

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of June 1, 2015, which found the appellant not eligible for May 2015 disability assistance according to section 9 (2) and section 29 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the amount of her income exceeded the amount of disability assistance she was eligible for; funds received in March 2015 were reported by the 5<sup>th</sup> of April 2015 and affected the appellant's May 2015 assistance.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 9, 10, 29, Schedule A and B.

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

From ministry files:

- The appellant is a single person and her monthly disability assistance is \$906.42.
- On April 1, 2015 the appellant advised the ministry she had received \$25,000.00 from another province under its victims of crime legislation. The appellant was advised that she would not be eligible for assistance due to receipt of income in excess of disability assistance rates.

A statement by the government of another province dated March 6, 2015 shows that it issued a cheque to the appellant for \$25,000.00 from Victims of Crime Fund.

The appellant's March 2015 bank statement shows an ABM deposit of \$25,000.00 on March 17, 2015.

In her request for reconsideration dated May 27, 2015 the appellant states that the \$25,000.00 was a payout from another province's victims of crime fund. She describes the circumstances for which she received the award and this sum was supposed to assist with counselling. She paid many of her debts from this sum. She was informed by 2 separate workers at the ministry that this money would not disqualify her from her disability benefits. She submitted that her case is very similar to exempt unearned income under the Criminal Injury Compensation Act Schedule B xxxviii and this income is not federally taxable. She stated that being homeless again is not going to be pleasant or conducive to becoming a functioning and contributing member of society.

In her Notice of Appeal dated June 9, 2015 the appellant states that the payment was compensation for a crime committed against her when she was a child.

On June 25, 2015 the appellant submitted page 12 of the 2014 Income Tax Guide to the tribunal and highlighted the following passages: "You do not have to report certain amounts as income, including the following: ... compensation received from a province or territory if you were a victim of a criminal act or a motor vehicle accident...".

At the hearing the appellant stated that a counsellor from BC had told her about the other province's victims of crime assistance program. As the record was from the other province she had to apply to that province. She said that with the councilor's help she applied to that program and was expecting a voucher for counselling - she was surprised that she received a lump sum payment of \$25,000.00. After the cheque arrived she immediately went to the ministry to inquire whether these funds were exempt. After one worker at the front counter told her these funds did not qualify as income she wanted to make sure and sought a second opinion – with the same result. She was told that her award should not affect her disability assistance, but she should set aside money in a separate savings account just in case.

The appellant said that she received disability assistance for May 2015 but may have to pay that back depending on the outcome of this appeal. She also said she received her disability check for June 2015 after she provided information to the ministry that she had less than \$5,000.00 left. She is concerned that she may be cut off disability assistance for the rest of the year.

The ministry relied on its reconsideration decision and said that its decision is based on BC legislation. The ministry apologized that incorrect information was given to the appellant. The ministry explained that eligibility information will no longer be given over the counter because front counter personnel are not qualified to make decisions on eligibility. The ministry confirmed that the appellant had received disability assistance for May and June 2015. If the ministry's reconsideration decision is confirmed the May benefits will have to be paid back. The ministry expects that an appellant should be able to live off his/her asset level for 1 month (the appellant's asset level is \$5,000.00).

Pursuant to section 22(4) of the Employment and Assistance Act, the panel admits the appellant's written submission and oral testimony and the ministry's oral testimony as being in support of the information and record that was before the ministry at the time of reconsideration; specifically, the new information provided additional details on the appellant's financial award, her disability assistance for May and June 2015, and the ministry's handling of eligibility decisions.

## PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for disability assistance for May 2015 under section 9 (2) and section 29 of the EAPWDR because her income exceeded her maximum allowance as set out in Schedule A, was a reasonable application of the legislation or was reasonably supported by the evidence.

The following legislation applies:

### 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: .....

(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; .....

### 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.

### Asset limits

**10** (1) The following assets are exempt for the purposes of subsection (2): .....

(2) A family unit is not eligible for disability assistance if any of the following apply:

(a) a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5 000; .....

### 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.

### 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 one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v); .....
- and

(b) the information required is all of the following, .....

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income; .....

According to section 2(1) of **Schedule A** the appellant's monthly support allowance is calculated as \$531.42. According to section 4(2) her maximum monthly shelter allowance is calculated as \$375.

## Schedule B

### Net Income Calculation

(section 24 (b) )

### Deduction and exemption rules

**1** When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

(a) the following are exempt from income: .....

- (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss

or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age; .....

### **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: .....

- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation; .....

### *Appellant's position*

The appellant argues that her award is similar to an award under the BC Criminal Injury Compensation Act and should qualify for the same exemption under the EAPWDR. In addition it does not make sense that she has to report her award as income with the ministry when the same award does not have to be reported as income on her income tax return. The appellant argues further that she needs the money to pay off debts and for ongoing counselling. The appellant believes it to be unfair that she should be re-victimized and lose her disability assistance for an injustice that happened in her childhood. She was misinformed by the ministry and led to believe that her award would not impact her disability assistance in any way.

### *Ministry's position*

The ministry argues that in accordance with section 9 of the EAPWDR the appellant is not eligible for May 2015 income assistance as the amount of her income exceeded the amount of her allowance. Under section 1(t) EAPWDR the other province's victims of crime award is defined as "other award" and considered unearned income. Schedule B sections 1 and 7 set out types of unearned income that may be deducted or exempted from the calculation of the amount of income received.

The ministry argues that exemptions under section 1(a)(xxxviii) are not applicable because, although similar in nature, the funds were issued under the other province's Victims of Crime Regulation and

not under the BC Criminal Injury Compensation Act as specified under this section. The exemptions set out under section 7(1)(c) are applicable as the source of the award/compensation is not limited. This section sets out that the maximum amount of income that may be exempted is the same as the maximum asset level of the family unit; the appellant's maximum allowable asset value is \$5,000.00. Therefore \$5,000.00 will be excluded from the calculation of the appellant's amount of income: \$25,000.00 minus \$5,000.00 equals a total income of \$20,000.00. As this amount exceeds the amount of the appellant's shelter/support allowance of \$906.42 the appellant is not eligible for disability assistance for May 2015 pursuant to section 9 and 24 of the EAPWDR.

The ministry argues that the appellant's May assistance is impacted because under section 29 of the EAPWDR changes in income must be reported by the 5<sup>th</sup> day of the month following the month the income was received. The income is then included in the calculation of the amount of assistance a person is eligible to receive at the first opportunity which is the month of reporting. In this case the funds were received in March and reported by the 5<sup>th</sup> of April, affecting May assistance.

To the appellant's argument that the ministry should not treat her award as income when she does not have to report it on her income tax return, the ministry responded that the tax laws she cited are federal laws and the ministry can only apply BC legislation.

#### Panel's decision

The panel finds that the income received by the appellant from the other province's Victims of Crime Fund amounting to \$25,000.00 meets the definition of "unearned income" under section 1(1)(t) of the EAPDWR. The maximum amount of income that may be exempted in the circumstances of the appellant is \$5,000.00 as set out in section 7(1)(c). As a result the appellant's net income for March 2015 is \$20,000.00.

As this amount exceeds the amount of the appellant's shelter/support allowance of \$906.42 the panel finds that the ministry reasonably determined under section 9 of the EAPWDR that the amount of the appellant's income exceeded the maximum amount of disability assistance that would be payable to a family unit of that size.

As the appellant reported her March income by April 5<sup>th</sup> she is not eligible for disability assistance for May 2015 under section 29 of the EAPWDR; under this section changes in income must be reported by the 5<sup>th</sup> day of the month following the month the income was received. The ministry included the appellant's March income reported in April 2015 which affected her May 2015 assistance.

The panel notes that, although similar in nature, the funds the appellant received were not issued under the BC Criminal Injury Compensation Act as specified under section 1(a)(xxxviii) of Schedule B; therefore this section does not apply in the appellant's circumstances. The panel notes that the relevant legislation to determine the appellant's disability assistance is set out in the Employment and Assistance for Persons with Disabilities Act and Regulation.

The panel finds, therefore, that the ministry was reasonable in concluding that pursuant to section 9 and 29 of the EAPWDR the appellant was not eligible for disability assistance for May 2015 because her net income exceeded the amount of disability assistance she would otherwise have been

APPEAL #

eligible for. The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable regulation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision.