

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated March 6, 2017, which held that in accordance with section 8(2) of the Employment and Assistance Regulation (EAR), the appellant was not eligible for income assistance because she had applied for income from another source, and that in accordance with section 43 she is liable to repay the hardship assistance she received.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 5

EAR, sections 8, 40 and 43

PART E – Summary of Facts

On July 17, 2016, the appellant made an on-line application for income assistance. On July 21, 2016, she completed an eligibility interview, at which time she stated that she had previously been receiving long-term disability (LTD) benefits from her employer but that LTD was not payable for July and August because she was a 10-month employee. Her LTD would be reinstated in late September. That employer LTD benefits are not payable in July and August is confirmed in a July 2, 2015 letter from the insurance provider. The appellant also stated that she had applied for Canada Pension Plan Disability (CPPD) benefits.

On August 4, 2016, the ministry determined that the appellant was ineligible for income assistance because she had applied for income from another source. The ministry determined that the appellant was eligible for hardship assistance and issued July benefits of \$420.49 and August benefits of \$610.00. Included in the appeal record are copies of four ministry Promise to Pay (Hardship) forms, all of which are signed by the appellant. The forms respecting the July and August hardship assistance are date stamped August 5, 2016, the form respecting September hardship assistance of \$610.00 is date stamped August 25, 2016, and the form respecting October hardship assistance of \$610.00 is date stamped September 29, 2016.

Also included in the appeal record is a copy of a “Consent to Deduction and Payment Canada Pension Plan (CPP)” form which the ministry prepared on August 4, 2016, for the appellant’s signature, but which is not signed by the appellant.

In its reconsideration decision, the ministry reports that a data match with Service Canada’s computer system verifies that the appellant has received CPP income.

In her written submissions and at the hearing, the appellant indicated that she felt she had no choice but to sign the Promise to Pay forms in order to receive assistance and that she was not eligible to receive LTD from her employer for July and August as she is 10-month employee. At the hearing, the appellant confirmed that she was required to apply for CPPD benefits by her LTD insurer and that she had received CPPD benefits.

At the hearing, the ministry relied on its reconsideration summary.

The arguments of both parties are set out in Part F of this decision.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that in accordance with section 8(2) of the EAR, the appellant was not eligible for income assistance because she had applied from income from another source, and that in accordance with section 43 she is liable to repay the hardship assistance she was provided for July through October 2016?

Relevant Legislation

EAPWDA

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

EAPWDR

Effect of applying for other sources of income

8 (1) For the purposes of subsection (2), "**income**" does not include

- (a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or
- (b) income exempt under section 1 of Schedule B

(2) A family unit is not eligible for income assistance if an applicant in the family unit has applied for income from another source.

Rules about applications, payments, etc.

40 Subject to this Part, the following sections apply in respect of hardship assistance:

- (c) section 8 [*effect of applying for other sources of income*];

Applicants who have applied for income from other source

43 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant has applied for income from another source if

- (a) the minister considers that undue hardship will otherwise occur, and
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

The appellant's position is that she should have been provided with income assistance, not hardship assistance, and that she should not have to repay the hardship assistance she received because she was not eligible to receive LTD for July and August. The appellant also argues that she felt she had no choice but to sign the Promise to Pay forms because she was in need of financial assistance.

The ministry's position is that while no evidence was submitted at the time the appellant applied for assistance from the ministry to confirm her application for CPPD benefits, as the appellant had advised she had made such application and as the receipt of CPP benefits was subsequently confirmed by a data match with Service Canada, the ministry is satisfied that appellant had applied for income from another source. Accordingly, pursuant to section 8 of the EAR, the appellant was not eligible to receive income assistance.

The ministry also takes the position that while the CPP consent form may be used to secure repayment of hardship assistance, it is not required under the EAPWDR and that the Promise to Pay (Hardship) agreements, which were signed by the appellant, provide the type of security specified by the minister to require repayment of the hardship assistance.

Panel Decision

While the appellant argues that she should have been eligible for income assistance, section 8 of the EAR clearly states that "A family unit is not eligible for income assistance if an applicant in the family unit has applied for income from another source." At the time the appellant sought assistance, she stated that she had applied for CPPD, which is confirmed by both the appellant and the Service Canada data match. Accordingly, as the appellant had applied for income from another source, namely CPPD, the ministry reasonably determined that she was not eligible for income assistance under section 8 of the EAR.

Respecting the issue of whether the appellant is required to repay the hardship assistance she received for July through October 2016, section 43 of the EAR provides that hardship assistance may be provided to a family unit that is not eligible for income assistance because an applicant has applied for income from another source, if the applicant provides the type of security specified by the minister for the repayment of the hardship assistance. As the ministry argues, while the CPP consent form could be used to secure repayment of hardship assistance, as it authorizes the ministry to directly deduct hardship repayment from a CPP payment, there is no legislative requirement that this particular document be the type of security provided. The Promise to Pay (Hardship) form expressly states that repayment is a pre-condition for being provided with hardship assistance and that the applicant agrees to repay the specified amount of hardship assistance. The panel finds that the ministry has reasonably determined that the four Promise to Pay (Hardship) forms signed by the appellant meet the requirements for security set out in section 43 and therefore, the appellant is required to repay the hardship assistance she received for July through October 2016.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for income assistance and must repay the hardship assistance she received for July through October 2016, was reasonably supported by the evidence and a reasonable application of the legislation. The panel confirms the reconsideration decision. The appellant is not successful on appeal.