

APPEAL NUMBER

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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision of September 18, 2019 in which the ministry determined that the appellant was ineligible for income assistance (“IA”) for the month of August 2019 because the net income of the family unit calculated under Schedule B of the Employment and Assistance Regulation (“EAR”) exceeded the income assistance rates determined under Schedule A of the for the size of the family unit. Specifically the ministry determined that CPP and private pension benefits received by the appellant’s spouse constituted “unearned income” pursuant to EAR Subsections 1 (1) (e) and (f) that must be included in calculating the net income of the family unit.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Section 1

Employment and Assistance Regulation (EAR):

- Sections 1, 10, 28
- Schedule A Sections 1, 2, 4
- Schedule B Sections 6, 7

PART E – SUMMARY OF FACTS**Information before the Ministry at Reconsideration**

- appellant's Request for Reconsideration submitted September 5, 2019 which included 2 handwritten pages setting out the reasons for the appellant's request for reconsideration, summarized as follows:
 - the appellant and spouse have been married for 2 years
 - In [REDACTED] 2019 when the appellant applied for IA the ministry requested the spouse's financial information. The spouse, who turned 60 years of age in [REDACTED] 2019, was awaiting receipt of monthly CPP and private pension income;
 - the appellant owns the home in which the family unit resides and is responsible for half the bills
 - the appellant is currently unable to work due to osteoarthritis ("OA") and an injury to the lower back and is in the process of applying for designation as a Person with Disabilities ("PWD");
 - the appellant's spouse can be verbally and emotionally abusive, and when upset will not assist in paying the bills;
- appellant's monthly income report to the ministry dated June 3, 2019 declaring monthly spousal income of \$1,047.00 (CPP \$390 + private pension \$657=\$1,047);
- appellant's monthly income report to the ministry dated July 5, 2019 declaring monthly spousal income of \$1,148.00 (CPP \$390 + private pension \$758=\$1,148).

Information received after Reconsideration

- October 29, 2019 written submission by the appellant, to which was appended:
 - 2 additional handwritten pages of notes written on the Request for Reconsideration form but not included with the Request for Reconsideration submitted on September 5, 2019;
 - October 22, 2019 handwritten note from the appellant in which reiterated that the appellant suffers from OA and a back injury and also noted short-term memory loss. The appellant added that the spouse's car was repossessed last year.

Admissibility of Additional Information

A panel may admit additional information under EAA Section 22 (4)(b) as evidence in support of the information that was before the ministry at reconsideration if it is directly related to the information considered by the ministry at reconsideration and does not contain substantively new information.

The panel determined that the October 29, 2019 notes consisted of argument and information already considered by the ministry at reconsideration, and were therefore not admissible under Section 22 (4) (b). The panel also determined that the appellant's reference to short-term memory loss in the October 22, 2019 note could not be admitted because it was new information that was not considered by the ministry at reconsideration. As well the panel found that the information related to repossession of the appellant's car was not admissible because it was not directly related to or in support of the information 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 IA for the month of August 2019 because the net income of the family unit calculated under Schedule B of the EAR exceeded the income assistance rates determined under Schedule A for the size of the family unit. Specifically the ministry determined that CPP and private pension benefits received by the appellant's spouse constituted "unearned income" pursuant to EAR Subsections 1 (1) (e) and (f) that must be included in calculating the net income of the family unit.

Relevant legislation:

**EAA:
Definitions**

1 (1) In this Act:

"**applicant**" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"**dependant**", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person

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

**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:

- (e) superannuation benefits;
- (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.

Monthly support allowance

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2.

7	Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age	\$507.22
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Monthly shelter allowance

4 (1) For the purposes of this section:

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

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;
- (b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [assets held in trust for person receiving special care] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving

special care] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:
 - (i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation;
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;
 - (iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;

(f) a tax refund;

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

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

- (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and
- (b) the settlement agreement requires the defendant to
 - (i) make periodic payments to the person for a fixed term or the life of the person,
 - (ii) purchase a single premium annuity contract that
 - (A) is not assignable, commutable or transferable, and
 - (B) is designed to produce payments equal to the amounts, and at the times,

specified in the settlement agreement,
(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
(iv) remain liable to make the payments required by the settlement agreement.

The appellant argues that the spouse's pension income should not be included when calculating net income under Schedule B because the pensions arise from the spouse's employment income earned prior to their marriage. The appellant also argues that a person must be a recipient of IA in order to apply for PWD benefits.

The ministry's position is set out in the reconsideration decision and in the ministry's written submission dated November 6, 2019, i.e., that the appellant is not eligible for IA because the net income of the family unit (\$1,277.06) calculated according to EAR Schedule A exceeds the rates of IA for the family unit (\$1,077.22) set out in Schedule A. The ministry also submits that eligibility for IA is not a requirement for designation as a PWD.

Panel Decision

There is no dispute that the appellant and the appellant's spouse have been married for 2 years and reside together. Accordingly, the spouse is a "dependant" of the appellant as defined in section 1 of the EAA: "anyone who resides with the person and who is the spouse of the person". The panel therefore finds that the ministry reasonably determined that the appellant's spouse is part of the family unit, which is defined in EAR Section 1 as "an applicant or a recipient and dependants".

Schedule A sets out that the appellant's family unit is eligible to receive up to \$1,077.22 (\$507.22 support plus \$570 shelter). EAR Section 28 states that the amount of IA that may be provided to a family unit is the amount calculated under Schedule A minus the net income calculated under Schedule B.

EAR Section 1 clearly states that CPP benefits and private pension (superannuation) benefits are "unearned income". Unearned income is part of the net income of a family unit and must be declared by the IA recipient in each monthly report to the ministry. No evidence was submitted by the appellant to indicate that the family unit is eligible for any of the deductions or exemptions set out in the legislation.

In this case the appellant's spouse receives a monthly income of \$1,277.06 (\$519.06 CPP plus \$758 private pension), which exceeds the maximum allowable IA rate of \$1,077.22. Pursuant to EAR Section 10 (2) a family unit is not eligible for IA if the net income of the family unit equals or exceeds the amount of IA determined under Schedule A. The panel therefore finds that the ministry reasonably determined that the appellant is ineligible for IA because the net income of the family unit exceeds the allowable rate of IA in the appellant's circumstances. However, as indicated by the ministry in its November 6, 2019, the appellant's ineligibility for IA does not prevent the appellant from applying for PWD designation.

Conclusion

The panel concludes that the ministry's reconsideration decision is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision. The appellant is not successful on appeal.

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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)

2019/Nov/26

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/Nov/26

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/Nov/26