

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of March 17, 2017 in which the ministry determined that the appellant was ineligible for income assistance (IA) because the net income of her family unit exceeded the income assistance rates determined under Schedule A of the Employment and Assistance Regulation (EAR) for the size of her family unit.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sections 1, 2

Employment and Assistance Regulation (EAR):

- Sections 1, 10, 28
- Schedule A Sections 1
- Schedule B Sections 2, 3, 4

PART E – Summary of Facts

A ministry representative did not attend the hearing. After confirming that the ministry was notified the hearing proceeded under Section 86 (b) of the Employment and Assistance Regulation.

The appellant is a recipient of IA with an employed spouse.

The evidence before the ministry at reconsideration included the following:

- appellant's request for reconsideration submitted to the ministry on February 17, 2017 and extended to March 17, 2017;
- ministry monthly income report forms submitted by the appellant to the ministry on:
 - September 29, 2016 declaring appellant's employment income of \$96.00 and her husband's (H) employment income of \$938.27;
 - November 2, 2016 declaring appellant's employment income of \$96.00 and H's employment income of \$610.16; and
 - January 4, 2017 declaring appellant's employment income of \$96.00 and H's employment income of \$482.35;
- handwritten monthly income statements for the period July – December 2016 submitted by H, indicating that his average gross monthly employment income was \$3,744.82 (\$3,521.08 average monthly income + \$223.74 average monthly tips = \$3,744.82);
- H's federal GST return relating to his self-employment for the period July 1 – September 30, 2016 declaring a total revenue of \$10,721.00 and net GST owing of \$135.19;
- appellant's bank account statements for the months of October and December, 2016;
- appellant's bank account "back items enquiry" for October 2016 and November 24 – December 30, 2016.

Information submitted after Reconsideration

Notice of Appeal:

In her Notice of Appeal dated March 26, 2017 the appellant stated that H does not make much money and his mother sometimes has to help out with the rent. She also noted that H leases a business vehicle at a cost of \$2,400 per week, which she orally corrected at the hearing to read \$2,400 per month.

Appellant's oral evidence:

The appellant also corrected the monthly employment income figure that she had submitted to the ministry, stating that she earns approximately \$42 per month delivering newspapers, and not \$96 per month as indicated on her ministry form and on H's monthly income statements. She confirmed that she receives no other income. The appellant conceded that under the legislation the maximum allowable IA rate for a 2-person family unit is \$307.22 support and \$570 shelter for a total IA of \$877.22.

Witness N:

At the hearing the appellant tendered her mother in law (N) as a witness. N confirmed that she had contributed approximately \$30 - \$50 per month to assist the appellant and H with paying their monthly rent for the past few months. She could not recall whether she had helped them out financially in 2016.

The panel considered the oral and written evidence tendered by the appellant and determined that the information concerning the appellant's monthly employment income and the monthly cost of H's leased vehicle were admissible under EAA Section 22 (4) as evidence in support of the information before the ministry at reconsideration because:

1. the appellant's new evidence relating to her employment income explained the discrepancy between the appellant's income as declared on her ministry form and the actual amounts deposited by the newspaper employer into her bank account; and
2. H's vehicle leasing costs of \$2,400 per month were considered by the ministry at reconsideration.

The panel did not admit the evidence of N or the appellant's statement in her Notice of Appeal that N sometimes helped with the rent because this information was not relevant to the matter under appeal and was not before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision which determined that the appellant was ineligible for income assistance (IA) because the net income of her family unit exceeded the income assistance rates determined under Schedule A of the Employment and Assistance Regulation (EAR) for the size of her family unit.

Relevant legislation:

EAA: Definitions

1 (1) In this Act:

"family unit" means an applicant or a recipient and his or her dependants;

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

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,

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

Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 Subject to sections 3 and 6 to 10 of this Schedule, 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.

Schedule 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,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;

Exemption — earned income

3 (1) The amount of earned income calculated under subsection (6) is exempt for a family unit.

(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 the following:

- (a) \$200, if the family unit is not described in paragraph (b), (c) or (d);

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is

- (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
- (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
- (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.

(2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if

- (a) the recipient is participating in a self-employment program, and
- (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

The appellant argues that she earns approximately \$42.00 per month as a newspaper carrier, and that H's average monthly net income after expenses is \$856.29, which is less than the maximum IA rate of \$877.22 permitted for a 2-person family unit when the \$200 exemption set out in EAR Section 3 (6) (a) is applied. She concedes that under the legislation the maximum allowable IA rate under Schedule A for a 2-person family unit is \$307.22 support and \$570 shelter for a total of \$877.22.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- a person's schedule B earned and unearned income must be deducted from his or her IA calculated under Schedule A, which in the appellant's circumstances is \$877.22 (\$307.22 support plus \$570 shelter allowance);
- the appellant is permitted an exemption from earned income to a maximum of \$200 for the family unit as set out in EAR Section 3 (6) (a);
- H's deductions of GST, lease payment, gas, office and phone are not permitted in calculating net income under Schedule B because H is not participating in the ministry's self-employment program;
- the family unit's average monthly income from employment under Schedule B exceeds the family unit's maximum IA of \$877.22 under Schedule A;
- pursuant to EAR Section 10 (2) the appellant is not eligible for IA because the net income of the family determined under Schedule B exceeds the amount of IA determined under Schedule A.

Panel Decision

EAR Section 10 (2) clearly states that in order to be eligible for IA the family unit's net income as calculated in Schedule B must not exceed the amount of IA determined under Schedule A. There is no dispute as to the maximum allowable amount of IA determined under Schedule A, which is \$877.22 per month in the appellant's circumstances. Although the appellant has tendered evidence to demonstrate that H's gross monthly income is almost eradicated by his monthly expenses of GST, lease payment, gas, office and phone, none of these business expenses is deductible from earned income under EAR Schedule B, Section 2 unless the person incurring the expenses is participating in a self-employment program approved by the ministry, as set out in Section 4 (1) of Schedule B. The only deduction from earned income available to the appellant's family unit is \$200, as set out in Section 3 (6) (a) of Schedule B.

Taking into account the family unit's average monthly earned income of \$3,786.82 (H's gross income and tips averaging \$3,744.82 per month plus the appellant's revised employment income of \$42 per month = \$3786.82) the panel finds that the ministry reasonably determined that the net income of the appellant's family calculated under Schedule B exceeds the maximum allowable amount of IA calculated under Schedule A. The panel also finds that the ministry reasonably determined that because the family unit's Schedule B net income exceeds the amount of IA payable to the appellant's family unit under Schedule A she is not eligible for IA pursuant to EAR Section 10 (2).

In conclusion the panel finds that the ministry's decision that the appellant was not eligible for IA because the net income of her family unit exceeded the income assistance rates for the size of her family unit under Schedule A of the Employment and Assistance Regulation (EAR) was reasonably supported by the evidence, and confirms the decision. The appellant is not successful in her appeal.