

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 4, 2014 which found that the appellant is not eligible for disability assistance for the month of December 2014, pursuant to Section 9 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), as the net monthly income of the family unit exceeded the amount of assistance payable due to unearned income received by the appellant in October 2014.

PART D – Relevant Legislation

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

PART E – Summary of Facts

Neither the appellant nor her representative attended the hearing. The appellant provided a Release of Information which requested that information/documents regarding the appeal be sent only to the appellant and not to her representative. 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) Bank Account statement for the month of October 2014 showing two deposits of \$302 from 'Canada' on October 2 and one deposit of \$302 on October 7 and one deposit of \$302 on October 21, 2014;
- 2) Transaction history showing a deposit for "EFT Credit Canada" on November 4, 2014;
- 3) My Service Canada Account statement for the period March 2, 2014 through October 4, 2014 and showing two payments of \$302 with reports process September 30, 2014 and one payment of \$302 with a report processed October 5, 2014; and,
- 4) Request for Reconsideration dated November 24, 2014.

In her Request for Reconsideration, the appellant wrote that:

- She has been working for several years to make ends meet, so she would not have to ask for help from the ministry.
- She has only been on EI [employment insurance] once before several years ago. She never did the financial bills, etc. as her spouse did it all.
- She did not know that EI was to be taken off for every penny and, if she did, she would not have pursued it.
- She wanted to give her children a happy Christmas and this is the first one alone from her separation. It has been hard on all of them and she did not want to continue her EI. The ministry has told her that she must continue with EI.
- She is not lazy and she is looking for a job but it is hard when she does not have a car.
- She will be evicted from her place and she wonders where she will be eating with her children. They are adults, but they still need her.
- She has no other source of income. She would like to stop EI since it is causing her more problems than it is worth.
- She was under the impression that EI was treated as earned income and was not deducted.

In her Notice of Appeal dated December 12, 2014 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She did not know that her worked earnings would be deducted from her disability assistance earnings. She was not informed of this by the ministry.
- She has nothing to live on if the ministry stops her cheque.

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

- The appellant is a sole recipient and her total monthly rate of disability assistance is \$946.42, consisting of shelter of \$375, support of \$531.42 and a diet supplement of \$40.
- In October 2014, the appellant received EI payments on October 2, 2014 (\$604), October 7, 2014 (\$302) and October 21, 2014 (\$302), for a total of \$1,208 which was deposited into her bank account, as shown in the bank statements provided to the ministry by the appellant.

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 disability assistance for the month of December 2014, pursuant to Section 9 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), 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 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 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, ...

- (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" 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 9(2) of the EAPWDR states that a family unit is not eligible for disability assistance if the net income of the family unit exceeds the amount of the disability assistance payable. The ministry stated that the appellant received a total of \$1,208 in EI benefits in the month of October 2014. The ministry stated that as a sole recipient of disability assistance, the appellant is eligible for a support allowance of \$531.42 per month and a shelter allowance in the amount of \$375 per month and a diet allowance of \$40 per month, for a maximum total monthly allowance of \$946.42, as per Schedule A of the EAPWDR. The ministry stated 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 employment insurance benefits. The ministry stated that there are no exemptions in the case of EI and, therefore, the unearned income must be deducted from the appellant's disability assistance. The ministry stated that the appellant's income from EI (\$1,208) exceeded her assistance rate for the month (\$946.42) and, therefore, she is not eligible for assistance for the month of December 2014 pursuant to Section 9 of the EAPWDR.

Appellant's position

The appellant acknowledged that she was in receipt of EI benefits in October 2014 in the total amount of \$1,208 as she provided bank statements to the ministry showing these payments, and it is also not disputed that she is eligible for the amount of \$946.42 in disability assistance each month as a single recipient. However, the appellant argued in her Notice of Appeal that she did not know that her worked earnings would be deducted from her disability assistance earnings as she was not informed of this by the ministry. In her Request for Reconsideration, the appellant argued that she was under the impression that EI was treated as earned income and was not deducted. The appellant wrote that she has nothing to live on if the ministry stops her cheque.

Panel's decision

The panel finds that it is not disputed that the appellant received a total of \$1,208 in EI benefits in the month of October 2014. Under Section 1 of Schedule B of the EAPWDR, 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." The panel finds that the ministry reasonably determined that the total amount of the

appellant's EI benefits (\$1,208) must be included in the calculation of her income received in October 2014 and that, given the directory language of the applicable provision through the use of the word "must", 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 disability assistance for the month of December 2014, pursuant to Section 9 of the EAPWDR.

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*.