

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 15 June 2015 determined that under section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant was not eligible for disability assistance effective June 2015 because her net income determined under Schedule B of the EAPWDR exceeded her assistance rate determined under Schedule A of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, s. 1, 7 and 9.

EAPWDR, Schedule A, s. 2 and 4.

EAPWDR, Schedule B, s. 1, 6 and 7.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant received disability assistance as a sole recipient for March – May 2015. Prior to this, the appellant received Medical Services Only (MSO).
- On 26 March 2015, the appellant attended the ministry's office with her record of employment and advised the ministry worker that she had been laid off. The ministry worker indicated to the appellant that she needed to apply for Employment Insurance (EI) benefits.
- On 9 April 2015, the appellant confirmed to the ministry she had applied for EI benefits.
- On 10 April 2015, the ministry advised the appellant by phone that she was required to sign an Assignment of Benefits (AOB) for the EI cheque issued in order to be eligible for disability assistance for the month of May.
- On 22 April 2015, the appellant signed an AOB in favour of the ministry indicating that the effective date was 3 May 2015, that the total amount of this assignment was \$946 and that the appellant's minimum weekly allowance was \$218. The document authorized Human Resources Development Canada (HRDC) "to deduct from any assistance payable to me an amount equal to the welfare payments made to me for any week for which I am entitled to payment of [EI] benefits" and that "any excess of [EI] benefits payable, over the previously mentioned deduction, will be paid directly to me."
- A Memo from the Appellant to a ministry worker dated 2 May 2015 indicated that while she had already submitted her report card to the ministry, she then found out that despite the AOB, the EI benefit in the amount of \$1,073 had been direct deposited in her bank account. She submitted a correct report card and added that she did not want to receive EI directly but believed that when she assigned it to the government, it would be paid to the government. She added, "If this continues, your mandate is going to require me to do yet another financial requalification, and I just did one, for being off assistance for two months or more." The ministry indicated that this Memo was received on 25 May 2015.
- On 19 May 2015, the ministry stated it received a note dated the same day from the appellant indicating that her disability assistance had not been deducted from her EI despite the signed AOB. In her Note, the appellant also stated that as a result, she was being "put off disability" against her will and the legislation. She indicated that the AOB was never sent to EI and that it appeared to be only for the month of May while she expected it to be permanent, as long as she was on EI benefits.
- On 20 May 2015, the ministry became aware that the appellant had received \$1073 in EI benefits and the ministry worker indicated to the appellant that this income would be deducted from her disability assistance for the month of June but that given it was higher than the assistance rate she was eligible for, she would become ineligible for disability assistance and changed her file to MSO status.
- According to the ministry's file the decision to determine the appellant's ineligibility for disability assistance effective June 2015 was made either on or before 25 May 2015 or on 1 June 2015.
- In her request for reconsideration dated 3 June 2015, the appellant stated the following:
 - She signed the AOB on 22 April 2015;
 - She did not know why it had not been sent to EI;
 - She did not expect EI to direct deposit \$1073 in her bank account and she noticed it after a few days when she realized her bank balance was high;
 - She attended Service Canada's office and was told that no AOB had been received

- according to her EI file;
- She went to the ministry's office to ask why the AOB had not been sent to EI and she stated that her file was checked and that the expression on the Service BC clerk's face said "oops";
 - She wrote a Note to the worker and eventually she received a call from said worker who said that her status with the ministry should be changed to MSO and that it was this decision that she was appealing;
 - She stated that in February she was subjected to a full Financial Qualification Review due to having been 2 months off assistance and that it was no small matter and a nuisance to her bank.

In her Notice of Appeal dated 19 June 2015, the appellant indicated that the reconsideration decision had not addressed the issue she was raising, which was her change in status to MSO.

At the hearing, the appellant reiterated the evidence presented at reconsideration. The ministry relied on the reconsideration decision but added the following evidence:

- Regardless of whether there is an AOB for EI payments, if the unearned income is greater than the monthly disability assistance for which a person may be eligible, the person becomes ineligible for disability assistance and ceases to be a recipient of such assistance.
- Although the legislation does not set a period of time mandating for how long after a person ceases to be eligible for disability benefits, after which the person must financially requalify, ministry policy is that if a person ceases to be a recipient of disability assistance for more than 60 days, the person must re-qualify for disability assistance and provide the financial information required to restore eligibility for disability benefits.
- While the appellant ceased to be a recipient of disability assistance when her unearned income exceeded the monthly assistance she was eligible to, it did not change her Person with Disabilities (PWD) status.
- The ministry was unable to determine exactly what had happened to the AOB that the appellant had signed and whether it was sent to the EI office or not.
- The ministry stated that the appellant's status had not yet been changed to MSO, pending the decision on the Appeal.

The panel determined that the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the ministry at reconsideration and provided more information on how the appellant's file was processed and corroborated the evidence at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision determining that the appellant was not eligible for disability assistance effective June 2015 because her net income determined under Schedule B of the EAPWDR exceeded her assistance rate determined under Schedule A of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence.

Section 1(1)(g) of the EAPWDR states that:

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;

The ministry argued that EI benefits were unearned income and the appellant did not dispute that. Schedule B of the EAPWDR sets out exemptions and deductions in calculating monthly income. The appellant does not dispute that those exemptions and deductions do not apply to her EI unearned income.

And s. 9 of the EAPWDR imposes 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.

The appellant did not dispute that her EI income exceeded her monthly disability allowance but argued that because the ministry failed to send her AOB to the EI office, she ended up receiving the EI payment in her own account and, as a result, her status as a recipient of disability assistance was changed to MSO.

The ministry acknowledged that the appellant had requested a reconsideration of the change of her status to MSO but argued that this decision had not yet been made and it was pending the outcome of this appeal. The decision made was strictly to determine if the appellant's unearned income from EI exceeded her monthly disability assistance. The evidence showed that it did.

The appellant also referred to s. 7 of the EAPWDR stating as follows:

7 (1) In this section, **"income"** does not include

(a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or

(b) income exempt under section 1 of Schedule B.

(2) A family unit is not eligible for disability assistance if an applicant in the family unit has applied for income from another source unless

(a) the applicant enters into a repayment agreement with the minister,

(b) if the source of the other income is federal employment insurance under the *Employment Insurance Act* (Canada), the applicant, in addition to the requirement under paragraph (a), satisfies the minister that a direction has been completed in accordance with subsection (3), and ...

(3) A direction referred to in subsection (2) (b) must be completed under the *Employment Insurance Act* (Canada) by the applicant who applies for the federal employment insurance and must direct that (a) an amount equal to the amount of disability assistance provided to or for the family unit under this section be deducted from the employment insurance, and (b) the amount deducted be paid to the minister.

She argued that the “direction” at s. 7(2)(b) of the EAPWDR was the AOB that she had signed allowed her status to remain as a recipient of disability assistance and that the excess EI would be reported on the next month while she would remain eligible for such assistance.

The ministry took the position that s. 7 dealt with new applications for income from another source and that it did not change the fact that the appellant was receiving unearned income in excess of the amount she was eligible for disability assistance.

Panel decision:

The panel notes that at reconsideration and subsequently during this appeal, the appellant disputed the ministry decision to change her status from recipient of disability assistance to MSO and notes that her position was that the ministry had not addressed her request in its reconsideration decision. However, the panel also notes that the ministry’s decision appealed was: “As your monthly disability assistance entitlement is \$946.42 and your EI income is \$1073, you are not eligible for June disability assistance.”

The appellant agreed that her EI payments exceeded her disability assistance and that she could not get both at the same time. Thus, regardless of s. 7 and whether an AOB was sent to the EI office or not, it does not change the fact that the ministry was reasonable in determining the appellant’s unearned income exceeded her monthly disability benefits at that time.

The ministry took the position that the change in “status” from recipient of disability assistance to MSO could not be determined until the appeal had been decided and that is the reason why they did not directly address the issue raised by the appellant. The ministry explained at the hearing the process that they follow and on what basis they make the decisions on eligibility and MSO and it appears to the panel that it would have been extremely beneficial for the appellant if that had been clarified for her at the outset.

Given that that the evidence shows that the appellant’s EI payment in May did exceed her monthly disability assistance benefits, the panel concludes that the ministry reasonably determined that the appellant was not eligible for June 2015 disability assistance under s. 9(2) of the EAPWDR. Therefore, the panel finds the ministry’s decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.