

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated September 24, 2014 which found that the appellant is not eligible for income assistance for the month of September 2014, pursuant to Section 10 of the *Employment and Assistance Regulation* (EAR), as the net monthly income of the family unit exceeded the amount of assistance payable due to earned income received by the appellant in July 2014.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 1, 10 and Schedules A and B

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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

- 1) Savings Account history showing a balance on July 31, 2014 of \$5.88;
- 2) Chequing Account history showing deposits for “EI” [employment insurance] on July 22, 2014 in the amount of \$2,960, and \$740 and \$370 on July 30, 2014, with a balance on July 31, 2014 of \$1,472.23;
- 3) Monthly Report to the ministry dated August 5, 2014 indicating no income, including no EI received;
- 4) Savings Account history showing a balance on August 28, 2014 of \$7.34;
- 5) Account Details statement dated September 5, 2014 showing balances of \$7.34 and \$279.99 in two accounts; and,
- 6) Request for Reconsideration dated September 10, 2014.

In his Request for Reconsideration, the appellant wrote that:

- He submitted his stub for September benefits on July 23, 2014, not August 5 as stated by the ministry, and he did not have the EI money at the time. He did not fail to declare the income as he did not have it yet.
- The money he received from EI was to cover a period from May 2014 to the first two weeks of July 2014 and he was not aware that income would be expected to cover him for the month of September.

In his Notice of Appeal dated October 3, 2014 the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that:

- He was following the ministry’s direction.
- The money he received was back-pay from months ago and used to pay back his cost of living for those months he was not even on assistance.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry provided information that:

- The appellant is a sole employable applicant with no dependants. His total monthly rate of income assistance is \$610, consisting of shelter of \$375, support of \$235.
- In July 2014, the appellant received EI payments on July 22, 2014 (\$2,960) and July 30, 2014 (\$740 and \$370) which were deposited into his bank account, as shown in the bank statements provided to the ministry by the appellant.
- The ministry looks at when funds are received and not the period of time for which they are alleged to be payable.
- Funds received in July are reported in August and deducted from the client’s September 2014 assistance, which would be provided to the appellant by cheque in the last week of August.

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 income assistance for the month of September 2014, pursuant to Section 10 of the *Employment and Assistance Regulation* (EAR), as the net monthly income of the family unit exceeded the amount of assistance payable, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the EAR provides that:

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.

Schedule A of the EAR sets out the total amount of income 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 EAR provides as follows:

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

- (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.

Section 1 of the EAR 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 Section 10(2) of the EAR states that a family unit is not eligible for income assistance if the net income of the family unit exceeds the amount of the income assistance payable. The ministry pointed out that the appellant does not dispute that on July 22, 2014, he received \$2,960 and, on July 30, 2014 he received deposits of \$740 and \$370 for EI benefits. The ministry stated that as a sole recipient of income assistance, the appellant is eligible for a support allowance of \$235 per month and a shelter allowance in the amount of \$375 per month for a maximum total monthly allowance of \$610, as per Schedule A of the EAR. 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 EAR to include employment insurance benefits. The ministry argued that the appellant's income from employment insurance (\$4,070) exceeded his assistance rate for the month (\$610) and, therefore, he is not eligible for assistance for the month of September 2014 pursuant to Section 10 of the EAR.

Appellant's position

The appellant acknowledges that he was in receipt of EI benefits in July 2014 in the total amount of \$4,070 as he provided bank statements to the ministry showing these payments, and it is also not disputed that he is eligible for the amount of \$610 in income assistance each month as a single recipient. However, the appellant argued that the money he received from EI was to cover a period from May 2014 to the first two weeks of July 2014 and he was not aware that income would be expected to cover him for the month of September. In his Notice of Appeal, the appellant argued that the money he received for EI was back-pay from months ago and used to pay back his cost of living for those months he was not even on assistance.

Panel's decision

The panel finds that the appellant admitted that, in July 2014, he was paid EI benefits in the total sum of \$4,070. Under Section 1 of Schedule B of the EAR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 1(g) 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: "...employment insurance." Although the appellant argued that the EI benefits were payable for a period of time from May to the beginning of July, prior to his application for income assistance, the panel finds that the relevant timing

according to the definition of unearned income is when the funds are received. The panel finds that the ministry reasonably determined that the total amount of the appellant's EI benefits (\$4,070) must be included in the calculation of his income received in July 2014 and that, given the directory language of the applicable provision, the ministry does not have the discretion to do otherwise. The panel finds that the ministry reasonably concluded that the amount of the appellant's income exceeded the amount of assistance determined under Schedule A for the appellant's family unit and that, therefore, the appellant is not eligible for income assistance for the month of September 2014, pursuant to Section 10 of the EAR.

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*.