

### PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) March 17, 2014 reconsideration decision in which the Ministry determined that, in accordance with the Employment and Assistance for Persons with Disabilities Regulation section 1, section 9, section 24 and Schedules A and B, the Appellant’s employment insurance benefit, including deductions, is considered unearned income and must be deducted from the monthly disability assistance the Appellant would otherwise be eligible for.

### PART D – Relevant Legislation

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

## PART E – Summary of Facts

The Appellant did not appear at the hearing. The Panel confirmed that the Appellant was provided with notice of the hearing and then the Panel proceeded in his absence in accordance with section 86(b) of the Employment and Assistance Regulation.

The Ministry had the following evidence for its reconsideration decision:

1. Information from its records that:

- The Appellant is eligible to received disability assistance with a dependent spouse with Persons with Disabilities (“PWD”) designation with no dependent children.
- On February 27, 2014 the Ministry advised the Appellant that he had to declare his gross employment insurance (“EI”) benefit before deductions.
- The Ministry confirmed the Appellant’s weekly EI benefits of \$514 less \$32 income taxes with the federal government. The Ministry was advised that the Appellant had deductions from his EI because of an overpayment.
- The Ministry advised the Appellant that the overpayment amount was not exempt from how it determined eligibility for disability assistance.

2. Copy of EI claim report dated February 25, 2014 with the following information about the Appellant’s benefits: benefits started January 19, 2014 and expire on January 24, 2015; the benefit rate is \$514 per week with 28 weeks of entitlement; the first week of February 9, 2014 the gross benefit was \$514; the second week of February 16, 2014 the gross benefit was \$514; on February 23, 2014 a payment of \$558 was issued.

3. The Appellant’s request for reconsideration in which he wrote that:

- In an effort to be transparent will all monies he receives, it became known to him that some deductions to his EI earnings were not claimed; the deduction was for repayment of family maintenance arrears.
- At the time he filed for assistance with the Ministry, he was not aware that there would be a garnishment of his EI benefits.
- He received his EI payment on February 25, 2014 for the weeks of February 9 and 16 totally \$596 not \$986 (after income tax deductions), as he declared to the Ministry when they filed for help in the way of assistance.
- He was unaware of any garnishment at the time and for that he apologizes; it was not his intent to make this process any more complicated that it has become.
- He assured the Ministry that he did not receive a lump sum EI payment because EI does not give lump sum payments unless repaying for any arrears; he has not been informed of any lump sum payment and submitted a bank statement showing all money directly deposited from EI.
- His goal is not to rely on the Ministry funding to exist; unfortunately at this time, this is not the case, but all avenues are being explored, including participating in programs offered by a provincial program and getting any retraining that may be available.
- He and his wife are facing eviction from their home due to garnishment of his EI and are unable to pay rent; they now have a monthly income that is less than that eligible from the Ministry.

4. Copy of Appellant’s bank statement dated March 4, 2013 showing a deposit from the federal government for EI for \$558 on February 25, 2014.

In his notice of appeal, the Appellant wrote that since the latter part of January 2014, when he applied for disability assistance, he received 2 checks from EI. One check was for the entire month of February totaling \$596 and the gross amount was higher - \$986 before deductions. This gross amount was still less than what the two of them would have received in monthly PWD assistance by about \$286. Until March 24, 2014 he received only one EI check. This has been over a period of over 2 months and their income from EI would now look more like a net income well under the Ministry amounts, by far more than \$286. As of March 25, 2014 he received his second EI payment. Taking that into account and adding the 2 EI payments together of \$596 net or \$986 gross – the payment received for the entire month of February plus \$748 net and \$986 gross – the payment received for March, the total is \$1,344 of actual money received over the past 2 months. The Appellant submitted a copy of his bank statement showing a deposit on March 11, 2014 for \$748 for EI benefits.

The Appellant also stated that he understands that the Ministry's legislation is worded so that his EI conflicts with it. But he is also aware that without further continued assistance from the Ministry they will undoubtedly be left with no home nor the means to feed or clothe themselves. He wrote that he continues to sign promises to repay all monies and only hopes that they can work together through this very difficult and incredibly stressful time.

The Appellant made notes on two documents. On the EI claim report he referred to the 2 payments for \$514, underlined the February 23, 2014 amount of \$558 and wrote "these amounts totaled saw a payment issue for the amount underlined". On the first page of Appendix A of the reconsideration decision, after the 2<sup>nd</sup> paragraph of the Background section, the Appellant wrote "As of March 2014, please note that I have received No notice of any over payment from EI and thus no overpayment deductions have been made". After the 3<sup>rd</sup> paragraph under Legislation, the Appellant wrote "For Feb. the gross EI was only \$986 and as such shouldn't a top up be issued?"

Since the Appellant did not appear at the hearing, the Panel will consider the information in his notice of appeal to be his submissions for the appeal hearing. The Panel finds that the Appellant's written statements in his notice of appeal provide additional details about his EI benefits. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the written statements as being in support of evidence that was before the Ministry at reconsideration.

At the hearing the Ministry reaffirmed its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant and his spouse are eligible for \$1270.58 a month in disability assistance as a family unit of 2 adults.
2. Starting on January 19, 2014 the Appellant was eligible for \$514, less \$32 income taxes, for 28 weeks in weekly EI benefits.
3. For the week of February 9, 2014 the gross benefit was \$514 and for the week of February 16, 2014 the gross benefit was \$514.
4. On February 25, 2014, the Appellant received \$558 in EI benefits.
5. On March 11, 2014, the Appellant received \$748 in EI benefits.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether Ministry reasonably determined that, in accordance with the EAPWDR section 1, section 9, section 24 and Schedules A and B, the Appellant's employment insurance benefit, including deductions, is considered unearned income and must be deducted from the monthly disability assistance the Appellant would otherwise be eligible for.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

### *Definitions*

1(1) In this regulation:

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

(g) employment insurance.

### *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.

### *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 A – Disability Assistance Rates (section 24(a)).*

Monthly support allowance

2 For family unit of two recipients - \$700.56.

Monthly shelter allowance

4 For family unit of two recipients - \$570.

### *Schedule B – Net Income Calculation (section 24(b))*

1 Exemptions from income.

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits.

7 Exemptions – unearned income.

### *The Parties' Positions*

The Appellant submitted that the gross amount of EI benefit he receives in a month is less than the \$1270.50 in disability assistance that he is eligible for. He stated that in February 2014 he received \$986 gross - \$596 net in EI benefits and in March 2014 he received \$986 gross - \$748 net in EI benefits. He also submitted a copy of a bank statement showing a deposit of \$558 in EI benefits on February 25, 2014 and a copy of a bank statement showing a deposit of \$748 on March 11, 2014..

The Ministry's position is that the Appellant's monthly \$2056 EI benefit is considered unearned income and therefore is not exempt from the net income calculation for disability assistance under Schedule B of the EAPWDR. The Ministry noted that under section 9(1) of the EAPWDR income includes an amount garnished from the income of a recipient. The Ministry determined that, except for income tax deducted from the EI benefit, the Appellant's EI benefit, including the garnishment for family maintenance arrears, must be deducted from the Appellant's disability assistance under section 24 of the EAPWDR. Therefore, under section 9(2) of the EAPWDR, the Appellant is not eligible for disability assistance because his monthly EI benefit of \$2056 exceeds the \$1270.56 in disability assistance his family unit would be eligible for under Schedule A of that regulation.

#### *The Panel's Findings and Conclusion*

In his notice of appeal, the Appellant stated that his gross EI benefit for February and for March 2014 was \$986; however, he provided no documentation to support those amounts. He also provided no documentation to support the net EI benefit figures he cited. The Panel finds that the only documents in the record regarding the Appellant's EI benefit amounts are the EI Claim Report and the copies of the Appellant's bank statement showing the \$558 deposit on February 25, 2014 and the \$748 deposit on March 11, 2014. There is also evidence that the Ministry confirmed the amount of the Appellant's benefits with the federal government. The Panel gives these two records and the Ministry's confirmation more weight than the information provided by the Appellant. Based on the EI Claim Report and the Ministry's confirmation, the Panel finds that the Appellant is eligible for \$514 a week, less \$32 taxes, in EI benefits, or \$2056, less \$128 taxes, for a 4 week month.

Section 24 of the EAPWDR provides that disability assistance may be provided to or for a family unit, for a calendar month in an amount that is not more than the amount of assistance determined under Schedule A minus the family unit's net income determined under Schedule B. Under Schedule A, the Appellant's family unit is eligible for \$1270.50 a month in disability assistance. The Appellant receives EI benefits of \$2056 a month, which is defined as unearned income under section 1 of the EAPWDR and which under section 9(1) includes any amount garnished. Schedule B lists various exemptions and deductions which may be applied to the calculation of net income. The Panel finds that the only one applicable to the Appellant's circumstances is section 6 (a); that is, any income tax deducted at source from employment insurance benefits. Therefore, the Panel further finds that the Ministry reasonably determined that under section 9(2) of the EAPWDR, the Appellant is not eligible for disability assistance because his monthly net unearned income in the form of EI benefits exceeds the monthly disability assistance his family unit would be eligible for under Schedule A of that regulation.

Having reviewed and considered all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore the Panel confirms that decision.