy of income assistance cheque stub dated December 19, 2013
- copy of bank account history detailing deposit of \$3,324
- copy of memo dated December 18, 2013 written by lawyer confirming maintenance payments
- copies of cheques of maintenance payments

The appellant wrote in her notice of appeal that she had received \$3300 but that they did have lots of expenses, in particular a higher hydro bill given that it was winter and that the appellant's children don't have enough money for Christmas and New Year's. The appellant stated that income assistance was needed for kids' school stuff and food money. No further evidence was provided by the appellant other than her statements written on her notice of appeal.

The panel finds as fact that the appellant's income assistance rate is \$1015.58 and that the appellant received maintenance payments of \$3324 in November 2013, which was reported on the appellant's stub the following month.

[REDACTED]

PART F – Reasons for Panel Decision

The issue whether the ministry's decision to deny the appellant income assistance for the month of January because the appellant's unearned income of \$3324 for the month of November exceeded the allowable limits as defined by Section 10 (2) of the EAR was a reasonable application of the legislation.

The relevant legislation is from the EAR:

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 1 of the EAR supplies the definition of unearned income:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: (p) maintenance under a court order, a separation agreement or other agreement;

Schedule B of the EAR outlines what income may be exempted from deduction of income assistance and maintenance monies are not exempted. Under Section 28 of the EAR and Schedule A & B of the EAR, the Ministry deemed that the maintenance monies were unearned income and not exempt from net income calculation, thus resulting in an excess of income to qualify for income assistance.

The ministry position is that the appellant's receipt of \$3324 of maintenance payments in November exceeded the appellant's allowable income for that month. As that income was reported in December, it must be taken into account in determining the amount of income assistance for January. Under section 10 of the EAR, the appellant is thus not entitled to income assistance in the month of January.

The appellant argued that they are in need of income assistance in January in order to pay a hydro bill, provide school supplies and for food money.

The legislation is clear that there is no discretion for the ministry to provide income assistance when non-exempted unearned income exceeds their allowable rate of support and shelter as determined in Schedule A.

The panel found that the evidence supported the finding that the appellant had received maintenance monies defined in Section 1 of the EAR as unearned income in an amount that exceeded her income assistance support. It was noted that the appellant duly reported her receipt of this unearned income on her cheque stub and acknowledged in her notice of appeal the receipt of the monies. The unearned income was not exempt from deduction under Schedule B.

Accordingly, the panel finds that the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.