

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated January 14, 2014 which denied the appellant eligibility for her January 2014 disability assistance because she received income in excess of the legislated limit. The ministry determined that the appellant's \$1150 in casino earnings meets the legislated definition of unearned income and must be deducted dollar for dollar without exemptions as per Sections 1 and 9 of the *Employment and Assistance Person with Disability Regulation (EAPWDR)*. Her unearned income of \$1150 exceeds her assistance rate of \$906.42, therefore she is not eligible for her January 2014 disability assistance.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 1 and 9, and Schedule B.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

- 1) A copy of an assistance cheque for December 2013 in the name of the appellant, which shows a total allowance of \$941.42
- 2) A declaration form (stub) completed by the appellant which shows income of \$1150 and a note written directly below stating "gave \$50 to staff as gratuity".
- 3) A letter written in the appellant's hand writing, signed and dated December 4, 2013. The letter is addressed to the ministry and states that she won approximately \$1150 at the casino, if any money is to be deducted from her cheque she requests that it be a small amount each month over the next year and that the ministry respond to her letter in writing.

A Request for Reconsideration signed and dated December 30, 2013 in which states the appellant she:

- Did not know that the funds she reported would be considered unearned income and she had no knowledge of this;
- Reported \$1150 not the amount the ministry wrote;
- Requested a reply to her letter in writing and this did not happen;
- Is facing hardship and stress as a result of the ministry's decision and this is not healthy for a person with pain and disability issues;
- Is attending counselling due to this situation;
- Requests benefits under appeal;
- Requests an explanation of what "an asset in the second month" means;
- Has no advocate available to her due to the Christmas season;
- Has to pay her rent; and
- Thought she was only over by \$350 and only that amount would need to be repaid.

In the Notice of Appeal signed and dated January 17, 2014, the appellant states:

- "discrimination – no other person has their wages or income deducted (from casino winnings)";
- "Human Rights - the right to have an asset of \$5000"; and
- "I received no notice from the ministry as to what is considered earned or unearned income";
- "Not enough time to obtain an advocate".

At the hearing the appellant summarized her health issues for the panel. Her summary included the following:

- She is a single mom who has invisible disabilities that were the result of health and safety inadequacy in her former profession;
- As a result, she learned to reinvent herself, went back to school and found a new field of employment;
- Unfortunately, this new field also had many health and safety inadequacies which lead to further injury;
- She found herself without support, in pain and does not think she can reinvent herself again;
- For 2 years she could not do anything and spent that time in a reclining chair;

- After she was introduced to gambling, she found it therapeutic as it keeps her mind off of her pain;
- At the casino she can walk around or sit as there is seating everywhere; and
- She understands that gambling has become a crutch and has sought out counselling.

The appellant reiterated the facts listed in her request for reconsideration, the notice of appeal and the letter dated December 4, 2013, and added to this the following information:

- She thought it was best to declare her earnings as she wanted to keep things on the up and up;
- She won \$1150 and thought the earnable allowable limit was either \$500 or \$800, with an allowable asset limit of \$5000, and thought that ministry included money as an asset;
- She thinks her money is an asset and wants it to be considered as such, if not considered an asset, she wants it deducted in small increments;
- She wanted a small amount deducted from her cheque every month for one year to make the balance after her allowable limit, which she requested in writing;
- She requested a response in writing but received a phone call from a ministry representative who appeared to be reading from a manual and she could not understand most of what was said to her; and
- In the past she has worked, earning anywhere from \$200-\$300 and this amount has never been deducted from her assistance, and she questions why casino earnings would be different.

At the hearing the ministry relied on the reconsideration decision, provided definitions for earned and unearned incomes, and added the following:

- The appellant's denial is not based on whether or not the earnings are an asset, this decision is solely about unearned income;
- It is ministry policy to deduct unearned income from one assistance cheque rather than in small amounts over the year; and
- The appellant's past earning of \$200-\$300 were earned through employment. As an incentive to encourage recipients to work, employment earnings are not deducted unless they exceed \$800.

#### *Admissibility of New Evidence*

The Ministry did not object to the admittance of new evidence.

The panel found that the appellant's summary of her health issues was not in support of the issues addressed in the reconsideration. Accordingly, the panel did not admit this new evidence as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated January 14, 2014, which held that the appellant is not eligible for disability assistance for January 2014, pursuant to Sections 1 and 9 of the EAPWDR. The ministry determined that the appellant's \$1150 in casino earnings meets the legislated definition of unearned income and must be deducted dollar for dollar without exemptions as per Sections 1 and 9 of the (EAPWDR). Her unearned income of \$1150 exceeds her assistance rate of \$906.42, therefore she is not eligible for her January 2014 disability assistance.

The following sections of the *EAPWDR* apply to this appeal:

### **Section 1: "earned income" means**

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (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;

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;

- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;**
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds.

### **Section 9: Limits on income**

- (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 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.

### **Schedule B**

#### **Deduction and exemption rules**

**1** When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3, 3.1 and 4, and
- (d) all unearned income must be included, except the deductions permitted

under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

### Exemptions — unearned income

7 (1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that 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;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for

- (i) disability-related costs,
- (ii) the acquisition of a family unit's place of residence,
- (iii) a registered education savings plan, or
- (iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

- (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,
- (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or
- (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(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*;

(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that  
(A) is not assignable, commutable or transferable, and  
(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement.

agreement.

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

*The Appellant's Position:*

The appellant's position is that she was not informed that the casino earnings would be considered unearned income. She argues that she thought her money was earned income which would mean \$800 would be allowable and she would only need to repay \$350, which she wants to do over the period of a year. If her money is not earned income, the appellant argues that the money should be considered an asset, which would fall under the \$5000 allowable limit.

*The Ministry's Position:*

The ministry's position is that any money or value received from playing at the casino meets the legislated definition of unearned income as it comes from playing the lottery or games of chance; therefore, the ministry considers the \$1150 the appellant received to be unearned income. Since there are no exemptions that apply to this income, the entire \$1150 must be deducted from the appellant's disability assistance which leaves her ineligible for her January 2014 assistance. Lastly, the ministry argues that it is ministry policy to deduct unearned income in one month.

*The Panel's Decision:*

The appellant argues that casino earnings should not be considered unearned income rather they should be considered an asset and fall within the \$5000 limit or earned income with an allowable limit of \$800. Section 1 of the EAPWDR sets out many examples of unearned income, which includes (r) lottery or games of chance. The panel finds that the evidence demonstrates that casino earnings are defined as money received from lottery or games of chance and therefore are considered unearned income and cannot be considered earned income or an asset. Section 9 of the EAPWDR sets out that if the income of a family unit, in this case the appellant, exceeds the amount of disability assistance the family unit is eligible for, the family unit is ineligible for the disability assistance. The panel finds that the evidence establishes that the appellant is not eligible for disability assistance since her casino income exceeds her disability assistance amount. In its reconsideration decision, the ministry argues that the entire \$1150 casino income must be deducted from the appellant's disability assistance as there are no exemptions that apply to this amount. Section 7 of the Schedule B of the EAPWDR sets out the exemptions that apply to unearned income. The panel finds that the evidence establishes that the appellant's \$1150 casino income does not qualify for any legislated exemptions and that pursuant to Section 9 EAPWDR, not just ministry policy, the entire amount must be deducted from the appellant's disability assistance.

**Conclusion**

The evidence establishes that the appellant's casino earnings are unearned income, that they exceeded the appellant's disability assistance amount and must be deducted from her disability



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assistance. The panel therefore finds that the ministry's decision to determine that the appellant is ineligible for disability assistance for January 2014 was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision.