



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 28, 2016 which found that the appellant is not eligible for income assistance pursuant to Section 10 of the Employment and Assistance Regulation 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) Application for Income Assistance (Part 1) dated June 13, 2016;
- 2) Application for Income Assistance (Part 2) dated June 22, 2016 showing family unit's monthly rental property income of \$1,250, property taxes of \$1,100 and assets comprising cash on hand or in a bank account totalling \$944, a leasehold condo valued at \$147,000 and a bank account with a balance of \$1,086. In response to a question on the application form which asks the applicant to describe changes in circumstances or income that have caused the applicant to apply for income assistance, the appellant said that he was applying for Persons With Disabilities (PWD) status, that his Employment Insurance (EI) benefits were depleted, and that he is unable to return to work;
- 3) Bank account, credit card and mortgage balances in the appellant's name as of June 10, 2016 and recent activity statements for three bank accounts in the appellant's name;
- 4) A medical statement from the appellant's family physician saying that the appellant is in the family physician's care and that he has an ongoing medical condition of Depression with paranoia that will continue for more than two years, and that the appellant has other medical conditions including: Hypertension, Ischemic heart disease, Diabetes, Dyslipidemia and Chronic Obstructive Pulmonary Disease (COPD) anxiety; and
- 5) Request for Reconsideration dated June 22, 2016.

In his Request for Reconsideration, the appellant wrote that:

- He has been experiencing chronic depression for four years;
- He has no energy or motivation;
- He feels overwhelmed and sad and is often unable to take care of day-to-day responsibilities;
- He often can't get enough sleep because his sleep is disturbed;
- He eats either too much or not enough;
- He has trouble concentrating and often "zones out";
- He has eyesight problems and he has fear and anxiety about losing his eyesight;
- He has physical problems including: breathing irregularities, heart problems, lower back pain, high blood pressure, high cholesterol and diabetes; and
- His physical issues and mental illness interfere with his ability to work and take care of himself.

In his Notice Of Appeal (NOA) dated August 5, 2016, the appellant wrote that he cannot work because he is sick with mental health problems of depression and anxiety and that he is under a lot of stress that he is not managing well. He also had physical problems including heart problems, high blood pressure and high cholesterol and diabetes and he needs assistance to help him manage his life better.

### *Additional Information*

Included with the appellant's NOA was a letter dated August 3, 2016 from a doctor in a mental health

facility in the appellant's community indicating that the appellant has major issues with depression and anxiety, that he is currently taking medication and has been admitted to the hospital due to his depression and anxiety.

The ministry had no objection to the introduction of the additional evidence.

#### *Appellant's Evidence at the Hearing*

At the hearing, the appellant stated that the money he receives from renting his condominium (the condo) is not real income because, while he rents it for \$1,150 per month, every month he has to pay \$618 towards the mortgage, \$318 for maintenance and \$252 for renovations, and therefore his costs exceed the rent he receives. He said that he had provided the ministry with documentation relating to the rental property including the lease agreement and the maintenance contract and did not understand why the ministry had not included those documents in the appeal package. He said that the lease with the renter was a one year lease which expires at the end of December 2016. Since renting the apartment he has been homeless and has been staying with friends ("couch surfing").

The appellant stated that he had tried to sell the condo in late 2015 but at that time the best offer he received was for significantly less than his asking price and that if he had accepted the offer he would have lost \$35,000 on the sale, \$15,000 of which represented his original down payment, while the other \$20,000 would have been negative equity. This left him with no option but to rent the condo.

He stated that because of his poor and deteriorating health he could no longer work. He lost his job following the breakup of his marriage in June 2015 and he no longer qualifies for Employment Insurance. He has tried self-employment but was unsuccessful at that. He said that he didn't understand why he did not qualify for income assistance and that he had received approximately \$900 per month when he first applied for assistance in March and April 2016, but that the ministry stopped providing income assistance after two months. He stated that he wanted to apply for eligibility as a Person with Disabilities (PWD) but had been told by the ministry that he did not need to apply and that disability assistance would be assessed automatically. He said he has been waiting for 9 months for a PWD designation and it has still not been approved.

#### *Ministry's Evidence at the Hearing*

At the hearing, the ministry relied on the reconsideration decision and emphasized that social assistance was a last resort. The ministry stated that if the appellant had no income he would have been entitled to a monthly support allowance of \$235, but he was not entitled to the monthly shelter allowance of up to \$375 because he had no shelter costs. The ministry explained that because he was renting his condo, he had unearned income of \$1,150 per month. The ministry said that the only deductions permitted by legislation from unearned income from a self-contained rental suite are the essential operating costs of that suite, and the resulting net unearned income, being in excess of \$235, makes him ineligible for income assistance.

The ministry said that, while it did not have the particulars at hand during the hearing, the two months of income assistance that the appellant received in March and April 2016 were likely temporary emergency payments available to any applicant in dire need during the initial application for ongoing income assistance, between stage 1 and stage 2 of the application process.



The ministry also explained that in order to apply for a PWD designation, which would result in the appellant receiving disability assistance, an applicant must first be eligible for income 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 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.

### EAR

#### 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: ...

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient ...

#### Limits on income

**10** (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

**28** 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 - Income Assistance Rates (section 28 (a) )

#### Maximum amount of income assistance before deduction of net income

**1** (1) ... the amount of income assistance referred to in section 28 (a) [*amount of income 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.

#### Monthly support allowance

**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

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an applicant or a recipient described in Column 2 ...

<b>Item</b>	<b>Column 1 Family unit composition</b>	<b>Column 2 Age or status of applicant or recipient</b>	<b>Column 3 Amount of support</b>
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

### Monthly shelter allowance

4 (1) For the purposes of this section:

**"family unit"** includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

**"warrant"** has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

(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:

<b>Item</b>	<b>Column 1 Family Unit Size</b>	<b>Column 2 Maximum Monthly Shelter</b>
1	1 person	\$375

### Schedule B - Net Income Calculation (section 28 (b) )

#### 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 ...

(d) all unearned income must be included, except the deductions permitted under section 6 ... of this Schedule.

#### Deductions from unearned income

6 The only deductions permitted from unearned income are the following: ...

(b) essential operating costs of renting self-contained suites.

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### *The Appellant's Position*

The appellant's position is that he has no real income because the rent he receives for the condo he owns does not cover his costs of ownership, that he is not able to work because of his significant health issues, and that he needs assistance to cover his basic needs for food, shelter and medication.

### *The Ministry's Position*

The ministry's position is that the legislation provides income assistance as an option of last resort, and that the appellant is not entitled to any income assistance in this case because, pursuant to Section 10(2) of the EAR, the net income of the family unit determined under Schedule B of the EAR equals or exceeds the amount of income assistance determined under Schedule A of the EAR for the appellant's family unit.

### *The Panel's Decision*

The panel finds that the information provided by the appellant in the NOA, including the letter dated August 3, 2016 from a doctor in a mental health facility, is not admissible because the information in the letter is not related to the issue in the record of the ministry decision and therefore it does not support or corroborate the information and records before the ministry at the time of reconsideration of the decision under appeal pursuant to section 22(4) of the EAA.

Section 1(1) of the EAR defines unearned income to include rental of land, self-contained suites or other property, except the place of residence of an applicant or recipient. Because the appellant has rented his condo and because his condo is a self-contained suite which is not the appellant's place of residence, the panel finds that the appellant has unadjusted unearned income of \$1,150 per month. Schedule B section 6(b) of the EAR permits only those deductions relating to the essential operating costs of a self-contained rental suite from unearned income for that rental suite. The panel finds that maintenance cost of \$318 per month and the building repair costs of \$252.20 are essential operating costs associated with the self-contained suite and are therefore eligible deductions from unearned income, leaving the appellant with net unearned income of approximately \$580 per month.

Section 28 of the EAR says that income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined under Schedule A of the EAR minus the family unit's net income determined under Schedule B of the EAR, which is \$580 per month. Schedule A 2(1)(a) of the EAR provides for a monthly support allowance of \$235 for an applicant who is under 65 years of age with no dependent children. As the appellant is an applicant under the age of 65 with no dependent children, the panel finds that the appellant's support allowance amount for the purpose of calculating whether income assistance may be provided under section 28 of the EAR is \$235. Section 4(2) of Schedule A states that the monthly shelter allowance for a family unit is the smaller of the family unit's actual shelter costs and \$375 for a family unit consisting of a single person. As the appellant has no actual shelter costs, the panel finds that the appellant is not entitled to a shelter allowance. Since the the appellant's net income of \$580 per month exceeds the \$235 per month he is entitled to under the EAR, the panel finds that the appellant is not entitled to any income assistance.

## Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for income assistance pursuant to Section 10 of the EAR as the net monthly income of the family unit exceeded the amount of income assistance payable, was reasonably supported by the evidence and confirms the decision. The appellant is not successful in his appeal.