

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 23, 2014 which found that \$500 from a Life Income Fund (LIF) paid to the appellant must be deducted from the amount of disability assistance payable, pursuant to Section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9, and 24 and Schedules A and B

PART E – Summary of Facts

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

- 1) Letter dated March 24, 2014 from the appellant's physician 'To Whom It May Concern' stating that the appellant is unable to perform any physical work due to medical reasons;
- 2) Letter dated April 8, 2014 to the ministry from the appellant ; and,
- 3) Request for Reconsideration dated April 8, 2014.

In his letter submitted with the Request for Reconsideration dated April 8, 2014, the appellant wrote that:

- He feels the ministry's decision is unfair, prejudicial and uncaring to his individual disability obstacles and there must be room for movement in a specific individual case.
- His doctor has told him that physical labour is to be avoided for fear of another hospital stay.
- There is no non-physical employment available in his community and he has to take the extra money to get his transportation and ramp system for his van going to be able to transport his scooter.
- In his opinion and that of labour, government and legal officials he has spoken with, pension monies are an "earned income" in the case of special needs emergency funds such as his.
- He worked hard for this money and is currently paying taxes on it as he draws it out.
- He is seeking special consideration to allow him to be financially capable of seeking employment. He was originally getting \$881 per month in disability funds. The extra \$500 from his LIF would give him a livable income to do what he has to do to get full-time employment. With the \$500 penalty, he is right back and even deeper in the same hole, not nearly livable.
- He has tried to get a grant for retraining or upgrading of his current skills, with no success.
- He and his OT ("Orthopedic Therapist") and doctor applied for a scooter and MSP told them the closest that might be available is a manual wheelchair. He found funding for a scooter from another organization.
- He needs the extra \$500 for him to end up at his final goal which will lead to full-time employment.

In his Notice of Appeal dated May 5, 2014 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- The definition of "earned income" can be widely interpreted to suit any specific situation.
- He worked long and hard for many years to build this money with no taxes being deducted and no money in pocket but, rather, placed into a forced retirement pension plan.
- When he pulled this money from the superannuation plan to put into investments, he lost the B.C. government portion of contributions which he disagreed with. The money was then frozen for 10 years and he needed the money and would not have been in this predicament if he had access to it.
- He has to pull out a small portion of the money every month to try to slowly get ahead to be able to seek employment without jeopardizing his senior years, and he is being penalized.
- The small amount of money he is receiving each month is being taxed and taxed money is "earned income" whether it is past, present or future.
- He needs a reprieve for one year retroactive to January 2014 and it will allow him to be back work.

At the hearing, the appellant provided a written submission on his behalf dated May 29, 2014. The ministry had no objections to the submission. The panel considered the submission as part of the appellant's argument, containing no new evidence.

In his submission dated May 29, 2014, the appellant wrote that:

- He had no choice but to get a part-time physical job, against his doctor's advice, which placed him in the hospital for two weeks.
- There is no office work nearby and he had to dip into his retirement LIF in the amount of \$500 per month so that he can get his transportation problems solved to get full-time work. This is a temporary necessity.
- This is not "unearned" money since, when he worked for a municipality, his employer matched his contribution. When he pulled out his portion to put into investments the B.C. government froze his portion for 10 years and took away his employer portion. If he had that share, this would not be happening.

At the hearing, the appellant stated that:

- He had to get a part-time job at the end of last year and he ended up in the hospital with an infection.
- He cannot use his legs very well and any exertion is a problem. He cannot do physical work.
- He has training in computer work but he has not been able to find anything in his area and no other office or clerical work.
- He had to open his LIF, which is really a fund for his retirement.
- A person with disabilities is allowed to earn up to \$800 per month in income because that is considered "earned" income, but the payment from his LIF should be considered the same in his case. The \$500 each month will help him to get employment.
- He managed to get a scooter to get around in his local area. He wants to be involved in areas where his training lies, but there is no transit and he needs to get a ramp system for his van.
- When he was working, money was put into the pension plan and was automatically deducted from his pay. He was not taxed on that money.
- The pension was only paying 1% and he took his portion out and had an investor put it into a locked-in investment which has done much better.
- Now that he is taking out \$500 per month, he is being taxed on it and many people agree that it is "earned" money.
- He needs the extra \$500 per month to help him "get going again." He feels like a prisoner in his own house and desperately wants to work.

The ministry relied on its reconsideration decision. The ministry provided information that:

- The appellant is a single recipient of disability assistance and his total monthly allowances and support of \$531.42 plus shelter of \$350 for a total of \$881.42.
- For the month of March 2014, the appellant was eligible for the reduced sum of \$381.42 since the \$500 received from his LIF was deducted as unearned income.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that \$500 from a Life Income Fund (LIF) must be deducted from the amount of disability assistance payable, pursuant to Section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 24 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) provides:

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 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 for 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 1 of the EAPWDR defines "unearned income" as:

"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 1 of the EAPWDR defines "unearned income" as:

"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;

Ministry's position

The ministry's position is that the amount of \$500 received by the appellant in January 2014 from an LIF must be deducted from the amount of disability assistance payable for the month of March 2014 pursuant to Section 24 of the EAPWDR. The ministry argued that disability assistance may be provided for a calendar month in an amount that is not more than the amount determined under Schedule A (\$881.42) minus the net income of the family unit determined under Schedule B (\$500). The ministry argued that, under Schedule B, all unearned income must be included except the deductions permitted under Section 6 and any income exempted under Section 7, 7.1, 7.2 and 8. The ministry argued that the definition of "unearned income" means any income that is not earned income and includes, without limitation, money or value received from money, annuities, stocks, bonds, shares, and interest-bearing accounts or properties. The ministry argued that an LIF payment is defined as an annuity and, as such, is unearned income for which there are no exemptions. The ministry argued that the legislation does not provide discretion for the ministry to exempt this income regardless of the type of disability the recipient has.

Appellant's position

The appellant acknowledged that he was in receipt of an LIF payment in January 2014 for \$500 and

he does not deny that annuities are specifically included in the definition of "unearned income" in Section 1 of the EAPWDR. The appellant argued, however, that the definition of "earned income" is very broad and the ministry has the discretion to consider the LIF as falling within this definition in his individual case so that the \$800 exemption per month would apply. The appellant argued that the ministry must start looking at disability cases individually and with much more care and compassion since no two disability cases are alike and cannot be lumped together. The appellant argued that he earned the LIF funds when he was working for a municipality and was not taxed on the amounts automatically deducted from his pay; now that he is withdrawing the funds monthly he is being taxed on these amounts and many people agree that this constitutes "earned income." The appellant also argued that he needs the extra \$500 per month on a temporary basis to allow him to obtain a ramp system for his van to transport his scooter and facilitate getting employment in his field.

Panel's decision

The appellant admits that, in January 2014, he was in receipt of an LIF payment in the total sum of \$500. 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, according to Section 1 of the EAPWDR, "unearned income" is defined to include, without limitation, money or value received from "money, annuities, stocks, bonds, shares, and interest bearing accounts or properties." The appellant argued that his LIF can be included within the definition of "earned income" since it was part of his compensation from his previous employment, and the amount of money he is receiving each month is being taxed and taxed money is "earned income" whether it is past, present or future. The panel finds that the ministry reasonably determined that the LIF is an annuity and included in the definition in Section 1(a) of the EAPWDR, which lists several types of investments. The appellant acknowledged that he withdrew his portion of the retirement fund and invested it and is now receiving continuing payments from his LIF investment.

Although the appellant argued that the ministry has discretion to consider his LIF as "earned income" in his situation, the panel finds that the ministry reasonably concluded that the legislation does not provide discretion for the ministry to disregard part of the prescribed definition of "unearned income" or to add an exemption for this type of income regardless of the nature of the recipient's disability. The use of the word "must" in Schedule B of the EAPWDR requires the ministry to include all unearned income in the calculation of the net income of a family unit. The appellant did not argue that any of the deductions in section 6 or exemptions in sections 7, 7.1, 7.2 or 8 of Schedule B apply, and the panel finds that the ministry reasonably determined that there are no deductions or exemptions provided for annuities in these sections. The panel finds that the ministry reasonably concluded that the \$500 from an LIF paid to the appellant must be deducted from the amount of disability assistance payable, pursuant to Section 24 of the EAPWDR.

Conclusion

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry reconsideration decision.