



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 10, 2015 which found that the appellant is not eligible for income assistance pursuant to Section 10 of the *Employment and Assistance Regulation* (EAR) as the net monthly income of the family unit exceeded the amount of income assistance payable.

### PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), Sections 1, 10, 28, and Schedules A and B

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Undated handwritten note in which the appellant wrote that she moved as of December 15, 2015 and her rent is \$1,180 per month not including utilities, to be shared once she gets a room-mate. She bought a car and paid \$5,000 in full;
- 2) Print-out from on-line classified listing for housing;
- 3) Letter dated January 16, 2015 in which a medical practitioner wrote that the appellant continues to suffer from chronic pain of her neck and back related to a motor vehicle accident (MVA) in 2007 and she has a basal cell carcinoma requiring further treatment;
- 4) Letter dated January 23, 2015 in which a medical practitioner wrote that the appellant had shoulder surgery in 2014 and the end result was some pain relief but decreased range of motion. She has chronic pain of her neck and spine since an MVA in 2007;
- 5) Statement of Assistance from another province in the amount of \$257.19 for each of June and July 2015;
- 6) Bank statements for October through November 2015, showing a balance as of November 23, 2015 of \$8.86;
- 7) Application for Income Assistance dated November 23, 2015 indicating monthly disability income of \$990.00; and,
- 8) Request for Reconsideration dated December 8, 2015, with typed letter from the appellant.

In her Request for Reconsideration and letter, the appellant wrote that:

- She is aware that her monthly income is \$21 per month over the amount to qualify for assistance but she is not able to work and, therefore, cannot provide for the health of her teeth and vision.
- The cost of rent alone for shared accommodation is two-thirds of her income and she has not been able to access subsidized housing.
- She has an income of \$938 per month and cannot access benefits but someone with PWD designation, who receives \$907 per month, does receive these benefits and can also earn up to \$800 per month without losing assistance or dental and vision benefits.

In her Notice of Appeal stamped received by the Tribunal on January 13, 2016 the appellant expressed her disagreement with the ministry reconsideration decision and wrote that she believes she should have access to the supplements based on her unearned income and her earning potential.

At the hearing, the appellant reiterated information provided at reconsideration and stated that:

- She receives \$937.81 in income and she is not able to work at all. She would like access to the supplements that Persons With Disabilities (PWD) receive, such as dental care and vision care. She was denied because her income is \$21 more than the assistance rates.
- Someone who has the PWD designation receives disability assistance plus they are entitled to earn up to \$800 per month which is not deducted from their assistance and they also have access to all the supplements.

The ministry relied on its reconsideration decision, which included information that:

- The appellant declared monthly Canada Pension Plan Disability (CPPD) benefits of \$937.81.
- At the hearing, the ministry stated that the ministry does not approve “supplements” for vision and dental care; these are provided under medical coverage for a person receiving assistance.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant is not eligible for income assistance pursuant to Section 10 of the *Employment and Assistance Regulation* (EAR) as the net monthly income of the family unit exceeded the amount of income assistance payable, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the EAR provides that:

- 10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Section 28 of the EAR provides that:

Income 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.

Schedule A of the EAR sets out the total amount of income 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.

Section 1 of the EAR 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:

- ...
- (f) any type or class of Canada Pension Plan benefits; ..."

In calculating the net income of a family unit under Schedule B, specific exemptions and deductions from unearned income are provided for as follows:

### **Deduction and exemption rules**

- 1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation, . . .
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 [deductions from earned income] and 6 of this Schedule,
  - (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
  - (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 [*education-related*] of this Schedule.

### **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** The following unearned income is exempt:

...

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A-B) \times C$ , where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.

### ***Ministry's position***

The ministry's position is that the appellant is not eligible for income assistance pursuant to Section 10 of the EAR as her net monthly income exceeded the amount of income assistance payable. The ministry argued that the appellant is a single applicant for income assistance and, therefore, eligible for assistance of \$610 per month under Schedule A of the EAR, consisting of a support allowance of \$235 plus a shelter allowance in the amount of \$375. The ministry argued that the appellant declared monthly CPPD benefits of \$937.81, which are included in the definition of "unearned income" in Section 1 of the EAR, and that there are no applicable deductions or exemptions available in Schedule B to reduce this amount of income. As the monthly net income of the appellant's family unit (\$937.81) exceeded the income assistance rate (\$610), the appellant is not eligible for assistance pursuant to Section 10(2) of the EAR. Additionally, in oral argument the ministry noted that the amount of the appellant's CPPD benefits also exceeded the disability assistance amount payable to a PWD designate.

### ***Appellant's position***

The appellant does not dispute that she is in receipt of monthly CPPD benefits in the amount of \$937.81, but she argued that she is not able to work at all and she would like the same access to vision and dental care that a person with PWD designation receives. The appellant argued that she believes it is unfair that she was denied because her income is \$21 more than the assistance rates while a person with the PWD designation receives disability assistance plus they are entitled to earn up to \$800 per month which is not deducted from their assistance and they also have access to all the supplements.

### ***Panel's decision***

The panel finds that it is not disputed that the appellant receives monthly CPPD of \$937.81. Money or

value received from any type or class of Canada Pension Plan benefits is specifically included in the definition of "unearned income" under Section 1(1) of the EAR. Section 1(d) of Schedule B of the EAR stipulates that all unearned income must be included in income except the deductions permitted under Section 6 and any income exempted under Sections 7 and 8 of Schedule B. Section 6 of Schedule B of the EAR relates specifically to income tax deducted from source for employment insurance benefits and essential operating costs of renting self-contained suites and Section 8 of Schedule B provides an exemption for education-related costs. While Section 7(1)(e) provides an exemption for a portion of CPP benefits, the appellant did not claim that any of the deductions or exemptions applied to her situation and the CPP exemption relates to the tax portion when a person is taxable; the panel finds that the ministry reasonably determined that none of the deductions or exemptions apply to the appellant's situation.

The panel finds that the ministry reasonably concluded that there is no income exemption or deduction available in Schedule B of the EAR to reduce the amount of the appellant's income from CPPD benefits. Although the appellant argued that it is unfair that she is not able to work and she is not provided the same access to vision and dental coverage as a person with PWD designation because her income is \$21 more than the disability assistance rate, Section 10(1) of the EAR stipulates that if a person's net income equals or exceeds the amount of income assistance determined, there is no eligibility for income assistance, and the ministry is not provided with discretion to determine otherwise. The panel finds that the ministry reasonably concluded that the net income of the family unit of \$937.81 exceeded the amount of income assistance determined under Schedule A of the EAR for a family unit matching the appellant's family unit (\$610) and, therefore, no income assistance is payable, pursuant to Section 10(2) of the EAR.

#### *Conclusion*

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence, pursuant to Section 24(1)(a) of the *Employment and Assistance Act* and confirms the decision under Section 24(2)(a).