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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 July 24, 2014, in which the ministry found the appellant was not eligible for income assistance for the month of July 2014, per Section 10(2) of the Employment and Assistance Regulation. Specifically the ministry determined that the Family Maintenance Enforcement Payment received by the appellant was not exempt from the income calculation and, therefore, the appellant’s net income for May exceeded the amount of income assistance determined for the appellant’s family unit under Schedule A of the Regulation.

PART D – Relevant Legislation

Employment and Assistance Act, (EAA) Sections 1, 2, and 4
Employment and Assistance Regulation (EAR) Sections 10(2), 28, and Schedules A and B

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted in writing pursuant to section 23(3)(b)

Evidence before the ministry at the time of Reconsideration includes the following:

- The appellant is a sole recipient with Persons with Persistent Multiple Barriers (PPMB) level of assistance with income assistance calculated at \$657.92 (Monthly Support of \$282.92 + Monthly Shelter Allowance of \$375).
- Family Maintenance Payment History (Query), dated July 11, 2014, showing 3 payments on April 14, 2014 (\$75.00), May 20, 2014 (\$1,010.42), and May 26 (\$416.90).
- Family Maintenance Payment Summary, dated July 11, 2014, showing 4 payments “Sent to Client” – Aug 2012 (\$69.48), Nov 2012 (\$163.73), June 2014 (\$75.00), and July 2014 (\$1,427.32) and 4 payments “Declared by Client” – Sept 2012 (\$69.48), Oct 2012 (\$69.48), Nov 2012 (\$163.73), and Dec (\$163.73).
- From the ministry section of the appellant’s Request for Reconsideration, dated July 11, 2014:
 - On June 23, 2014 the ministry reviewed the Family Maintenance Discrepancy Report and found that the appellant had received a total of family maintenance of \$1,427 but did not declare the amount in her monthly report card.
 - On June 26, 2014 the appellant came to the ministry and was informed that she was not eligible for the month of July because the family maintenance amount is more than the amount of income assistance determined under the EAR.
- In her Request for Reconsideration, the appellant states:
 - When she went to get her June cheque, there was extra money in her account. When the appellant got home she got the letter saying she was accepted for disability. She thought the extra money was backdating of her disability and figured that, after receiving only \$235 a month for almost 3 years, she could finally help her kid. Because her daughter was reconciling with her husband, she gave them one-half of the money.
 - When the appellant went to get her July cheque, she was informed that there was no cheque because the extra money was a Family Maintenance Enforcement Plan deposit.
 - She has received a 30-day notice of eviction from her landlord.

The ministry stated, via e-mail dated August 21, 2014, that its submission in this matter will be the reconsideration summary provided in the Record of the Ministry Decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for income assistance for the month of July, per s.10(2) of the Employment and Assistance Regulation. Specifically the issue is whether the ministry determination that the FMEP payment received by the appellant was not exempt from the income calculation and, therefore, the appellant's net income for May exceeded the amount of income assistance determined for the appellant's family unit under Schedule A of the Regulation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant..

Relevant Legislation

Employment and Assistance Regulation

Definitions

1 (1) In this regulation:

"**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;

Limits on income

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.

Amount of income assistance

28 Income 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 B – Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(a) the following are exempt from income:

[*A list of 42 exemptions relating to dependent children and child support, tax credits, payments to specifically identified groups, BC earned income benefit, rent subsidies, self-help support, and PharmaCare refunds. None of these exemptions are applicable in the*

present appeal]. Included in the list is:

- (xxvii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
- (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 of this Schedule,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Deductions from unearned income

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

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (1) The following unearned income is exempt:

[A list of 6 exemptions relating to mortgage interest, veterans benefits, criminal injury compensation or other awards, payments made from certain trusts, structured settlement annuity payments, a portion of CPP benefits and a tax refund. None of these exemptions are applicable in the present appeal].

The legislation exempts income received from the calculation of net income if it meets any of the criteria defined in Schedule B, Section 1 of the EAR. The legislation also allows unearned income to be deducted or exempted from the calculation of net income if it meets any of the criteria defined in Sections 6 or 7 of Schedule B of the EAR.

The ministry's position is that a FMEP payment is unearned income and, since it does not meet any of the exemption criteria, they must deduct it from the total of the appellant's Monthly Support Allowance and Monthly Shelter Allowance.

The appellant's position is that she was not aware that the payment was FMEP and assumed that it was disability back payment, which would not be deducted. The appellant did not specify a specific clause under which she felt the payment should be exempted.

The panel has carefully reviewed the legislation and can find no provision that would provide an exemption or deduction from income for the payment received by the appellant. The panel particularly considered Section 1,

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Sub-section xxvii of Schedule B. However, the appellant provided no evidence that would indicate that the daughter was “a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court”. Therefore, the panel finds that the ministry reasonably determined that the FMEP payment to the appellant does not meet any of the exemption or deduction criteria listed and the full amount of the payment must be included as unearned income.

The legislation requires the ministry to deduct any net income from the maximum income assistance as calculated using Schedule A.

The ministry’s position is that, because the FMEP payment is greater than the maximum amount of income assistance, no payment for July is due.

The appellant argues that she did not know the payment was FMEP until it was too late and she cannot afford to have her July payment eliminated or she could face eviction as a result.

The panel finds that the net income resulting from the FMEP payment exceeds the maximum income assistance as calculated using Schedule A. The panel also finds that the onus was on the appellant to determine the source of the additional funds, and the potential impact on her monthly assistance, before spending the money. The panel notes that the appellant gave her daughter one-half of the payment received. The remaining one-half would still exceed her maximum monthly income assistance.

In conclusion, the panel finds the ministry's determination, that the appellant was not eligible for income assistance for the month of July because the appellant’s net income for May exceeded the amount of income assistance determined for the appellant’s family unit under Schedule A of the EAR, was reasonably supported by the evidence and is a reasonable application of the applicable regulation. The panel therefore confirms the ministry's decision.