



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated December 20, 2016 which found that the appellant is not eligible for income assistance for the month of December 2016 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 appellant and her spouse are in receipt of assistance as a two person family unit. The appellant's file was opened in October 2016.

The appellant's spouse also attended the hearing and the appellant gave verbal assent to have him participate in the hearing as the appellant's representative.

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

- 1) Ministry Monthly Report dated November 8, 2016 identifying monthly income from employment totalling \$663.70 and employment insurance of \$1088.00 received by the appellant in October 2016;
- 2) Service Canada Statement dated November 8, 2016 in the name of the appellant showing weekly gross employment insurance income, earnings, deductions and net amounts paid to the appellant between May 26, 2016 and November 5, 2016, including \$92 for the report week ending October 22, 2016 processed on October 21, 2016, \$498 for the report week ending October 8, 2016 processed on October 13, 2016, and \$498 for the report week ending September 24, 2016 processed on October 13, 2016;
- 3) Statement of Earnings from the appellant's employer showing gross income, deductions and net income in the amount of \$633.17 paid to the appellant on October 28, 2016; and
- 4) Request for Reconsideration dated December 9, 2016.

In her Request for Reconsideration, the appellant wrote that:

- She was unable to work for a month longer than expected because her family physician did not complete the necessary paperwork on a timely basis;
- Her employer of 18 years is "trying to get rid" of her so that the employer does not have to pay benefits;
- Her family unit got severely behind in paying their bills, some of which were 6 months overdue because she was unable to work for several months;
- She feels let down and "this whole thing" is affecting her health and the health of her spouse;
- She hasn't felt safe or secure for months because she doesn't know what her employer will do;
- Her family unit had difficulty finding a place to live and acquired their current residence "because (they) didn't have any choices"; and
- She is trying to keep her job and doesn't want to become homeless.

Additional Information

In the Notice Of Appeal (NOA) dated December 29, 2016, the appellant's spouse wrote that he is waiting for his disability assistance and that the appellant was looking after him but cannot look after him any more. He states that the appellant was off work for surgery and they got behind on their bills, which they are now trying to pay off.

The panel finds that the information provided by the appellant in the NOA is admissible because it

supports 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.

At the hearing the appellant introduced additional evidence in the form of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities form issued to the appellant by the appellant's landlord on December 7, 2016 and stamped "received" by the Ministry on the same date. The Ministry had no objection to the introduction of the additional information.

The panel finds that the additional information contained in the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities form is also admissible because it supports 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.

Appellant's Evidence at the Hearing

At the hearing, the appellant stated that her family unit had received an eviction notice from the landlord at their previous residence in March 2016 because he was selling the house, and that they had two months notice to leave the home that they had rented for 15 years. They had difficulty finding a new residence as there were few accommodations available and eventually they were forced to rent a home at a significantly higher rent "whether (they) wanted to or not".

Because the rent was so high the family unit got behind on their bills and lost their vehicle. To make matters worse, the appellant had to have surgery and was not able to work for her employer, for whom she had worked for 18 years, for several months. Originally the surgery was scheduled for May 2016 but was delayed until July 2016. Following the surgery the appellant had difficulty getting her family doctor's approval to return to work. She felt she was ready to return to work in September 2016, but her family doctor wanted her to gradually return to work and she was not able to get him to sign the papers that the appellant's employer required until October 2016. As a result she was living on employment insurance and got even further behind on her bills.

The appellant confirmed that all income for the month of October 2016 had been accurately declared in the Ministry Monthly Report and that she returned to work in mid October 2016.

Ministry's Evidence at the Hearing

At the hearing, the Ministry relied on the reconsideration decision and stated that the amount of income assistance that an applicant is entitled to is a calculation based on a formula set out in the legislation. As such, the Ministry has no discretion to make exemptions as to the amount of assistance provided to any applicant. The Ministry also confirmed that the appellant's file was still open, and that even though the appellant was not entitled to any assistance in December 2016 because her earned and unearned income exceeded the limits set out in the EAR, the appellant should continue to submit Monthly Reports for subsequent months.

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:

"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: ...

(g) employment insurance ...

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

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
7	Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age	\$307.22

Monthly shelter allowance

- 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
2	2 persons	\$570

Schedule B - Net Income Calculation [section 28 (b)]

Deductions from earned income

- 2** The only deductions permitted from earned income are the following:
- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance, ...
 - (iv) Canada Pension Plan, ... and
 - (vii) union dues

Exemption — earned income

- 3** (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.
- (2) If an application for income assistance (part 2) form is submitted to the minister, the family unit may

[]

not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance under the *Employment and Assistance for Persons with Disabilities Act* for the calendar month immediately preceding that first calendar month.

(6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and ... :

(a) \$200 ...

The Appellant's Position

The appellant's position is that her family unit is in significant financial difficulty because they were forced to rent a home that they could not afford and because the appellant was forced off work due to surgery, and as a result they are now facing eviction and in risk of becoming homeless.

The Ministry's Position

The Ministry's position is that the legislation and regulations establish shelter and support allowance entitlements and that the Ministry has no discretion to adjust support amounts based on the individual circumstances of an applicant.

The Panel's Decision

Section 1(1) of the EAR defines unearned income to mean any income that is not earned income, and to include, without limitation, money or value received from employment insurance. In the decision section of its reconsideration decision, the Ministry incorrectly concludes that the appellant reported \$1,044 in employment insurance earnings in October 2016. In fact the appellant reported \$1,088 in employment earnings in October 2016, as indicated in the Service Canada Statement and the background section of the Ministry's reconsideration decision. In addition, the Ministry determined that the \$406 deducted by Service Canada in October 2016 for earnings should not have been deducted by the appellant in reporting employment insurance income in October 2016 because "earnings are not considered an allowable deduction from (employment insurance) in accordance with Schedule B Section 6(a) (of the EAR)...". As the \$406 was deducted from the total amount of employment insurance paid to the appellant in October 2016 by Service Canada **before** the appellant was paid, the panel finds that this amount was not "money or value received from employment insurance" pursuant to the definition of unearned income in Section 1(1) of the EAR, and the Ministry's determination that the amount should be added to the amount received by the appellant was not a reasonable application of the applicable enactment in the circumstances of the appellant pursuant to Section 24(1)(b) of the *Employment and Assistance Act*. The panel therefore finds that the information before the Ministry at reconsideration confirms that the appellant's family unit received unearned income in the form of employment insurance in the amount of \$1,088.00 in the month of October 2016.

Section 1(1) of the EAR also defines "earned income" to include money received for work. Furthermore, Schedule B Section 2 of the EAR permits the deduction of income tax, employment

insurance premiums, Canada Pension Plan contributions and union dues from earned income. The panel finds that the information before the Ministry at reconsideration includes evidence that the appellant received \$663.17 in earned income from employment in October 2016 after deductions totalling \$113.88 for employment insurance premiums, Canada Pension Plan contributions, union dues and income tax, all of which are permitted deductions from earned income pursuant to Schedule B Section 2(a) of the EAR. The panel therefore finds that the Ministry reasonably determined that the appellant's earned income was \$663.17 in October 2016.

Schedule B Section 3 of the EAR states that \$200 of earned income for a two person family unit without dependents in any month is exempt, except for the month in which an application for income assistance form is submitted. As the appellant's application for income assistance form was submitted in October 2016 and the income assistance which is the subject of this appeal was for the month of December 2016, the panel finds that the appellant is entitled to the \$200 earned income exemption pursuant to Schedule B Section 3.

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 in this case is \$1,551.17 per month [\$1088.00 in unearned income plus \$663.17 in earned income less the \$200 earned income exemption specified in Schedule B Section 3(6)]. Schedule A 2(1)(a) of the EAR provides for a monthly support allowance of \$307.22 for two applicants who are under 65 years of age with no dependent children. As the appellant is an applicant under the age of 65 who is a member of a two person family unit 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 \$307.22.

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 \$570 for a two person family. The appellant's actual shelter costs for the month are \$1,650 per month as confirmed by the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities form which was introduced by the appellant at the hearing and admitted by the panel pursuant to section 22(4) of the EAA. As the appellant's actual shelter costs exceed \$570, the panel finds that the appellant is entitled to a shelter allowance in the amount of \$570 per month.

Since the the appellant's net income less the allowable exemption of \$1,551.17 in the month of October 2016 exceeds the \$877.22 per month that the family unit is entitled to under the EAR (a shelter allowance of \$570 plus a support allowance of \$307.22), the panel finds that the appellant is not entitled to any income assistance in December 2016.

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 Ministry's decision. The appellant is not successful in her appeal.