

APPEAL NUMBER

2020-00126

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 17, 2020 in which the ministry found that the appellant is not eligible for income assistance for the month of April 2020, pursuant to Section 10(2) of the Employment and Assistance Regulation (EAR), due to the family unit's net income from employment insurance (EI) being more than the income assistance amount for the month of February 2020.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), Sections 1, 10, and 33, and Schedules A and B.

PART E – SUMMARY OF FACTS

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Screenshot Summary of employment insurance (EI) payment information for the period September 8, 2019 through December 28, 2019, the date reports were processed (February 2 and February 4, 2020) and the net amount paid, totalling \$1,485;
- 2) Ministry Reconsideration decision dated April 3, 2020 refusing to conduct a reconsideration of a decision to deny April income assistance as the April income assistance had been paid to the appellant and the requirements of Section 17(1) of the *Employment and Assistance Act* had not been met at that time; and,
- 3) The appellant's Request for Reconsideration dated March 16, 2020.

In the Request for Reconsideration, the appellant wrote that:

- The appellant wanted to clarify the circumstances regarding the Medical EI payments.
- The appellant was paid amounts on February 2 and 4, 2020 that were for the period of September 8, 2019 to December 28, 2019.
- The amounts received were used to cover many expenses the appellant incurred during that period.
- The appellant needs assistance for April 2020.

Additional Information

In the Notice of Appeal dated April 28, 2020, the appellant expressed disagreement with the ministry's reconsideration decision and wrote:

- The amount the appellant received from EI was a back payment.
- As the appellant was previously entitled to this money and it was not paid until a later time, it should not disqualify the appellant's allowance of income assistance during a period for which the appellant did not qualify for EI.
- The appellant sees the basis of the decision as flawed and implores an amendment of Section 33 of the EAR.

At the hearing, the appellant stated:

- The appellant relies on the Screenshot Summary of EI payment information to show that the amounts paid for EI related to periods from September 8, 2019 through December 28, 2019.
- In September 2019 the appellant was hospitalized. The appellant applied for medical EI upon release from the hospital in October 2019.
- The appellant was not issued a Record of Employment (ROE) from the appellant's previous employer despite the appellant contacting the employer many times. The appellant was never advised how to obtain a ROE from an employer that was not complying.
- In December 2019, Service Canada requested the ROE from the employer and, in January 2020, the EI benefits were approved and paid on February 2 and 4, 2020.

- Through no fault of the appellant's, the delay in payment of the EI benefits resulted in an overlap with income assistance benefits.
- If the appellant had received the EI benefits when the appellant was entitled, there would not have been an interference with the income assistance payments.
- The law is unjust if it does not compensate for the position the appellant is in.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that when considering net income, the ministry only considers the month that the funds are actually received by the client by way of cheque or deposit into their bank account and not when payment is approved or when entitlement might arise.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision, which determined that the appellant is not eligible for income assistance for the month of April 2020 pursuant to Section 10(2) of the Employment and Assistance Regulation (EAR) due to the family unit's net income from EI being more than the income assistance amount for the month of February 2020, was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

The relevant sections of the legislation are as follows:

Section 1 of the EAR defines "unearned income" as:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance; . . .

Section 10 of the EAR provides:**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.

Section 33(1) of the EAR provides:**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 specified by the minister:

- (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.

Schedule A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

In calculating the net income of a family unit under Schedule B of the EAR, some deductions and exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAR provides as follows:

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,

- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 [exemptions- unearned income] and 8 [minister's discretion to exempt education-related unearned income] of this Schedule.

Section 6 of Schedule B of the EAR provides as follows:

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.

Section 7(1)(g) of Schedule B of the EAR provides as follows:

Exemptions — unearned income

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(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.

Sections 22(1), 23(1) and 23.2(1) of the *Employment Insurance Act (Canada)* provide in part as follows:

Pregnancy

22 (1) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant who proves her pregnancy. . . .

Parental benefits

23 (1) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides. . . .

Benefits — critically ill child

23.2 (1) Despite section 18, but subject to this section, benefits are payable to a major attachment claimant who is a family member of a critically ill child in order to care for or support that child . . .

Panel's decision

In the reconsideration decision, the ministry wrote that Section 10(2) of the EAR sets out that a family unit is not eligible for assistance if the net income of the family unit determined under Schedule B of the EAR equals or exceeds the amount of income assistance determined under Schedule A. The ministry wrote that information was received from Service Canada that the appellant received 15 weeks of medical EI in February 2020 totalling \$1,485. Section 1 of the EAR defines “unearned income” as income that is not earned income and includes, without limitation, money or value received from employment insurance. The ministry wrote that in calculating net income all unearned income must be included, as set out in Section 1(d) of Schedule B of the EAR, unless there is an allowed deduction or an amount is specifically exempted under Sections 7 or 8 of the Schedule. The ministry wrote that money received from EI is not exempt unless it is for maternity, parental benefits or benefits to care for a critically ill child. The ministry wrote that the appellant, as a sole recipient, is entitled to income assistance in the total amount of \$760 according to the rates in Schedule A.

The ministry wrote in the reconsideration decision that Section 33 of the EAR requires reporting of income by the fifth day of the month after the month income is received and the income affects the assistance payment in the following month. At the hearing the ministry acknowledged that the EI received by the appellant was “backpay” for a previous period and stated that the ministry only considers when the funds are actually received by the client and not when they are approved or when entitlement might arise. The ministry determined that, according to this reporting cycle, the appellant was not eligible for assistance for the month of April 2020 as the net income from EI payments (\$1,485) received by the appellant in February 2020 exceeded the amount of income assistance (\$760) for that month.

The appellant does not dispute that the amount of \$1,485 for medical EI was received in the month of February 2020. The appellant provided the ministry with a copy of the Screenshot Summary of EI payment information showing the net amount paid to the appellant, totalling \$1,485. However, the appellant argued that this payment represents a back payment as it covers the period the appellant was entitled to EI, from September 8, 2019 through December 28, 2019. In the Notice of Appeal, the appellant wrote that as the appellant was previously entitled to this money and it was not paid until a later time, it should not disqualify the appellant's allowance of income assistance during a period for which the appellant did not qualify for EI.

At the hearing, the appellant clarified that the appellant was not issued a ROE from the appellant's previous employer despite the appellant contacting the employer many times and it was not until December 2019 that Service Canada requested the ROE from the employer. The appellant stated that the ROE was obtained and, in January 2020, the EI benefits were approved and then paid to the appellant on February 2 and 4, 2020. The appellant argued that, through no fault of the appellant's, the delay in payment of the EI benefits resulted in an overlap with income assistance benefits. The appellant argued that if the appellant had received the EI benefits when entitled, there would not have been an interference with the income assistance payments. The appellant argued that the law is unjust because it does not compensate for the position the appellant is in.

While the appellant argued that the EI payments not be considered by the ministry as part of the appellant's net income for February 2020 since the appellant was entitled to the funds during a previous period (September through December 2019), Section 1(g) of the EAR defines "unearned income" to mean any income that is not earned income, and includes, without limitation, money or value *received* from EI. As well, Section 33(1) of the EAR provides that the monthly report to the ministry must include a report of all income *received* by the family unit in the month and the source of that income. While the appellant described the efforts made to obtain the necessary ROE and to claim the medical EI benefits at or around the time the appellant was entitled in 2019, the appellant acknowledged that the EI payments were not received by the appellant until February 2020.

Section 1(d) of Schedule B of the EAR requires that, when calculating the net income of a family unit, all unearned income *must* be included, except the deductions permitted under section 6 and any income exempted under Sections 7 and 8 of the Schedule. Section 6 provides a deduction for income tax that is deducted at source from EI benefits. The appellant did not dispute that the exemptions under Section 7 [EI benefits available for maternity, parental, and caring for a critically ill child] and Section 8 [minister's discretion to exempt education-related unearned income] do not apply to the appellant's circumstances. The panel notes that the use of the word "must" in Section 1(d) of Schedule B of the EAR requires the ministry to include all unearned income in the calculation of the net income of a family unit and does not give the ministry the discretion to do otherwise.

According to Section 10(2) of the EAR, a family unit is not eligible for assistance if the net income of the family unit determined under Schedule B of the EAR equals or exceeds the amount of income assistance determined under Schedule A. The panel finds that the ministry reasonably concluded that the net income from EI payments (\$1,485) received by the appellant in February 2020 exceeded the amount of income assistance for that month. The appellant did not dispute that the amount of the appellant's income assistance entitlement under Schedule A of the EAR was \$760. According to the monthly reporting established in Section 33 of the EAR, the appellant was not eligible for income assistance for the month of April 2020. Although the appellant argued that the law is unjust for not compensating for the position the appellant is in, the panel's jurisdiction is limited by Section 24 of the *Employment and Assistance Act* to determining the reasonableness of the ministry's decision based on the legislation in force at the time of the decision.

Conclusion

The panel finds that the ministry's decision, which determined that the appellant is not eligible for income assistance for the month of April 2020 pursuant to Section 10(2) of the EAR due to the family unit's net income from EI being more than the income assistance amount for the month of February 2020, is a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the ministry decision and, therefore, the appellant is not successful in the 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
S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020-05-20

PRINT NAME
Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-05-20

PRINT NAME
Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-05-20