

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated September 4, 2015, finding that the inheritance of \$4563.72 received by the appellant in June 2015 is "unearned income" in accordance with the definition of that term in Section 1 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), does not qualify under any legislated exemptions in Schedule "B" of the EAPWDR and is in excess of the appellant's monthly disability assistance so that she is not eligible for disability assistance in August 2015 in accordance with section 9 of the EAPWDR.

PART D – Relevant Legislation

The relevant legislation is sections 1 and 9 of the EAPWDR and sections 1 and 7(1) of Schedule "B" to the EAPWDR.

PART E – Summary of Facts

The appellant receives disability assistance. In June 2015 she received and deposited in her bank account the proceeds of a RIFF in the amount of \$4563.72 which she had received as the named beneficiary of her mother who had passed away some time before. Upon learning that the appellant had received these moneys, the ministry found the appellant ineligible to receive disability assistance for one month (August) on the basis that the moneys were “an inheritance” qualifying as “unearned income” in excess of the appellant’s monthly disability assistance amount to which none of the prescribed exemptions applied.

The appellant submitted a 4-page brief to the panel shortly before the hearing. The panel considered the admissibility of the briefing and found that it contained no new evidence or argument but was rather a re-statement of the appellant’s advocate’s arguments at reconsideration.

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PART F – Reasons for Panel Decision

The matter under appeal is the reasonableness of the reconsideration decision dated September 4, 2015, finding that the inheritance of \$4563.72 received by the appellant in June 2015 is “unearned income” in accordance with the definition of that term in Section 1 of the EAPWDR, does not qualify under any legislated exemptions in Schedule “B” of the EAPWDR and is in excess of the appellant’s monthly disability assistance so that she is not eligible for disability assistance in August 2015 in accordance with section 9 of the EAPWDR.

The relevant legislation is sections 1 and 9 of the EAPWDR and section and 7(1) of Schedule “B” to the EAPWDR.

Part 1 — Interpretation

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:

...
(d) insurance benefits, except insurance paid as compensation for a destroyed asset;

...
(l) a trust or inheritance;

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.

Exemptions – unearned income

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...
(1) The following unearned income is exempt:

...
(c) a criminal injury compensation award or other award ...

The appellant was represented by an advocate at the hearing. The advocate’s basic position is that the monies received by the appellant fall under paragraph 7(1)(c) of Schedule “B” to the EAPWDR, “a criminal injury compensation award or other award”, rather than under paragraph 1(1)(l) of the EAPWDR, “a trust or inheritance”. If it falls under the former provision, it is exempt from deduction so that it does not impact the appellant’s disability assistance. If the monies received by the appellant fall under the latter provision, it is not exempt and does impact the appellant’s disability assistance. Her position is that the ministry’s reconsideration decision is unreasonable because it did not either find or

consider the possibility that paragraph 7(1)(c) is applicable.

The advocate advances three arguments to support her position. The first is by analogy with a similar provision regarding “insurance benefits”. The ministry’s position, argues the advocate, is that because “an inheritance” is specifically stated to be “unearned income” under section 1(1)(l), it cannot therefore be “an award” under section 7(1)(c). But this assertion is contradicted by the ministry’s own policy in regards to “insurance benefits”, which are another item identified as “unearned income” in paragraph 1(1)(d) of the EAPWDR, which policy states that certain payments such as “insurance settlements” are not considered unearned income if they are a one-time, lump sum payment as they are exempted under paragraph 7(1)(c). If, argues the advocate, payments such as “insurance benefits” or “insurance settlements” are exempted if they are one-time, lump sum payments, then this rule should apply to “an inheritance”.

The advocate’s second argument is that the ministry’s reconsideration decision does not consider the purpose of the paragraph 7(1)(c) exemption. She points again to the ministry’s own policy in regards to that paragraph which she quotes as follows: “One time awards that are not specifically defined in regulation as exempt can be considered “other awards” under Schedule “B” section 7 and exempt up to the family’s asset level.” She then argues that on a plain interpretation of the word “award”, an inheritance is an award as it falls within the meaning “to officially decide that someone should get something”.

The advocate’s third argument is that paragraph 7(1)(c) is currently being revised in a way that may have benefitted the appellant if the new provisions had been in place at the time she received the inheritance and the appellant should have the benefit of those new provisions.

The ministry’s position is that the monies received by the appellant represent “an inheritance” which on a plain interpretation of paragraph 1(1)(l) is “unearned income”. The ministry maintains that paragraph 7(1)(c) does not apply in this case because section 1(1)(l) applies and because the inheritance cannot be characterized as “an award”. Further, the ministry argues that what the ministry considered on reconsideration, and the panel must consider in deciding this matter, is the legislation, not the policy.

The advocate’s position in regards to the use of policy is that it is a useful interpretive tool when considering the meaning of the legislation.

The panel finds that the advocate’s third argument is not valid. The legislation which applies to this situation is the legislation that was in force at the time the appellant received the inheritance.

In order for the advocate’s argument to stand scrutiny the panel must find: (1) it is appropriate to use policy to interpret the legislation in this case, and (2) the monies received by the appellant can be characterized as an “other award” as that term is used in paragraph 7(1)(c). The panel considers that the answer to the first question depends on the answer to the second and so will deal with the latter first.

It is a principle of statutory interpretation that a general catch-all phrase following a list of more specific items must be interpreted in the context of those specific items. In the case of paragraph

7(1)(c) the wording is: “a criminal injury compensation award or other award”. In this context “other award” most likely refers to an award in the legal sense of the outcome of an adjudicative process. This would also make sense in the context of the ministry policy cited by the advocate. An “insurance settlement”, as used in the policy, refers to an award ordered by a judge or tribunal, for instance. On the other hand, an “insurance benefit” as an instance of “unearned income” as found in paragraph 1(1)(l) would be the result of the terms of an insurance policy. The former is “an award”, the latter not.

On this analysis, there is no analogy between “an inheritance” and an “insurance settlement” and the advocate’s argument breaks down.

It is not necessary for the panel to consider whether it is appropriate to refer to policy to interpret the legislation in this case as there is no inconsistency between the two legislative provisions, nor between the two legislative provisions and the policy.

The appellant’s inheritance monies, then, fall under paragraph 1(1)(l) and not paragraph 7(1)(c). As they were in excess of the appellant’s monthly disability assistance pursuant to section 9 of the EAPWDR the appellant was not entitled to receive disability assistance for one month.

Accordingly, the panel concludes that the ministry's determination that the monies received by the appellant were “unearned income” and that appellant was therefore not entitled to receive disability assistance for one month was a reasonable interpretation of the legislation in the circumstances and confirms the ministry's decision.