

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 1, 2014 which found that the appellant is not eligible for assistance, pursuant to Section 9 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), for the month of March 2014 as her net income in January 2014 exceeded her assistance rate.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9, and 29, and Schedules A and B

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) From the ministry's file: The Family Maintenance Enforcement Program (FMEP) provided information to the ministry that the appellant was in receipt of maintenance as per a court order filed with them. They disbursed \$408.61 on December 31, 2013 and \$427.61 on January 14, 2014. The appellant provided a December 2013 bank statement showing she received an early maintenance payment in December 2013 but she did not receive the December 31, 2013 disbursement in December 2013. The ministry concluded that the appellant received the December 31, 2013 disbursement in January 2014 along with the January 14, 2014 disbursement for a total amount of \$836.22 in maintenance payments;
- 2) Personal/Business Deposit Account Statement Update for the period December 1 through December 31, 2013 showing a deposit from FMEP on December 13, 2013 in the amount of \$636.14 and no other deposits by FMEP in the month, with handwritten notes added to the statement;
- 3) Family Maintenance Payment History dated March 12, 2014 for the period November 2012 through April 2014, indicating in part a payment amount of \$636.14 on December 12, 2013, \$408.61 on December 31, 2013 and the sum of \$427.61 on January 14, 2014, all payments being for arrears as opposed to regular payments;
- 4) Letter dated March 19, 2014 from the third party administrator to the ministry enclosing the appellant's second Request for Reconsideration; and,
- 5) Request for Reconsideration- Reasons dated March 16 and March 18, 2014.

In her Request for Reconsideration dated March 16, the appellant wrote that:

- She uses funds when she gets them and depends upon getting the next amount. She lives in the 'now' and she never has enough.
- She needs the money for March 2014 since she did not get any money for over a month.
- She needs gas for her car.
- She feels the funds are wrongfully taken from her since they are arrears from when she worked.
- She is homeless because of this and not because she does not pay. She does pay when she gets it, but rent needs to be paid by the 1st and it did not come until the 11th and was too late.
- January was paid and the building was sold which created a mix-up.
- People need reliable and stable pay to deal with the normal, daily expenses. She had managed to get all under control and the ministry sabotaged her.
- She has not received the adequate amount of funds she is legally entitled to get and it is over one month since she had anything. She would not be homeless if she had received monies and she is in a bad place for any female.
- She hopes the ministry will give her the support of \$500 for the month of March. She needs the money and depends upon it.
- The amount paid is arrears and not 'now' money.

In her Request for Reconsideration dated March 18, the appellant wrote that:

- She is grateful that the respondent with the Family Maintenance Enforcement Program (FMEP) "again pulled a fast one and quit" and there are no more funds from FMEP. She can again expect a certain amount and no surprises.
- She never had her rent on time or had any idea when she would have it. She did not have

February 1st rent on time and has not paid for March and she will stay until the bailiff moves her out since she has been told 'no storage, no moving truck.'

- There is no place to rent for \$375 per month.
- This has destroyed her monthly auto plan.
- The ministry took her support from her "X" which was for "default fees."
- Her cell phone cost \$35 plus taxes and costs over \$40 for the month.

In her Notice of Appeal dated April 9, 2013, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that the FMEP payments stopped and she has had no actual monies, disability assistance or maintenance, since February 11, 2014.

At the hearing, the appellant stated that:

- The last money she received was on February 11, 2014 and the payments have stopped.
- The money from FMEP was not regular. It was OK when they paid every two weeks, but then it changed to once per month. Some of the money went to 'default' fees and she did not see any of it.
- She did not have enough money to pay her rent, because the February 11, 2014 payment was too late, and she got evicted.
- She thinks the system should be changed so that the ministry and FMEP ensure regular payments to a person. It is impossible to plan when a person does not know how much money will be received. Bills need to be paid when they are due.
- The FMEP was garnishing her ex's pay, but he quit his job and now there is no more money.
- She did not get assistance for March, which would have been paid at the end of February yet the money from FMEP was received in January 2014 which does not make sense to her.
- The payments from FMEP were deposited directly into her bank account but there was sometimes a delay of up to 3 days from the date of the payment until she received the funds.
- It took 3 days for her to get the funds that were paid by FMEP on December 31, 2013.
- She believes the FMEP payments should not be deducted from her assistance since she worked full-time, raising her kids and these payments should not be taken away from her.
- She is now living in her car.

The ministry relied on the facts as set out in its reconsideration decision.

- The appellant is a single recipient of disability assistance.
- The appellant's assistance rate is \$561.42, composed of support allowance of \$531.62 and \$30 for her actual shelter costs.

At the hearing, the ministry clarified that:

- If the appellant can show that her actual shelter costs are higher, because her cell phone bill is more than \$30 each month, she can be in contact with the local ministry office to see about increasing her shelter allowance.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance, pursuant to Section 9 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), for the month of March 2014 as her net income in January 2014 exceeded her assistance rate, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

Section 9 of the EAPWDR provides that:

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 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 A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided but, otherwise, all earned and unearned income *must* be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

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

- (a) the following are exempt from income: ...
- (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,
- (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.

Section 9 of Schedule B of the EAPWDR provides:

Application of deductions and exemptions

- 9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:
- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.
- (2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

Section 1(1) of the EAPWDR defines "unearned income" to mean:

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.

Ministry's position

The ministry's position is that the appellant is a single recipient of disability assistance with her shelter allowance currently set at \$30 as her actual shelter costs and she is, therefore, eligible for a total allowance of \$561.42 per month under Schedule A of the EAPWDR. The ministry argued that in determining net income under Schedule B, all unearned income must be included, which has been defined in Section 1 of the EAPWDR to include, without limitation, money or value received from maintenance under a court order, a separation agreement or other agreement. The ministry argued that the total net amount of the appellant's income calculated under Schedule B is \$836.22 in maintenance payments received by her in January 2014. At the hearing, the ministry clarified that the relevant date for calculating net income is the date that the money is received and not the date that it is payable. The ministry argued that there are not any permitted exemptions for or deductions from maintenance payments. The ministry pointed out that income is to be reported by the 5th day of the month following the month the income is received and the income is calculated for the following month

of assistance, so that income received in January 2014 is applied to March 2014 assistance. As the monthly net income of the appellant's family unit (\$836.22) exceeded the disability assistance rate (\$561.42), the appellant was not eligible for assistance for the month of March 2014, pursuant Section 9 of the EAPWDR.

Appellant's position

The appellant does not dispute that she was in receipt of maintenance payments in January 2014 in the total amount of \$836.22 but argued that the payments from FMEP were irregular and caused hardship to her as she defaulted on her rent and was evicted and is now "in a bad place for any female." The appellant argued that the FMEP payments should not be deducted from her assistance since she worked full-time raising her kids and these are arrears payments because her ex-spouse defaulted in his payments and these should not be "taken away" from her by being deducted from her assistance entitlement. The appellant did not dispute that her disability assistance amount is currently \$561.42 but she argued that her cell phone bill is actually \$35 per month plus the applicable taxes and that this amount should, therefore, be higher. The appellant argued that she has not received any income since February 11, 2014 and it is unfair to expect anyone to go without income for that long.

Panel decision

The appellant does not dispute that, in January 2014, she was in receipt of maintenance payments by direct deposit to her bank account in the total sum of \$836.22, paid pursuant to a court order, a separation agreement, or other agreement filed with the FMEP. Under Section 1(d) of Schedule B of the EAPWDR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted and, given the directory language of the Section 1 (i.e. the use of the word "must"), the ministry does not have the discretion to do otherwise. According to Section 1(1)(p) of the EAPWDR, "unearned income" is defined to mean any income that is not earned income and includes, without limitation, money or value received from any of the following: "...maintenance under a court order, a separation agreement or other agreement." The appellant argued that the FMEP payments should not be deducted from her assistance since she worked full-time raising her kids and these are arrears payments because her ex-spouse had earlier defaulted in his payments and should not be "taken away" from her assistance entitlement. As stated by the appellant, the Family Maintenance Payment History for the period November 2012 through April 2014, indicates that both payment amounts of \$408.61 on December 31, 2013 (deposited in her bank in January 2014) and the sum of \$427.61 on January 14, 2014, were for "arrears" as opposed to regular, ongoing maintenance payments. However, the wording in Section 1(1)(p) of the EAPWDR includes "maintenance" and there is no distinction provided in the current legislation between maintenance from ongoing payments or from arrears, and the panel finds that the ministry reasonably determined that the maintenance payments received by the appellant are, therefore, specifically included within the definition of "unearned income."

The panel finds that the relevant date for calculating net income is the date that the money is "actually received," as set out in Section 9(1) of Schedule B of the EAPWDR and not some other date such as the date that it is payable or when it is sent. The panel finds that the ministry was reasonable in considering the December 31, 2013 payment for \$408.61 as shown on the FMEP History to have been received by the appellant in January 2014 as it did not appear on her December bank statement, and the appellant admitted at the hearing that it was deposited into her account in January 2014. Combined with a payment of \$427.61 on January 14, 2014, the total FMEP amount is \$836.22. The appellant did not argue that there are any specific deductions permitted or income exempted under

the legislation and, having reviewed the deductions permitted under section 6 and the income exempted under sections 7, 7.1, 7.2 and 8 of Schedule B, the panel finds that the ministry reasonably concluded that there are not any permitted exemptions for or deductions from maintenance payments. Therefore, the panel finds that the ministry reasonably concluded that the appellant's monthly net income for January 2014 (\$836.22) exceeded the disability assistance rate for the month (\$561.42) and the appellant was not eligible for assistance for the month of March 2014, pursuant Section 9 of the EAPWDR.

The appellant raised a couple of issues that were beyond the scope of the panel's jurisdiction on this appeal, including that the payments from FMEP were irregular and caused hardship to her as she defaulted on her rent and was evicted and is now "in a bad place for any female," and that her actual shelter costs are higher. The ministry clarified at the hearing that if the appellant can show that her actual shelter costs are higher than the \$30 as currently established, she can be in contact with the local ministry office to request an increase in her shelter allowance.

Conclusion

The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.