

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 11, 2016 which found that the appellant is not eligible for income assistance for the month of October 2016, pursuant to Section 10 of the Employment and Assistance Regulation (EAR), as the net monthly income of the family unit exceeded the amount of assistance payable due to Employment Insurance (EI) income received by the appellant in August 2016.

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

The appellant stated that she had not picked up her Appeal Record package as she typically checks her mail box once per month, but she had her Reconsideration decision package available and stated she was aware of the contents of the Notice of Appeal and was prepared to proceed with the hearing.

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

- 1) Employment Insurance (EI) Benefit statements for the weeks starting July 3, July 10, July 17, July 24, and July 31, 2016 each in the amount of \$284;
- 2) Letter to the appellant dated August 29, 2016 in which Service Canada wrote that the maximum number of benefit weeks payable was 24 and the period to claim the weeks payable ended August 6, 2016. She was paid for 24 weeks for the period from March 29, 2015 (sic) to August 6, 2016;
- 3) Letter to the appellant dated August 30, 2016 in which Service Canada enclosed documents the appellant requested; and,
- 4) Request for Reconsideration dated September 30, 2016.

In her Request for Reconsideration, the appellant wrote that:

- She does not have money for rent for October 1, 2016. She is afraid she will get evicted soon and she has no food in her house. Bills are piling up.
- She did get 5 weeks of EI but she needed to pay of the remaining \$500 for August, September rent and she had other bills to pay due to being off work since June.
- She has not been able to find a job and she does not want to also be homeless.

### ***Additional Information submitted after reconsideration***

In her Notice of Appeal dated October 19, 2016 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She is still late with her October 1 rent and she is receiving disconnection notices for her cable.
- She is doing everything she can to find work with none available.
- She received 5 weeks of EI from a claim in 2015 and she used it to catch up and live.
- She is 72 hours or so away from a new claim with EI.
- She has no family or friends willing to help her.

At the hearing, the appellant stated that:

- She worked from March to June 2016 and was let go in June. She was very down and out about being let go and she waited until the last minute to apply for EI and income assistance.
- She applied for EI as a new claim but was told she had extra weeks from an old claim that she made in 2015.
- When she applied for income assistance, the ministry said she could be put on hardship assistance while she was waiting for her new EI claim to start and she got a cheque from the ministry in August 2016. A few weeks later, she discovered money in her bank account from EI, which was for a previous 5 weeks from her claim in 2015.
- The EI payments were \$284 for July 3, 10, 17, 24 and 31, 2016 and they related to a previous period in 2015. In July she had no money at all since she did not receive EI or income assistance.
- She reported the EI received on her reporting stub in September 2016.
- She was later told by EI that she did not have enough hours from the time that she worked in

2016 to qualify for a new claim for EI.

- She had been very late on a few bills, including rent, and when she received the money in August she paid her rent and bought food and she put \$300 in a savings account towards future rent. Her rent is \$700 per month and she only receives \$610 from the ministry.
- She was encouraged by the ministry, in conversations with ministry staff, to request a reconsideration of the decision to deny assistance for October and to enter into what she understood to be a reconsideration agreement so that she could get some money that she would later pay back.
- She has not received any money and she is a month late in her rent and has no food in her house. She is facing disconnection of her phone and other things, bill collectors are calling her, and she is afraid she is going to be evicted.
- She received her income assistance cheque for November 2016.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry provided information that:

- The appellant was eligible for hardship assistance for August and September 2016 pending her application to EI. The appellant became a sole recipient of income assistance in October 2016. Her total monthly rate of income assistance is \$610, consisting of shelter of \$375 and support of \$235.
- In August 2016, the appellant received EI payments of \$1,420. She received \$1,136 on August 11, 2016 and \$284 on August 16, 2016.
- The ministry looks at when funds are actually received and not the period of time for which they are payable.
- Funds received in August are reported in September and deducted from the client's October 2016 assistance.
- There is no record on the appellant's file of her having requested an appeal supplement to receive benefits pending her appeal. With the appeal supplement, the appellant is required to pay the supplement back to the ministry if the appeal is not successful but she would not be required to pay the supplement back if the appeal is successful. There may have been some miscommunication about what was required to receive the appeal supplement. The appellant was given a Request for Reconsideration package and the ministry does not enter into a reconsideration agreement with clients.
- If the appellant is facing eviction, she may request a crisis supplement from the ministry for her shelter amount of \$375.

### ***Admissibility of Additional Information***

The panel considered the information in the Notice of Appeal and the appellant's oral testimony as corroborating the previous information from the appellant in her Request for Reconsideration regarding the circumstances surrounding her receipt of EI benefits, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for income assistance for the month of October 2016, pursuant to Section 10 of the Employment and Assistance Regulation (EAR), as the net income of the family unit, as calculated under Schedule B of the EAR, exceeded the amount of assistance payable, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

**Sections 10 and 28** of the EAR provide:

### Limits on income

- 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

- 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 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. In calculating the net income of a family unit under Schedule B, various exemptions from income are listed but, if no exemptions apply, all earned and unearned income must be included in the calculation of net income.

**Section 1 of Schedule B** of the EAR provides as follows:

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 and any income exempted under sections 7 and 8 of this Schedule.

**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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;

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- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
  - (j) workers' compensation benefits and disability payments or pensions;
  - (k) surviving spouses' or orphans' allowances;
  - (l) a trust or inheritance;
  - (m) rental of tools, vehicles or equipment;
  - (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
  - (o) interest earned on a mortgage or agreement for sale;
  - (p) maintenance under a court order, a separation agreement or other agreement;
  - (q) education or training allowances, grants, loans, bursaries or scholarships;
  - (r) a lottery or a game of chance;
  - (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
  - (t) any other financial awards or compensation;
  - (u) Federal Old Age Security and Guaranteed Income Supplement payments;
  - (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*.;
  - (w) tax refunds.
  - (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
  - (y) gifts in the form of payment by another person of a debt or obligation;

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

The ministry's position is that Section 28 of the EAR states that a family unit's net income must be deducted from the amount of income assistance payable to the family unit. The ministry noted that the appellant does not dispute that she received \$1,420 in August 2016 for EI benefits. The ministry stated that in determining net income under Schedule B, all unearned income must be included, which has been defined in Section 1 of the EAR to include "employment insurance." The ministry stated that as a sole recipient of income assistance, the appellant is eligible for a support allowance of \$235 per month and a shelter allowance in the amount of \$375 per month for a maximum total monthly allowance of \$610, as per Schedule A of the EAR. The ministry argued that the appellant's income from employment insurance (\$1,420) exceeded her assistance rate for the month of October (\$610) and, therefore, she is not eligible for assistance for the month of October 2016 pursuant to Section 10(2) of the EAR.

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

The appellant acknowledged that she was in receipt of EI benefits in August 2016 in the total amount of \$1,420 as she completed her reporting stub to the ministry showing these payments, and it is also not disputed that she is eligible for the amount of \$610 in income assistance each month as a single recipient. However, the appellant argued that the money she received from EI was for a period in 2015 before she was in receipt of assistance from the ministry. In her Notice of Appeal, the appellant argued that she received 5 weeks of EI from a claim in 2015 and she used it to catch up and live and she is still late with her rent and she is receiving disconnection notices for her cable. The appellant stated at the hearing that she understood from the ministry that she would continue to be in receipt of benefits but that she would have to pay them back later under a reconsideration agreement.

*Panel's decision*

The appellant does not dispute that, in August 2016, she was paid EI benefits in the total sum of \$1,420. Under Section 1 of Schedule B of the EAR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 1(g) of the EAPWDR, "unearned income" is defined to mean any income that is not earned income and includes, without limitation, money or value *received* from any of the following: "...employment insurance." Although the appellant argued that the EI benefits were payable for a past claim in 2015, prior to her receipt of income assistance, the panel finds that the relevant timing according to the definition of unearned income is when the funds are 'received' by the appellant. As the appellant received the funds from EI in August 2016, the panel finds that the ministry reasonably determined that the total amount of the appellant's EI benefits (\$1,420) must be included in the calculation of her income received in August 2016 and that, given the directory language of the applicable provision, the ministry does not have the discretion to omit the EI received from the calculation of the appellant's net income. The panel finds that the ministry reasonably concluded that the amount of the appellant's net income exceeded the amount of income assistance determined under Schedule A for the appellant's family unit (\$610) and that, therefore, the appellant is not eligible for income assistance for the month of October 2016, pursuant to Section 10 of the EAR.

The panel notes that there may have been some miscommunication between the ministry and the appellant regarding a possible request for an appeal supplement, and there may be an issue regarding the appellant's eligibility for hardship assistance under Section 5 of the *Employment and Assistance Act*, as opposed to income assistance, but these are not the subject of this appeal.

*Conclusion*

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*. The appellant's appeal, therefore, is not successful.