

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated August 12, 2015 which found that the appellant is not eligible for disability assistance for the month of August 2015, 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 in the form of an inheritance received by the appellant in June 2015.

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

The ministry did not attend the hearing. After confirming that the ministry 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) Monthly Report dated July 1, 2015 indicating that the appellant received an inheritance, specifically \$2,000 for an inheritance and \$237 “donations for trust;”
- 2) Email dated July 23, 2015 to the appellant from a charitable organization to the appellant advising that \$832.44 had been sent to the appellant’s bank account;
- 3) Memo dated July 24, 2015 to the ministry in which the appellant requested permission to use the \$825.44 charity funds for her August 2015 rent without deduction from her disability benefits. The appellant wrote:
 - She is unable to find part-time work due to her multiple barriers of mild traumatic brain injury from a workplace accident in January 2008, lupus diagnosed October 2014 and litigation with her disability insurer.
 - Under “History of Payment and Treatment by Ministry,” regarding June 26, 2015 a reference to \$2,000 which is “...not deducted from August 2015- The executor was able to secure and release to me a further \$2,000 to me. On 16 July 2015 at 1:43 pm [a representative of the MLA office] told me by telephone on (sic) that the Ministry exercised its discretion in not withholding my August 2015 disability benefits. I am confirming that I will receive the August 2015 disability benefits on 29 July 2015 by this memo.”
 - Referencing July 26, 2015 and \$832.44 which is “not yet assessed- Facebook friend [name] put net \$832.44 Facebook [charitable] funds into a \$825.44 money order payable to my landlord for rent”; and,
- 4) Request for Reconsideration dated July 30, 2015 with attached typewritten statement by the appellant and copies of bank statements for a ‘no limit banking’ chequing account and a high interest savings account for the months of June and July 2015.
 - The chequing account shows total deposits in June 2015 of \$10,750, including \$2,000 deposited on June 26, 2015, and a total in July 2015 of \$1,145.29;

In her Request for Reconsideration, the appellant wrote that:

- Her lupus and depression are stabilized with medications at this time.
- On July 5, 2015 she had \$171.79 in her chequing account and \$1,158.85 in her savings account for a total of \$1,330.64.
- As the cutoff date for the ministry to assess income and assets is July 5, 2015, and a single person with no dependants is allowed \$5,000 in assets, she did not have assets in excess of the exemption for a single person.
- With respect to the disposition of the total inheritance she received from her father (\$13,300 received on May 26, 2015 and \$2,000 received on June 26, 2015), those funds were spent on survival and to address the catastrophic loss of her house and all its contents including her small business assets.
- The \$2,000 inheritance was given to her early as an emergency measure. She used \$825 for July rent and \$612.50 for the security deposit for the apartment she was able to find on her own after losing her house and contents in foreclosure on May 27, 2015.
- She only has \$178.23 in assets to live on at this time. She has not recovered any of the contents of her home.

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- Some Facebook friends opened a charitable account and told her that she was supposed to receive a money order for \$825 on July 26, 2015 to give to her landlord for August rent but she still has not received any funds.
 - She started part-time work on a cleaning crew.
 - If she does not pay her \$825 rent on August 1, 2015, all the fragile work and shelter arrangements she has made will be in jeopardy.

Additional information

In her Notice of Appeal dated August 20, 2015 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She was informed income was allowed by the ministry on July 16, 2015.
- The decision is not in compliance with the EAPWDA and EAPWDR, in particular regarding unearned income and assets allowable.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter dated September 10, 2015 in which the appellant wrote that the email and bills from the moving company relate to the redeeming of all of her possessions (except the clothes she was wearing that day), which were seized by the bailiff in foreclosure on May 27, 2015. She wrote that she has no funds to pay that bill, buy winter clothing or personal and household necessities to survive the upcoming winter.
- 2) Enclosed with the letter are:
 - Copies of an email dated September 1, 2015 and invoices for July, August and September 2015 from a moving company stating that the appellant's account "is in arrears in the amount of \$938.70;"
 - Copy of an email dated August 13, 2015 from the appellant's sister confirming she sent the appellant "an additional \$2,000 which will be deducted from her final payout," and,
 - Handwritten request for rescheduling the hearing date.

At the hearing, the appellant provided the following additional documents:

- 1) Property Transfer Tax Statement of Account indicating a closing balance as of September 8, 2015 of \$5,574.76;
- 2) Notice of Appeal dated July 15, 2015 indicating that the appellant claimed the small business exemption of up to \$50,000 in assets. In May 2015 she lost the contents of her small business office assets worth estimated up to \$50,000. The funds were replacement of these assets.

At the hearing, the appellant stated that:

- In 2008 she suffered a brain injury and she ended up losing her downtown office.
- She has nothing. She was left in front of her house with the clothes she was wearing, with no food or medicine and holding her pets with no supplies.
- On May 27, 2015 she lost her house and the contents in foreclosure. She had turned her house into a home office and it was a small business asset. The ministry allows recipients to have \$50,000 in small business assets, if approved by the ministry, but she did not know that.
- She had an appointment with a disability lawyer to have her inheritance put into a trust account for the morning of May 27, 2015.
- On May 26, 2015 she asked her sister, the executor of their father's estate, to send her inheritance, which is around \$22,000.

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- On May 17, 2015 she received \$7,000 which was paid into court for security for costs and the ministry said that was okay.
 - Since she needed the money right away, the \$13,000 was paid directly to the appellant on May 26, 2015. She used this money to buy a lap top computer and a small portable printer. She moved into a motel and she had to board her pets. The ministry consequently denied her assistance for July and she did not appeal that decision because she was told by the assistant in the MLA's office that he had talked to the ministry and that she would lose July benefits but could retain August benefits. All this money was gone by June 22, 2015.
 - The second payment from her inheritance was \$2,000 on June 26, 2015. The executor could not sent \$15,000 from the estate all at once because she did not have clearance from the Canada Revenue Agency (CRA).
 - In the meantime, she had disclosed on Facebook that she had lost everything and some people set up a charitable fund account to try to raise funds to help her pay August security deposit and rent for 3 months. She was not involved. Some money was raised and a money order was given to her that was payable directly to her landlord and paid August rent.
 - When she went to the ministry, she was told there was no record of any agreement that she could keep August benefits. She suspects that the ministry found out about the payment from the Facebook friends and reassessed the arrangement with the MLA's office.
 - She filed an application to reconsider the ministry decision to deny the August benefits.
 - Recipients are allowed to have \$5,000 in assets at any one time. The ministry decided that the \$2,000 she received on June 26, 2015 was unearned income but if the ministry had treated the funds as an asset it would not have affected her benefits.
 - She sold an old car in January 2015 and got \$4,300, which the ministry said was fine because it was considered an asset worth less than \$5,000.
 - She is currently destitute, working for minimum wage, and disabled with a brain injury. She cannot work more than 4 hours per day. Her fine motor coordination is not good. She also has lupus which causes a rash, her hair falls out and she gets arthritis in her feet, knees and hip. She is on medications. She has also been diagnosed with clinical depression and takes anti-depressants.
 - If she does not come up with the money to pay for the storage bills, the bailiff will sell the contents of her house. She also owes the province and there was a lien on the property for property transfer tax and provincial sales tax from her professional practice. The government says she owes \$18,000 for GST but the bill is actually \$3,800. Her house was sold for \$62,000 less than the assessed value so she was left with a number of debts.
 - Her rent is \$825 per month and although she is allowed to make up to \$800 per month in earned income, she cannot earn that much with her current job. She will be homeless if she loses her current apartment.

The ministry relied on its reconsideration decision.

Admissibility of New Information

The panel considered the additional documents as containing information relating to the circumstances surrounding the appellant's receipt of funds in June 2015, which was before the ministry at reconsideration. The panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*. The panel did not admit the Property Transfer Tax Statement of Account as this did not relate to an issue before the ministry at reconsideration.

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 August 2015, 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;

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- (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, as set out in the reconsideration decision, 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 wrote that the appellant received a total of \$2,000 as an inheritance in the month of June 2015. The ministry wrote 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, for a maximum total monthly allowance of \$906.42, as per Schedule A of the EAPWDR. The ministry argued that as the appellant indicated that funds from a charitable account had paid her August rent directly, there was no eligibility for shelter allowance and, therefore, her monthly assistance rate for August consisted of the support allowance only, or \$531.42. The ministry wrote that in determining net income under Schedule B, all unearned income must be included, which has been defined in Section 1(l) of the EAPWDR to include a trust or inheritance. The ministry wrote that there are no exemptions in the case of an inheritance and, therefore, the unearned income must be deducted from the appellant's disability assistance. The ministry wrote that the appellant's income from the inheritance (\$2,000) exceeded her assistance rate for the month (\$531.42 to a maximum of \$906.42) and, therefore, she is not eligible for assistance for the month of August 2015 pursuant to Section 9 of the EAPWDR.

Appellant's position

The appellant acknowledged that she received \$2,000 in the month of June 2015 and she also does not dispute that she is eligible for the amount of \$906.42 in disability assistance each month as a single recipient and that her August rent was paid through the charitable account. However, the appellant argued in her Request for Reconsideration that she did not have assets in excess of the exemption since a single person with no dependants is allowed \$5,000 in assets and the cutoff date for the ministry to assess income and assets is July 5, 2015. The appellant argued as well that the \$2,000 received on June 26, 2015 was spent on survival and to address the catastrophic loss of her house and all its contents including her small business assets and she claims the small business exemption of up to \$50,000 in assets since the funds received were replacement of these assets. The appellant also argued that there was a verbal agreement between the MLA's office and the ministry that, although she would lose her July 2015 benefits because of payments made in May 2015, she could keep her August 2015 benefits.

Panel's decision

The panel finds that it is not disputed that the appellant received a total of \$2,000 in the month of June 2015 as part of her inheritance as a beneficiary under her father's estate. In the Monthly Report dated July 1, 2015 filled out by the appellant and submitted to the ministry, the appellant indicated that she received an inheritance in the amount of \$2,000. Pursuant to Section 1 of Schedule B of the EAPWDR, all unearned income must be included in the calculation of the net income of a family unit unless it is specifically exempted. According to Section 1(l) 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: "...a trust or inheritance." Although the appellant argued that the funds should be characterized as an "asset" because they were used, at least in part, to replace some of the assets that she had lost in the foreclosure of her house, she does not dispute that the funds derived from an inheritance, which is specifically defined in the EAPWDR as being "unearned income" and, therefore, supersedes the use to which the funds may have been put in replacing seized assets.

Likewise, the appellant argued that the funds were a replacement of the small business assets seized by the bailiff in foreclosure and, therefore, she claims the exemption allowed for small business assets. However, the small business exemption in Section 4 of Schedule B of the EAPWDR allows an exemption from "earned income" if the recipient is participating in a self-employment program, and the appellant admitted that she was not participating in the program because she did not know about it. Additionally, the payment the appellant received is specifically defined as "unearned" income as a result of the source of the funds, being an inheritance from her father's estate, and the appellant did not claim that the payment of \$2,000 in June 2015 was "earned" income to her.

The panel finds that the ministry reasonably determined that the total amount of the appellant's inheritance (\$2,000) must be included in the calculation of her income received in June 2015 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, particularly through an alleged verbal agreement with a third party. 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 August 2015, 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*.