

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (ministry) dated 5 December 2017, which determined that the appellant is not eligible for hardship assistance under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for the months of October and November 2017. The ministry determined that the appellant was ineligible because she received unearned income, in the form of Employment Insurance (EI) benefits and Canada Pension Plan (CPP), in excess of income assistance rates for her family unit and there are no dependent children in the family unit.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, section 1
Employment and Assistance for Persons with Disabilities Regulation, section 9
Employment and Assistance for Persons with Disabilities Regulation, section 35
Employment and Assistance for Persons with Disabilities Regulation, section 39

PART E – SUMMARY OF FACTS

The appellant did not attend the hearing at the scheduled date and time. After verifying that the appellant had been notified of hearing, the hearing proceeded under section 86(b) of the EAR.

Information before the ministry at reconsideration included the following:

- The appellant is a sole recipient of disability assistance;
- The appellant's monthly assistance amount is \$1133.42 (\$706.42 support, \$375 shelter and \$52 transportation allowance);
- The appellant receives Canada Pension Plan (CPP) benefits of \$530.39, which is deducted from her monthly assistance;
- In August 2017 the appellant received EI benefits of \$2265, which was deducted from the appellant's October 2017 assistance;
- In September 2017 the appellant received EI benefits of \$872, which was deducted from the appellant's November 2017 assistance;
- The appellant requested hardship assistance for October and November 2017, stating that she had not received assistance since September and had been juggling bills and a death in the family; and
- The request for hardship assistance was denied.

Request for Reconsideration

In the Request for Reconsideration dated 21 November 2017, the appellant wrote that her request for hardship assistance should be approved because circumstances beyond her control in the month of October caused her to incur an inordinate amount of expenses. She had to travel to another province at her own expense to care for a sick family member. The trip lasted two weeks and depleted the meagre savings she had managed to accrue.

Information provided on appeal:

Notice of Appeal

In the Notice of Appeal dated 11 December 2017, the appellant gave as reasons for appeal: *I DISAGREE with their decision because they take my EI + CPP off my check for dollar for dollar and I went from medical EI to regular EI at the end of September and had to wait 21 days for EI's decision if I could get on to EI.*

Hearing Submissions

Appellant

The appellant did not attend the hearing.

Ministry

The ministry relied on the reconsideration decision.

Admissibility

The panel has determined that the information provided by the appellant in the Notice of Appeal consists of argument and will be considered on that basis. As such, the panel finds that there is no information before it that requires an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's determination, which determined that the appellant is not eligible for hardship assistance for the months of October and November 2017, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

APPLICABLE LEGISLATION

EAPWDR:

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:

- ***
(f) any type or class of Canada Pension Plan benefits;
(g) employment insurance;

Limits on income

- 9 (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 disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Hardship assistance — eligibility and limitations

- 35 (1) For a family unit to be eligible for hardship assistance, the family unit
- (a) must be ineligible for disability assistance for one or more reasons set out in sections 37 to 41, and
 - (b) must not be ineligible for disability assistance for any other reason.
- (2) A family unit that is eligible for hardship assistance must be provided with hardship assistance
- (a) in accordance with Schedule D,
 - (b) only for the calendar month that contains the date of the applicant's submission of the application for disability assistance (part 2) form, and
 - (c) subject to section 4 (2) of Schedule D, only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance.
- (3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in section 37, 39 or 41 is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 calendar months of receipt.
[en. B.C. Reg. 161/2004, s. 3; am. B.C. Regs. 306/2005, s. 5; 102/2008, s. 3; 149/2015, Sch. s. 6.]

Family units that have excess income

- 39 The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because the income of the family unit exceeds the limit under section 9 [limits on income] if
- (a) the minister considers that undue hardship will otherwise occur,
 - (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
 - (c) the family unit includes one or more dependent children, and
 - (d) the income that causes the family unit to be ineligible for disability assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

In the reconsideration decision, the ministry explained that the appellant was not eligible for October and November 2017 disability assistance because the CPP and EI income received exceeded the shelter/support/transportation allowance of \$1133.42 for which a sole recipient is eligible.

The ministry then considered the appellant's request for hardship assistance, noting that a family unit may be eligible for hardship assistance if they are not ineligible for the reasons set out at section 44 of the regulation. The ministry noted that this section of the regulation allows hardship assistance to be provided to a family unit that is not eligible for disability assistance due to excess income if the family unit includes one or more dependent children. The ministry stated that the appellant has no dependent children included on her file and concluded that she was not eligible for hardship assistance.

The panel notes that in the reconsideration decision the ministry has erroneously referred to section 44 (**Christmas Supplement**), rather than section 39 (**Family units with excess income**) of the applicable regulation. The panel also notes that section 39 of the EAPWDR is identical to section 44 of the Employment and Assistance Regulation (EAR). The panel finds this to be a non-material error as it is clear from the language used in the reconsideration decision that ministry is discussing the "**Family units with excess income**" provision.

In order to be eligible for hardship assistance where a family unit has excess income, the following four criteria (set out at section 39 of the EAPWDR and section 44 of the EAR) must be met: (a) the minister considers that undue hardship will otherwise occur, (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, (c) the family unit includes one or more dependent children, and (d) the income that causes the family unit to be ineligible for disability assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs. The panel notes that the ministry has addressed only the third of these criteria in the reconsideration decision and the appellant has addressed only the first of these criteria in her arguments at reconsideration and on appeal.

The appellant argued at reconsideration that circumstances beyond her control required her to deplete her savings travelling to another province in the month of October to care for a family member, which the panel finds speaks to undue hardship. On appeal the appellant has made two arguments. First, she argued that she disagrees with the ministry deducting CPP and EI dollar for dollar. The panel finds that this argument does not speak to any of the criteria for hardship assistance. Second, the appellant argued that it took 21 days for her to receive a decision from EI regarding her transition from medical EI to regular EI, which the panel finds relates to undue hardship. The panel notes that the ministry's reconsideration decision does not address the appellant's arguments in relation to the first criterion. In the reconsideration decision, the ministry determined that the appellant is not eligible because she does not have any dependent children. The appellant does not dispute the ministry's conclusion on this criterion in her arguments. The panel notes that all four criteria set out in the regulation are mandatory; there is no discretion. This means that each criterion must be met in order for an applicant to receive hardship assistance. As such, the panel finds that the ministry's determination that the appellant is ineligible for hardship assistance because she has not met one of the four criteria is a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant was not eligible for October and November 2017 hardship assistance, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.