

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 04 April 2017 that found that the appellant was not eligible, under section 10 of the Employment and Assistance Regulation, for income assistance for April 2017 because her net income in February 2017 exceeded the amount of assistance determined for her family unit size under Schedule A of the Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 1, 10, 28, and 33; Schedule A, sections 2 and 4; and Schedule B, sections 6 and 7.

PART E – Summary of Facts

The information before the ministry at reconsideration included:

1. The appellant is a sole recipient of income assistance. Her file opened on 14 December 2016.
2. The following chronology, as noted in the reconsideration decision and supported by bank statements and Service Canada account reports provided by the appellant:
 - 14 December 2016 – the appellant advised the ministry that she had applied for medical employment insurance (EI). The ministry determined that she was eligible for hardship assistance while she waited the outcome of her EI application. She was also advised that she would be required to sign an Assignment of Benefit (AOB) each month until the outcome of her EI application was determined. By signing an AOB, the appellant acknowledged that once her EI came into pay, the ministry would recapture any amount of hardship assistance that was issued under that assignment.
 - 15 December 2016 – the appellant deposited a ministry cheque in the amount of \$519.
 - 20 December 2016 – the appellant began to receive her EI benefits.
 - 27 December 2016 – the appellant received a ministry cheque for \$610 (hardship assistance for January).
 - January 2017 – the appellant continued to receive EI benefits. She received no cheque from the ministry that month (i.e. no assistance paid late in the month for February assistance). In late January, Service Canada began deductions from her EI to repay the hardship assistance.
 - February 2017 – the appellant received no cheque from the ministry that month (i.e. no assistance paid late in the month for March assistance). As shown in a My Service Canada printout, her EI payment details for February are as follows:

Reporting Period 2017	Gross EI \$	Income tax deducted \$	Repay of hardship assistance \$	Net payment to appellant \$
29 Jan-04 Feb	338	14	184	140
05 Feb-11 Feb	338	14	184	140
12 Feb-25 Feb	676	28	368	280
TOTAL	1352	56	736	560

- End of February 2016 – the appellant’s EI benefits expired and her December-January hardship assistance has been repaid through deductions from her EI in accordance with the AOB.
 - 15 March 2017 – the appellant attended at the local office to request continued assistance for April 2017. She submitted her February monthly report, declaring \$560 of EI, with supporting bank statements (see table above). She was advised that the EI income received in February would be deducted from her April assistance.
3. The appellant submitted her completed Request for Reconsideration on 24 March 2016, indicating she was attaching bank and Service Canada statements along with other material. She also attached a “Message to Worker” of the same date describing her previous employment and explaining that at the end of September 2016 she had taken sick leave because her medical condition precluded doing heavy lifting or working long hours. She noted that she didn’t begin to receive EI medical benefits until 20 December 2016. This left her in a difficult financial situation, particularly not being able to continue to rent a three-bedroom

home at \$1000/month, where she had been living in the expectation that she would regain custody of her son. She has since moved in with a friend and is paying her \$500/month. She took a big financial “crunch” in February, with deductions from EI to repay the Ministry. She did not receive any assistance in March. She asks for assistance to survive into April.

Notice of Appeal

The appellant’s Notice of Appeal is dated 13 April 2017. Under Reasons, she writes that the ministry provided her payments totaling \$1129 for December and January. She went October and November 2016 with no money. She is behind on rent for \$1000. She was on sick leave, with EI covering the maximum of 15 weeks. The ministry took dollar for dollar from the last two months of her EI and has been paid back in full, yet she is not being provided any money for April.

The hearing

At the hearing, the appellant reviewed the chronology of her applications for EI and for ministry assistance, covering much of the same ground as in the “Message to Worker” attached to her request for reconsideration. She stated that she wished that, with her EI expired and the ministry fully repaid at the end of February, she could start afresh with the ministry, and therefore not have to deduct February EI income from her April assistance (see also Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration.

Admissibility of additional information

The panel accepts the appellant’s Notice of Appeal and her testimony at the hearing as background and argument in support of her position.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision, which found that the appellant was not eligible, under section 10 of the EAR, for income assistance for April 2017 because her net income in February 2017 exceeded the amount of assistance determined for the size of her family unit under Schedule A of the Regulation, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the EAR:

Definitions

1 (1) In this regulation:

"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 (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.

Monthly reporting requirement

33 (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of each calendar month, and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

(i) whether the family unit requires further assistance;

(ii) changes in the family unit's assets;

(iii) all income received by the family unit and the source of that income;

(iv) the employment and educational circumstances of recipients in the family unit;

(v) changes in family unit membership or the marital status of a recipient;

(vi) any warrants as described in section 15.2 (1) of the Act.

From Schedule A:

Under section 2, the monthly support allowance for a sole recipient is \$235.00.

Under section 4, the monthly shelter allowance for a family unit size of 1 person is \$375.00

And from Schedule B:

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

Exemptions — unearned income

7 (1) The following unearned income is exempt:

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

Analysis

In the reconsideration decision, the ministry reviewed the applicable legislation. In accordance with the legislation set out above, the ministry noted that the EI received by the appellant is considered unearned income as per section 1(g) of the EAR. The ministry also reasonably found that as her EI was not for maternity, parental, or benefits to care for a critically ill child, it is not exempt as income as one of the categories of EI coverage referred to in EAR Schedule B, section 7(1)(g).

The ministry went on to state that under section 28 of the EAR, for all recipients of income assistance, income received during the previous month is reported by the 5th day of the current month and affects the following month's assistance. The ministry gave as an example that income received in February is reported by March 5 and affects April assistance. The panel considers this a useful description of the monthly income assistance determination methodology, consistent with the legislation, including EAR section 28, cited by the ministry, as well as section 33 (monthly reporting requirement). The panel understands that this methodology may seem confusing at times, as it is more implied by the legislation than specifically described. Another source of confusion is that a cheque for assistance for one month is issued near the end of the previous month.

The panel also notes that this methodology only applies for the third month and subsequent months of income assistance. For the first month – the month of application – income received the previous month is not a factor, though asset limits (\$2000 for a sole applicant) are considered. For the second month, income received in the first month may not be known by the time the cheque is issued near the end of that month. Any income received in these months might result in overpayments of assistance, to be repaid in subsequent months. In fact, this is what happened in this case, with the appellant receiving both EI and assistance for each of December 2016 and January 2017. As a result of the AOB arrangement between the ministry, Service Canada and the appellant, the overpayment was recaptured through deductions to the appellant's EI.

At the hearing, the appellant stated that she wished that, with her EI expired and the ministry fully repaid at the end of February, she could start afresh with the ministry, and therefore not have to deduct February EI income from her April assistance. The ministry representative explained that this was not possible as the appellant has an open file with the ministry and that the usual process of deducting income from the previous month from the assistance for the following month is explained to

all applicants upon intake and must be followed as a consequence of having an open file. The panel finds this explanation reasonable, as “starting afresh” – considering the recipient as a new applicant under the circumstances described by the appellant – could lead to inconsistencies and unfairness in the administration of the income assistance program.

Consistent with the methodology of deducting net income of the previous month as described above, the ministry applied the section 28 formula of calculating the Schedule A amount minus the Schedule B amount. As provided in the legislation, the ministry found that the rate of income assistance for a sole recipient under Schedule A is \$610 (\$235 support + \$375 shelter).

The ministry determined that for the Schedule B amount for February in the section 28 formula, the \$56 deducted from the appellant’s gross EI for income tax is an allowable deduction as per section 6(a) of Schedule B, leaving \$1256 (\$1352 gross - \$56 income tax).

Given EAR section 10(1), the panel finds that the ministry reasonably determined that the \$736 recaptured by the ministry in February (pursuant to the AOB signed by the appellant) is not a permitted deduction, as income that has been garnished, attached, seized, deducted or set off from the income of the recipient must be included as income.

The panel therefore finds that the ministry was reasonable in deciding, based on its determinations for the amounts under Schedules A and B, that the appellant's net income in February 2017 of \$1256 exceeded her monthly income assistance rate of \$610, and that therefore under EAR section 10(2) she is not eligible for income assistance for April 2017.

Conclusion

Based on the foregoing analysis, the panel finds that the ministry’s decision, which found that the appellant was not eligible for income assistance for April 2016, is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.