

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 26, 2016 which held that pursuant to section 10(2) of the Employment and Assistance Regulation (“EAR”) the appellant was not eligible for income assistance for the month of July 2016 and August 2016 because the family net income of \$ \$2,774.84 in May and \$2,786.73 in June of 2016 exceeded the family monthly income assistance rate (“IAR”) of \$1,416.28.

The ministry determined that the money received from her spouse’s parents (Parent 1) in May and June of 2016 are considered recurring gifts and are not considered gifts as defined in section 1(1)(xlvii) of the EAR and must be declared as unearned income and included when calculating the family’s monthly net income to determine the amount of income assistance the family unit is eligible to receive in accordance with section 24 EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 1, 10 and Schedule A and B

PART E – Summary of Facts

The appellant did not attend the hearing, but the panel being satisfied the appellant was notified of the date, time and location of the hearing, the hearing proceeded under section 86(b) EAR.

The evidence before the ministry at the time of reconsideration:

- Bank statements for the appellant for months of April, May and June 2016;
- Bank credit card statement for month of May 2016;
- Letter from ministry to appellant dated June 14, 2016 requesting three months of bank statements for her and her spouse;
- Request for Reconsideration dated July 8, 2016 with a 5 page attachment signed by spouse. In the attachment the spouse requests that the ministry will reconsider the decision based on the unique circumstances of the family. He states “while I now understand the policy regarding ongoing versus occasional gifts – we were not aware, nor were we made aware by any ministry worker, that ongoing support from my parents to help us meet our living expenses would be held against us.” He explains the family circumstances and that employment is on the horizon. He states that some of the money (\$900 deposit was money transferred from the appellant’s personal chequing account to the joint account. Similarly, the appellant transferred \$800 on May 25, \$900 on June 22 and \$200 on June 29 of 2016) that the ministry was referencing was not received from his parents. He states that the assistance of his parents was necessary to meet expenses as he and his wife were not making enough money to pay the monthly bills which he calculated to be \$2754.00.

On June 14, 2016 the ministry worker (EAW) reviewed the appellant’s monthly report that declared (in part) \$2000.00 of monthly ongoing assistance from family. The ministry requested the appellant submit three months of bank statements and on June 29, 2016 the EAW reviewed the April to June 2016 bank statements. The EAW determined the appellant was not eligible for income assistance for July and August because the family had received income in excess of the rate of assistance. The ministry informed the appellant that May income is used to calculate eligibility for July income assistance and June income is used to calculate August income assistance. On the May report, the appellant declared the family had received assistance from Parent 1 and that they receive \$500 or less with some regularity.

When calculating the payments from Parent 1, the ministry has considered only the deposits with the description “WWW3RD PTY DEP” on the bank statement. The deposits total \$2,300 in May and \$2,400 in June.

Date	Amount	Date	Amount
May 13	\$500	June 3	\$500
May 17	\$500	June 10	\$500
May 25	\$800	June 15	\$500
May 27	\$500	June 22	\$900
Total:	\$2300	Total:	\$2,400

The appellant stated the following four deposits should not be included when calculating the payments from Parent 1 because they were transfers of money between accounts:



Date	Amount	Bank Deposit Description	Ministry Calculation
April 20	\$900	No corresponding deposit found	Not included
May 25	\$800	WWW3RD PTY DEP	Included
June 22	\$900	WWW3RD PTY DEP	Included
Date	Amount	Bank Deposit Description	Ministry Calculation
June 29	\$200	No transaction available past June 23	Not included

The April 20 and June 29 deposits referred to by the appellant were not included in the ministry's calculation. Both the June 22 \$900 deposit and the May 25 \$800 deposit have the description "WWW3RD PTY DEP" on the bank statements. Other transactions have the description "WWW TRANSFER" so the ministry was not satisfied that these deposits are transfers between accounts. The ministry determined that the third party bank deposits to the appellant's bank account in May 2016 and June 2016 meet the definition of unearned income because they are not earned income and is money the appellant and/or her spouse received as deposits to their bank account as gifts.

The ministry determined the family's net income includes her spouse's employment earnings and the recurring cash gifts from his parents which totals \$2,774.84 for May 2016 (\$474.84 + \$2,300) and totals \$2,786.73 for June 2016 (\$386.73 + \$2,400). The ministry determined the family unit is eligible to receive \$1,416.28 in monthly income assistance and since the family's net income for May (which affects income assistance for July) and June (which affects income assistance for August) exceeds the monthly family rate of assistance, the family unit is not eligible to receive income assistance for the month of July 2016 and August 2016.

At the hearing the appellant's spouse stated the main issue is whether the money the family received from Parent 1 should be considered recurring gifts. He stated the family has two bank accounts #2098 which is the family joint chequing account and #2533 which is his wife's personal savings account. He told the panel the family did receive 3 separate deposits into the family's joint chequing account of \$500 in May 2016 and three separate deposits in the amount of \$500 in June 2016 from Parent 1 to assist the family with the monthly expenses, i.e. hydro, food, car payments, etc. He stated the family needed the help because his meager wage was not sufficient to sustain the family when the monthly expenses were over \$2700.00. He stated the money, which the ministry deemed as recurring, was needed for the family to survive and to pay the bills. He stated that he was told by a ministry worker that if the money had been given to them in a lump sum the ministry would not have looked at the situation but because Parent 1 could not afford to give the money in a lump sum the ministry deemed the "gift" as recurring which is not exempt from being included in the family's monthly net income. He stated there are 3 children in the family unit and the family just needed some assistance until he secured a full time job in his profession. He told the panel he now has an accepted offer of employment but the benefits of that employment will not commence for another three months.

The panel found the spouse's testimony provided information that was in support of the information and record that was before the ministry at reconsideration and accordingly has admitted this information in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on the facts in the Reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision of July 26, 2016 which held that the money received by the appellant in May and June of 2016 is considered a recurring gift under section 1(1)(xlvii) of Schedule B of the EAR and not exempt when calculating the family unit's net income under section 24 EAR; and therefore, because the family unit's net income exceeded the maximum rate of assistance she was not eligible to receive income assistance in July and August of 2016 was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The legislation considered: EAR

Definitions

Section 1

(1) In this regulation:

"earned income" means

(a) any money or value received in exchange for work or the provision of a service,

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

Limits on income

Section 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.

Amount of income assistance

Section 28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

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- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A – Support and Shelter Allowances

Monthly support allowance

Section 2

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
12	Two applicants/recipients and one or more dependent children	Both applicants/recipients are under 65 years of age	\$401.06

Monthly shelter allowance

Section 4

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
5	5 persons	\$750

Schedule B – Deduction and exemption rules

Section 1 When calculating the net income of a family unit for the purposes of section 28

(b) [amount of income assistance] of this regulation,

(a) the following are exempt from income:

(xlvii) gifts, other than recurring gifts;

...

(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 of this Schedule.

Ministry's Position

The ministry's position is that the monies from Parent 1 deposited into the appellant's bank account is considered unearned income being defined as gifts under section 1(y) EAR. The ministry's position is that these gifts are recurring gifts as defined under Schedule B section 1(a)(xlvii) because the bank statements show the appellant and her spouse received three third-party deposits in May and three third party deposits in June 2016 from Parent 1. The ministry argued that the appellant declared that they received ongoing financial assistance from Parent 1 as the family is not able to meet their monthly expenses. The ministry argued the family's monthly net income must include the spouse's employment earnings and the recurring gifts from Parent 1.

The ministry argued the maximum allowable rates of monthly income assistance (support - \$401.06 and shelter - \$750.00) for the family unit is \$1,416.28. The ministry argued that the family's monthly net income was \$2,774.84 in May 2016 (\$474.84 + \$2,300.00) and \$2,786.73 in June 2016 (\$386.73 + \$2,400.00) which exceeds the monthly rate of assistance and therefore the family unit is not eligible to receive income assistance.

The ministry stated that the family unit's net income for May 2016 and June 2016 affects the amount of assistance the family unit would be eligible to receive in July and August 2016. The ministry argued that since the family unit's net income exceeded the maximum rate of income assistance that the appellant is not eligible for income assistance for the month of July 2016 and August 2016.

Appellant's Position

The appellant argued that the family needed the money to survive and pay the bills. The appellant argued that the family just needed some assistance until he was able to secure full time employment in his profession. The appellant argued Parent 1 was not able to give the family a lump gift to assist them and because Parent 1 gave the family the money when it was available his family is being

penalized when the government should be assisting them and more understanding of the situation. The appellant argued \$800 deposit on May 25 was a transfer of money from her personal account into the family joint chequing account and the \$900 deposit on June 22 was a Child Tax Credit payment deposited into her account and transferred into the family joint chequing account.

Panel Decision

Section 1(x) EAR defines unearned income as gifts of money and Schedule B section 1(xlvii) EAR states gifts, other than recurring gifts, are exempt when calculating a family unit's net income.

Schedule B section 1(d) states that all unearned income must be included when calculating a family unit's net income under Section 28 EAR.

Section 10 EAR states 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.

The evidence before the panel is that the appellant had two bank accounts – #2098 which is the family joint chequing account and #2533 which is the appellant's personal savings account. The evidence of the spouse is that Parent 1, over a period of at least two months, May and June 2016, gave the family money to assist with them with the monthly expenses which the ministry considered recurring gifts and was deemed unearned income.

In dispute, was the deposit of \$800.00 in the family chequing account on May 25 which is described as "WWW3RD PTY DEP" and the deposit of \$900.00 on June 22 which is also described as "WWW3RD PTY DEP". The ministry argued these funds should be considered "gifts" because have the same description on the bank statement as the \$500.00 "gifts" received from Parent 1. The appellant argued these deposits were funds received from the federal government (Child Tax Benefit and Fed-Prov/Terr-Canada) and were only transfers from one family account (#2533) to the other account (#2098). The panel reviewed the bank statements and accepts the appellant's explanation as the deposit/withdrawal from one account (#2533) coincides with the deposit into the family joint account (#2098). The panel finds the ministry did not include these deposits in the calculation of the appellant's monthly net income for May or June 2016.

Parent 1 made three separate deposits of \$500 each into account #2098, the family's joint bank account during the month of May and June 2016. The deposits were described as "WWW3RD PTY DEP" on the bank statement. In the spouse's evidence he acknowledged these deposits were "gifts" from his parents, Parent 1, to assist his family with their monthly expenses during a time of need while he was trying to secure full time employment. The appellant also argued that EAW advised him that if the money had been given to him (his family) in a one-time one lump sum as a "gift" the ministry would have exempted the income. The ministry deemed the money from Parent 1 as recurring gifts because they set a pattern over a three month period. The ministry argued recurring gifts are not exempt from been considered unearned income as set out in Schedule B section 1(xlvii) EAR and must be included in the family unit's monthly net income.

Schedule B section 1(xlvii) EAR states gifts, other than recurring gifts, are exempt when calculating a family unit's net income.

The Panel finds there is no definition in the EAR legislation for recurring gifts. Wikipedia defines recurring as repeatedly and the panel relied on the Wikipedia definition. The evidence of the 3 separate deposits during the month of April, May and June 2016 is supported by the spouse's testimony that Parent 1's financial support is ongoing which supports the ministry's determination of recurring. The panel does not accept the appellant's argument that the money from Parent 1 should not be considered recurring because the family was in need and the money went towards offsetting their monthly expenses.

Therefore the panel finds ministry's decision that the money received by the appellant from Parent 1 was recurring gifts, is considered unearned income and must be included in the calculation of the family unit's monthly net income for May and June 2016 was reasonable.

The panel finds the family unit's net income for May 2016 was \$1,974.84 (\$1,500 + 474.84) and \$1,886.73 (\$1,500 + 386.73) for the month of June 2016 which still exceeds the family unit maximum monthly income assistance rate of \$1,416.28.

Therefore, the panel finds, based on the evidence, that the ministry's decision which determined the appellant was not eligible for income assistance for the month of July and August of 2016 was a reasonable application of the legislation. The reconsideration decision is confirmed and the appellant is unsuccessful on appeal.