

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 15, 2016 wherein the ministry determined that the appellant was not eligible for income assistance for November 2016, as set out in section 10 Employment and Assistance Regulation (“EAR”), because in September 2016 the appellant received \$3,500.00 in grants under the Canada Student Financial Assistance Act, which is considered unearned income and must be included in calculating the appellant’s net income for September 2016 under Schedule B EAR to determine the amount of income assistance, if any, she will be eligible to receive in November 2016.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 1,10, 16 and 28

## PART E – Summary of Facts

### **The information before the ministry at the time of reconsideration included the following:**

- The appellant is a sole recipient of income assistance since September 23, 2013 receiving monthly assistance of \$235 for a support allowance and \$375 for shelter allowance.
- May 12, 2016 – employment plan of BC contractor advised the ministry that the appellant is planning on attending school on a full time basis in September 2016.
- July 25, 2016 – a Notification of Assessment provided by Student Aid BC outlining the details of the total education costs of \$8,944, the amount the appellant was eligible to receive of \$4,576 and the unmet need of \$3,794.
- July 25, 2016 – the Student Aid BC assessment determined that the total education costs of \$8,944 were comprised of Tuition/fees of \$2,085 plus Books/Supplies of \$1,300 plus Living Allowance of \$5,559.
- September 6, 2016 – a statement of current charges provided by the education institution for 3 courses commencing September 6, 2016 and ending December 16, 2016 totalling \$1,575.12.
- October 6, 2016 – the appellant reported to the ministry that she received \$4,576.00 from Student Aid BC for education expenses for a 17 week program which started in September.
- October 26, 2016 – the appellant contacted the ministry to inquire about her income assistance benefits and the ministry advised the appellant that she is not eligible for benefits while attending full time school.
- November 7, 2016 – the appellant submitted her request for consideration stating that
  - a) She is not attending school on a full time basis and is only enrolled in 2 courses, and
  - b) She is taking a 40% course load and had to withdraw from one course due to health and her medical condition prevents her from attending all the classes, and
  - c) She indicated that because she did not receive adequate funding to cover her costs that it should not disqualify her for income assistance.

### **Notice of Appeal**

On November 21, 2016 the appellant submitted a Notice of Appeal in which she provided the following information:

- She disagrees with the ministry reconsideration decision.
- She states that she is not a full-time student and is a part-time student.
- She did not receive any income, but \$4,576 in September for education costs which she

declared in her October stub. \$3,500 of this amount was decided by the ministry to be unearned income which is entirely incorrect.

- The July 2016 notice of assessment (Student Aid BC) states that she has an unmet need of \$3,794, therefore, she has not received any excess; quite the opposite.
- She has not received enough money to pay for school so ministry assistance is much needed.
- The ministry has approved her to continue to receive assistance but denied her November 2016 assistance and are requiring her to pay back the \$610 she received.
- It is wrong for the ministry to require her to pay back November's assistance because she did not receive any income; earned or unearned. She just received money to pay for school.

### **At the hearing**

The appellant re-stated her position and that she has epilepsy which results in limitations to her ability to handle stress. She states that the difficulty she has experienced creates obstacles that hold her back from receiving the education she requires to become financially self-supporting.

The ministry relied on the information provided in the reconsideration decision and confirmed the \$4,576 student aid that the appellant received in September 2016. The amount was comprised of \$1,076 provincial aid which was all exempted plus \$3,500 in federal grants that was deducted from the appellant's November 2016 income assistance. The ministry further stated that subsequent to the reconsideration decision, the appellant was granted Persons with Persistent Multiple Barriers (PPMB) status which has some financial benefits for the appellant.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry reconsideration decision of November 12, 2016 wherein the ministry determined that the appellant was not eligible for income assistance for November 2016, as set out in section 10 EAR, because in September 2016 the appellant received \$3,500.00 in grants under the *Canada Student Financial Assistance Act*, which is considered unearned income and must be included in calculating the appellant's net income for September 2016 under Schedule B EAR to determine the amount of income assistance, if any, she will be eligible to receive in November 2016.

The relevant legislation is as follows:

### EAA

#### **Definitions**

1 (1) In this regulation:

**full-time student** has the same meaning as in the *Canada Student Financial Assistance Regulations (Canada)*;

**funded program of studies** means a program of studies for which funding provided to students under the *Canada Student Financial Assistance Act* may be provided to a student enrolled in it;

**unearned income** means 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;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities 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;

### **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.

### **Effect of family unit including full-time student**

16 (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student

(a) in a funded program of studies, or

(b) in an unfunded program of studies without the prior approval of the minister.

(1.1) Subsection (1) (a) does not apply to a family unit that includes a recipient who is enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2) during the period described in subsection (2).

(1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person

(a) is a sole recipient of income assistance who

(i) has a dependent child, or

(ii) provides care to a supported child,

(b) is required to enroll in the program of studies as a condition of an employment plan and

(c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist.

(2) The period referred to in subsection (1)

(a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and

(b) is not longer than one year.

### **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 B**

#### **Minister's discretion to exempt education related unearned income**

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the

costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student financial assistance;
- (c) student grants, bursaries and scholarships;
- (d) disbursements from a registered education savings plan.

(3) An exemption under subsection (2) may be authorized in respect of a student who is

- (a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,
- (b) an applicant or a recipient enrolled
  - (i) as a part-time student in an unfunded program of studies, or
  - (ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
- (c) a person in a category listed in section 29 (4) [consequences of failing to meet employment-related obligations] of this regulation enrolled as a part-time student in a funded program of studies.

(4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the Canada Student Financial Assistance Act;
- (c) disbursements from a registered education savings plan.

(5) An exemption under subsection (4) may be authorized in respect of a student who is

- (a) a recipient enrolled as a part-time student in a funded program of studies, or
- (b) described in section 16 (1.1) [effect of family unit including full-time student] of this regulation.

### **Canada Student Financial Assistance Regulations (Canada)**

**full-time student** means a person

- (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute
  - (i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
  - (ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,
- (b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and
- (c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be.  
(étudiant à temps plein)

### **Appellant's Position**

The appellant states that all of the \$4,576 she received from Student Aid BC was for education costs and she still has an unmet need of \$3,794. She disagrees that the \$3,500 identified by the ministry is unearned income and the ministry has approved her to continue to receive assistance but denied her for November 2016.

### **Ministry's Position**

The appellant's monthly assistance rate is \$610.00. The ministry argued the appellant was a recipient

of a grant from Student Aid BC and determined that \$3,500 of that grant received in September 2016 by the appellant was not exempt from the appellant's net income calculation as per Section 1(q) EAR and Schedule B section 8(4) of the EAR. The calculation showed that the appellant's monthly net income was over her monthly income assistance entitlement and therefore was not eligible for November 2016 income assistance

**Panel Decision**

The appellant received Student Aid BC funds in the amount of \$4,476 in September 2016. Based on the "Notice of Assessment provided by Student Aid BC, the appellants' education costs are \$2,085 for tuition and \$1,300 for books and supplies totalling \$3,385. The minister argues that the \$4,476 received in September 2016 is comprised of \$1,076 in grants under the BC Student Assistance program which is exempt and \$3,500 grants under the Canada Student Financial Assistance Act which is not exempt, however, the minister does not explain how this allocation of grant funds was calculated. The panel finds that \$3,385 of the \$4,476 Student Aid BC funds the appellant received in September 2016 is for tuition and books and is exempt in accordance with EAR Schedule B section 8(2).

The appellant argues that the \$4,476 grant she received in September 2016 was all for education costs, however section 1(q) EAR states that education or training allowances, grants, loans, bursaries or scholarships is unearned income. Section 28 EAR states that income assistance may be provided to or for a family unit 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.

The appellant is a sole recipient of income assistance under Schedule A EAR receiving \$235 support, \$375 Shelter, for a total of \$610. The panel finds the amount the appellant received in September 2016 in accordance with Schedule B is \$4,476 in grants minus the exempt portion of \$3,385 leaving a balance of unearned income of \$1,191 pursuant to Section 1(q) EAR.

The panel finds that the appellant is not eligible for income assistance for the month of November 2016 in accordance with section 10(2) EAR because her net income of \$1,191 determined under Schedule B exceeds the \$610 amount of income assistance as calculated for the appellant's family unit under Schedule A.

**Conclusion**

The panel finds that the ministry's reconsideration decision that the appellant was not eligible for income assistance for November 2016 was reasonably supported by the evidence and confirms the decision. The appellant was not successful in her appeal.