



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("ministry") decision of December 30, 2015, which determined that the appellant is not eligible for the month of December 2015 disability assistance pursuant to Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") because her Employment Insurance ("EI") income of \$1460.00 exceeds the \$906.42 rate of disability assistance.

## PART D – Relevant Legislation

EAPWDR Sections 1, 9, 24 and 26  
Schedule A Sections 1, 2, 4 and 5  
Schedule B Sections 1, 6, 7 and 8

## PART E – Summary of Facts

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

- Service Canada Account page received on December 14, 2015 showing dates and amounts of EI payments for the period June 15, 2015 to September 6, 2015.
- Banking Account Activity statements for 2 accounts for period October to December 2015 showing EI deposits and bank balances.
- Request for reconsideration signed by appellant on December 4, 2015 for discontinuance of disability assistance.
- Letter from Investigative Officer dated November 23, 2015 indicating that they had done a file review and determined the appellant was no longer eligible for assistance because her EI income exceeds persons with disability rates.
- Service Canada form labeled My Current Claim printed on November 13, 2015 showing details of claim including start date and total weeks of entitlement.

In her Notice of Appeal the appellant wrote that she received only \$365 EI on December 1, 2015 and her needs were not met.

At the hearing the appellant provided evidence that:

- She had only received ½ of a 2 week EI cheque, \$365 and that this was all the income she had to claim for January disability assistance.
- She was of the understanding that the panel would be reviewing her entitlement to a cheque for January, not December.
- She had been told that she would not be receiving a cheque for January so she signed another reconsideration form dated January 6, 2016 (which is in the current appeal package).
- She does not dispute that she had ongoing EI income, that she started receiving it in June, that her last cheque was at the beginning of December and that she's had no EI income since then.

At the hearing the ministry relied on its Reconsideration Decision and clarified that:

- The EI benefits the appellant received in October are considered unearned income and must be deducted from the appellant's disability assistance, and as a result the net income exceeded the ministry's rate of assistance for the family unit size.
- The appellant's assistance file reopened in April 2015 and that the appellant was required to report all income so that the ministry could determine what is exemptions and the amount of disability assistance.
- The ministry had not been aware that the appellant was receiving EI income and that it was her responsibility to report all income received by the 5<sup>th</sup> of the following month.
- The ministry found out about the appellant's EI payments when they cross-reference her file with the federal government and requested her to report her EI benefits as well to submit her bank accounts for those months that she received EI. When requested the appellant provided that information.
- The appellant received her June and July assistance cheque as well as her EI income.
- The appellant would need to put aside her EI income knowing it is going to be deducted from disability assistance income in the future.
- The appellant's October EI of \$1460 should have been declared at the beginning of November, the ministry would have processed the declaration and determined the amount of disability assistance the appellant was eligible for in December, and for which the cheque is issued at the end of November.



- This hearing is addressing the December assistance cheque.
- That the \$365 EI received in December would be reported January 5, which affects the cheque at the end of January (February cheque).
- The appellant received appeal benefits for December and January.
- The Reconsideration decision narrowed the decision down to ineligibility for December, rather than ongoing ineligibility as determined by the decision for which the appellant had requested a reconsideration, acknowledging that the EI would no longer be in pay.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration and provided clarification of the sequence of events, corroborating the information presented.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision of December 30, 2015, which found that the appellant was not eligible for the month of December, 2015 disability assistance pursuant to Section 9 of the EAPWDR as her EI benefits exceeded the amount of disability assistance payable, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 1(1) of the EAPWDR provides that:

"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;

...

Section 9(2) of the EAPWDR provides that:

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.

Section 24 of the EAPWDR provides that:

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.

Section 29 of the EAPWDR provides that:

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);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Schedule A of the EAPWDR sets out the maximum amount of disability assistance before deduction of net income:

#### Section 1

- (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of
- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
  - (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

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

#### Section 6 – Deductions from Unearned Income

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.

#### Section 7 Exemptions - Unearned Income

The panel notes that none of the exemptions applied to the appellant

#### *Ministry's Position*

The ministry's position is that the appellant's EI income of \$1460 from October should have been declared by November 5 resulting in no eligibility for December disability assistance because the unearned income, which had no exemption, was in excess of the payable rate.

#### *Appellant's Position*

The appellant's position is that she received her final EI payment at the beginning of December and that she was concerned she would not receive a disability cheque in January. The appellant does not dispute she had received EI income of \$1460 in October.

#### *Panel Decision*

The panel notes that the appellant does not dispute being in receipt of EI income of \$1460 in October, which should have been reported by November 5<sup>th</sup> as requested by EAPWDR Section 29, and that because this income of \$1460.00 is in excess of the ministry rate for disability assistance of \$906.42, there is no eligibility for the month of December 2015. Given the evidence presented, the panel finds that the ministry reasonably concluded that the appellant was not eligible for December disability assistance under s. 9(2) of the EAPWDR.

#### *Conclusion*

Therefore, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.