

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision of May 17, 2018 in which the ministry determined that the appellant was ineligible for income assistance (“IA”) for the month of April 2018 because the net income of his family unit exceeded the income assistance rates determined under Schedule A of the Employment and Assistance Regulation (“EAR”) for the size of the family unit.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR):

- Sections 1, 10, 28
- Schedule A Section 1
- Schedule B Sections 2, 3, 9

PART E – SUMMARY OF FACTS

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the EAR.

The information before the ministry at reconsideration included copies of the following:

- appellant's request for reconsideration received by the ministry on April 27, 2018;
- record of CPP disability benefits paid to the appellant's spouse ("N") for the months of December 2016 and January 2017;
- Government of Canada cheque dated March 27, 2018 payable to N in the amount of \$713.93;
- N's application for designation as a person with disabilities ("PWD") dated April 10, 2018;
- appellant's paycheque dated February 28, 2018 in the amount of \$1,990.25 with attached deductions stub;
- appellant's paycheque dated March 31, 2018 in the amount of \$1,646.41 with attached deductions stub;
- Service Canada Record of Employment ("ROE") dated April 10, 2018 indicating final pay period as March 31, 2018 and reason for issuance as "illness or injury";
- joint chequing account activity statements for the months of September 2017 – March 2018;
- joint chequing account activity statement for the period April 1 – April 12, 2018 indicating a deposit of \$1646.41 made April 10, 2018;
- summary of the appellant's bank assets and liabilities dated April 12, 2018;
- financial enquiry of transactions related to a joint chequing account held by the appellant and N listing the monthly bank balances for the period September 1, 2017 – April 17, 2018;
- financial enquiry of transactions related to a secondary joint chequing account held by the appellant and N listing the monthly bank balances for the period September 1, 2017 – April 17, 2018;
- financial enquiry of transactions related to a joint savings account held by the appellant and N for the period January 1, 2017 to April 17, 2018.

Oral Evidence at the Hearing

At the hearing the appellant provided evidence that:

- he broke a bone in his foot on March 14, 2018 and had to quit his job;
- he submitted medical and hospital reports to the ministry related to the injury;
- his usual practice was to submit his number of hours worked to his employer the last day of each month;
- he was paid once per month by paper cheque and usually his paycheque was issued on the 1st, 2nd or 3rd day of the month following the month in which he worked ;
- on March 16th or 18th he turned in his timesheet for the working period March 1-13, 2018. At the beginning of April his employer issued the March 31, 2018 cheque and he picked it up some time during the first week of April.

The panel determined that the appellant's oral evidence was admissible under Section 22 (4) of the EAA as evidence in support of the information before the ministry at reconsideration because it provided greater detail to the procedure through which he received his monthly earnings and the dates on which he received them, and did not raise new issues that had not been considered by 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 IA for the month of April 2018 because the net income of his family unit exceeded the income assistance rates determined under Schedule A of the EAR for the size of the 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,

"**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;

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

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) 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.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

The appellant argues that the employment income he received for work done in March 2018 should not be included in calculating his family unit's net income in April 2018.

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

- on March 27, 2018 the appellant and N applied for IA;
- on April 9, 2018 the appellant advised the ministry that he received his last pay on March 13, 2018;
- in April 2018 the appellant's family unit received a total income of \$2,360.34 ("Schedule B income"), consisting of:
 - earned income of \$1,646.41
 - unearned income (CPP disability benefit) \$713.93;
- on April 19, 2018 the ministry confirmed the appellant's eligibility for IA effective May 2018;
- N was determined eligible for PWD effective May 1, 2018;
- under EAR Schedule A the family unit was eligible for a shelter allowance of \$570 and support allowance of \$407.22, for a total IA of \$977.22 ("Schedule A income");
- because the appellant's April 2018 Schedule B income exceeded the Schedule A income allowable for his family unit he was not eligible for IA for the month of April;
- the appellant is not eligible for an earned income exemption for April 2018 under EAR Schedule B, Section 3 because his family unit did not become eligible for IA until May 2018.

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 that the maximum allowable amount of IA for which the appellant's family unit was eligible in April 2018 under Schedule A was \$977.22. EAR Section 28 states that the amount of IA that can be provided to a family unit cannot exceed the Schedule A income minus the family's net income under Schedule B.

The appellant did not work after March 13, 2018. During the first week of April he picked up his final paycheque dated March 31, 2018 in the amount of \$1,641.41 from his employer and deposited it to his bank account on April 10th. Section 9 (1) of Schedule B states that the deductions and exemptions apply only in the calendar month in which the income is "*actually received*", regardless of the period for which the income is payable. The evidence of the appellant confirms that although he ceased work on March 13th he actually received the income in April 2018. The panel therefore finds that the ministry reasonably determined that the appellant's earned income of \$1,641.41 be included in calculating the family unit's April 2018 net income under Schedule B.

The family also received unearned income in April 2018 in the form of N's CPP disability benefit of \$713.93. The family unit's April 2018 income calculated under Schedule B consists of earned income of \$1,641.41 plus unearned income of \$713.93, for a total Schedule B net income of \$2,360.34. The Schedule B income exceeds the Schedule A maximum allowable IA for the family unit by \$1,383.12, which renders the appellant's family unit ineligible for IA for the month of April 2018.

The panel therefore finds that the ministry's decision that the appellant's family unit was ineligible for IA during the month of April 2018 because its Schedule B net income exceeded the maximum assistance rate payable under Schedule A was reasonably supported by the evidence, and confirms the decision. The appellant is not successful in his appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/Jun/08

PRINT NAME

Chris McEwan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/Jun/08

PRINT NAME

Marilyn Mellis

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/Jun/08