

PART C – Decision under Appeal

The appellant appeals the September 18, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry), in which the Ministry denied her disability assistance for the month of September 2014 under section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), on the basis that she had unearned income (as defined in section 1(1)(g) of the EAPWDR), which resulted in net income in excess of the rate of disability assistance for which she is eligible under Schedule A of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24, 29 Schedule A, sections 1, 2 and 4, and Schedule B, sections 1, 6 and 7.

PART E – Summary of Facts

The information before the Ministry at reconsideration included the appellant's request for reconsideration dated September 9, 2014, as well as copies of the history of the appellant's spouse's bank account from February 2 through July 31, 2014, showing deposits from "Canada EI/AE" of \$856 on July 8 and 22, 2014.

The appellant is a designated person with disabilities. She said she has received disability assistance for about 5 or 6 years. The appellant's family unit is 2 persons as the appellant's spouse also receives disability assistance and they have lived together for a couple of years. The appellant and her spouse (the family unit) receive \$1,499.06 in disability assistance per month (\$570 for shelter, \$949.06 support, less a \$20 repayment). The appellant's spouse testified as a witness at the hearing of the appeal.

In July 2014, the appellant's spouse received federal employment insurance ("EI") payments in the amount of \$1712.00 (two EI payments of \$856 each). The appellant and her spouse said that they were never told by anyone at the Ministry or at the EI office that they had to report to the Ministry the amount of EI that the appellant's spouse received. They said that they understood that EI and the Ministry work together and that the Ministry would know that the appellant's spouse had received EI and adjust their disability assistance. They remembered filling out a form at a Ministry or EI office about the way that the EI and their disability assistance would work together. The appellant and her spouse reported to the Ministry in August 2014 that her spouse was receiving a small amount of income for some temporary work. The appellant and her spouse thought that the EI payments were exempt from deduction from their disability assistance.

The Ministry denied the appellant disability assistance for the month of September 2014 on the basis that her family unit had received unearned income - \$1712 in her spouse's EI payments - in July 2014, which is over and above the amount of disability assistance for which the appellant's family unit is eligible. The Ministry notes that as a person receiving disability assistance, the appellant is required to report any change in income (meaning any increase or decrease in the amount of income received) by the 5th day of the month following the month income is received, regardless of the period the payment represents. The Ministry notes that EI payments are unearned income under the legislation. The income is then included in the calculation of the amount of income at the earliest opportunity, which in this case, is September 2014 (the month following the month - August - the income was reported).

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's decision to deny the appellant disability assistance for September 2014 under s. 9(2) of the EAPWDR, on the basis that she received unearned income (\$1712 in her spouse's EI payments) in the month of July 2014 which exceeds the amount of disability assistance for her family unit under Schedule A of the EAPWDR.

Legislation – all references are to the sections of the *EAPWDR*.

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:

...

(g) employment insurance;

....

Limits on income

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(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.

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.

Monthly reporting requirement

29 For the purposes of section 11(1)(a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:

(i) ...

(ii) change in income received by the family unit and the source of that income;

....

Under s. 1 of Schedule A of the EAPWDR, the maximum amount of disability assistance before deduction of net income referred to in s. 24(a) is the sum of the monthly support allowance under s. 2 of Schedule A plus the shelter allowance calculated under s. 4 and s. 5 of Schedule A. Section 1 of Schedule B of the EAPWDR sets out deduction and exemption rules when calculating the net income of a family unit for the purposes of s. 24(b). Section 6 of Schedule B provides that the only deductions from unearned income are any income tax deducted at source from employment insurance benefits and essential operating costs of renting self-contained suites. Section 7 of Schedule B sets out exemptions to unearned income.

Appellant's position

The appellant and her spouse agree that he received \$1712 in EI payments in July 2014. The appellant and her spouse told the panel that no one at the Ministry explained to them that they were required to report the EI received to the Ministry – they understood that the Ministry and EI “work together” and that the Ministry would know that the appellant’s spouse received EI and adjust their disability assistance for them. The appellant and her spouse said that their disability assistance is directly deposited to their accounts. The appellant and her spouse argued that no one at the EI office or at the Ministry office explained that EI payments are considered unearned income which they must report to the Ministry, and this is why they did not realize that they had to report the EI payments to the Ministry. The appellant and her spouse say that they shouldn’t be denied the September 2014 disability assistance because they didn’t know they had to report the EI payments.

Ministry's position

The Ministry notes that s. 1 of the EAPWDR defines “unearned income” as any income that is not earned income, and includes, without limitation, money or value received from employment insurance. The Ministry also says that EI payments are not included as a type of unearned income that may be exempt under sections 1, 6 and 7 of Schedule B of the EAPWDR. The Ministry notes that s. 24 of the EAPWDR provides that the amount of monthly disability assistance is determined by deducting the amount of income calculated under Schedule B from the amount of shelter and support allowances calculated under Schedule A. The Ministry noted that, as stipulated under s. 29 of the EAPWDR, the total EI payments the family unit received in July 2014 was to be reported to the Ministry by August 5, 2014, and affected the September 2014 disability assistance. The Ministry determined that under s. 24 of the EAPWDR, the \$1,712.00 in EI payments the appellant’s spouse received in July 2014 must be deducted from the family unit’s September 2014 disability assistance and, as the \$1712.00 in EI payments is over the \$1499.06 disability assistance for which the family unit is eligible, the Ministry determined she was ineligible for September 2014 disability assistance.

Panel's decision

The appellant does not dispute that her spouse received \$1,712.00 in EI payments in July 2014 and does not dispute that the exemptions set out in the legislation (sections 1, 6 and 7 of the EAPWDR) do not apply to them. The panel finds that the Ministry’s determination that the appellant’s family unit received unearned income - \$1712.00 in EI payments in July 2014 - is reasonable based on the undisputed evidence.

Section 29 of the EAPWDR requires the appellant to report income received and the source of that income by the 5th day of the calendar month following the calendar month in which it was received. In this case, by August 5, 2014, the appellant had to report the \$1712.00 EI payments her spouse received in July 2014. The appellant does not dispute that the \$1712 EI payments exceed the amount of monthly disability assistance for which her family unit is eligible. Accordingly, the panel finds that the Ministry’s determination that the appellant is not entitled to disability assistance for the month of September 2014 under section 9(2) of the EAPWDR because she and her spouse received unearned income of \$1712 in EI payments in July 2014 is reasonable based on the evidence and is a reasonable application of the legislation in the appellant’s circumstances. The panel therefore confirms the reconsideration decision.