

Appeal Number 2022-0027

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of February 4, 2022 in which the Ministry determined that the Appellant's Employment Insurance benefits were no longer considered exempt income due to a change in legislation and pursuant to sections 1,2, 9 & 29 and Schedules A & B of the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, Sections 1, 2, 9 & 29 and Schedule A&B

Part E – Summary of Facts

The information before the Ministry at the time of reconsideration included the following:

- 1) The Appellant is a sole recipient of disability assistance, receiving \$1563.50 per month.
- 2) **December 2021** – The Ministry received information from Service Canada that the Appellant was receiving Employment Insurance (EI) benefits since September 21, 2021, and for each month totalling (\$1856).
- 3) **December 16, 2021** – The Ministry noted on the Appellant’s file that the Employment Insurance benefit received each month by the Appellant was no longer considered exempt income due to a change in the Employment and Assistance for Persons with Disabilities Regulation.
- 4) **January 20, 2022** – The Appellant requested a Reconsideration of the decision.
- 5) The Appellant confirmed that he was mailed a Federal Benefits Exemption Notification in December 2021, but that the Appellant did not open the mail (as he believed it only contained a notice of deposit) and therefore did not require his attention.
- 6) The Appellant maintained in his reasons that were outlined the request for Reconsideration that the untimeliness of the notification letter would not have afforded enough time for him to cancel EI benefits.

Additional Information

The Appellant had submitted a 28-page document on March 2, 2022 (received March 3, 2022) which consisted of:

- 1) A request for more time to gather information, and then a note to disregard the request for more time.
- 2) A reiteration of why the benefits should not be discontinued, as set out in the reasons for reconsideration.
- 3) A Canada Revenue Agency T4 statement of earnings for 2021
- 4) March 3, 2021 – Exhibits A-J (including Ministry policy and procedure manual regarding estoppel defence information, excerpts from the relevant legislation and duplicates of each)
- 5) Notification letter (not dated) sent by the Ministry to the Appellant in December 2021 (established by the information available in the MSDPR system) indicating a change in legislation regarding the Appellant’s EI benefits that would be applied to the EI period ending November 20, 2021.
- 6) Information related to an estoppel defence and a link to the Ministry’s policy and procedure manual involving debt management.

The Ministry did not object to the admissibility of the 28-page document. The panel considered that for a fair and full disclosure of all matters related to the decision under appeal, the 28-page document would be accepted, pursuant to section 22(4) of *the Employment and Assistance Act*.

At the hearing, the Ministry noted that the Appellant’s status as a Person with Disabilities (PWD) does/would not change if PWD benefits are reduced or suspended and that the Appellant does have the ability to have the PWD benefits reinstated in the future.

Part F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision on February 4, 2022, in which the Ministry determined that the Appellant's Employment Insurance benefits were not exempt from the calculation of income pursuant to sections 1, 2, 9 & 29 and Schedule A & B of the *Employment and Assistance for Persons with Disabilities Regulation*.

Full text of the relevant sections of the EAPWDR is provided at the end of the decision.

Panel Decision

The Ministry's position is that the Appellant's (\$1856) Employment Insurance benefit received from Service Canada is defined as unearned income and is not listed as an exemption under the legislation and is therefore considered unearned income that must be deducted from disability assistance. The Ministry maintains that the EI benefit had been temporarily exempt from April 2, 2020, until November 20, 2021, when the federal government's temporary changes to the EI program (and others) expired. The Ministry maintains that a letter was sent to the Appellant providing notice to the Appellant in December 2021 of the relevant change.

The Appellant confirms that he received the Notification letter in the mail, but that he did not open the envelope because he thought it was a deposit notification and considered it to be redundant. The Appellant's position is that even if he had of read the Notification letter the day that it was delivered, he still would not have had enough time to address his benefits accordingly.

The Panel finds that the evidence establishes both the Appellant and Ministry acknowledge that a notification was sent to the Appellant regarding a change in the legislation in December 2021. The panel finds that the evidence establishes the Appellant's EI benefit was impacted by the change in regulation, which resulted in the EI benefit no longer being exempt. The panel considered that the legislation outlines that the unearned income (or EI benefits) must be deducted from the Disability Assistance amount under schedules A & B of the *Employment and Assistance for Persons with Disabilities Regulation*. As such, the Appellant's monthly EI amount of \$1856 is over and above the Disability Assistance rate of \$1563.50 and must be deducted according to the legislation.

The panel considered that while the notice provided to the Appellant was untimely, the Ministry did provide notice regarding the change in legislation in December 2021, to the fact that the Appellant's EI benefits were no longer exempt under the legislation. The Appellant's assistance is determined by the income reported by December 5, 2021, and because the February 2022 cheque represents the Ministry's first opportunity to factor in the December income, there was no overpayment made to the Appellant, and none to recover. This was confirmed by the Ministry at the hearing. These facts, the panel considered do not fall under an estoppel defense, pursuant to section (87) of the *Financial Administration Act*, as claimed by the Appellant, which addresses the reclaiming of monies paid.

As such, the panel finds that the Ministry was reasonable when it determined the Employment Insurance benefit as unearned income under sections 1, 2, 9 and Schedule A & B of the *Employment and Assistance for Persons with Disabilities Regulation*.

Accordingly, the panel confirms the Ministry's decision, and the Appellant is not successful in this appeal, pursuant to Section 24(1)(a) and (2)(a) of the *Employment and Assistance Act*.

Legislation

Employment and Assistance for Persons with Disabilities Regulation

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

1 "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.....

2.01 (1) This section applies in relation to the provision of assistance for a calendar month after April, 2020 to or for(a) a family unit that (i) was eligible on April 2, 2020, or includes a person who was in a family unit that was eligible on April 2, 2020, for disability assistance or hardship assistance, or (ii) includes a person with disabilities who was a person with disabilities on April 2, 2020, or (b) a family unit that is described in section 2.1 (1) (a) of the Employment and Assistance Regulation.

(2) Section 10 (1) is to be read as though it also provided that the following assets are exempt for the purposes of section 10 (2): (a) an income support payment under the *Canada Emergency Response Benefit Act*; (a.1) a benefit under the *Canada Recovery Benefits Act*; (a.2) a benefit under the Canada Worker Lockdown Benefit Act; (b) employment insurance for a period ending before November 21, 2021;

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

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

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur: (i) a change that is listed in paragraph (b) (i) to (v); (ii) a family unit receives earned income as set out in paragraph (b) (vi);

Financial Administration Act

Defences to action for recovery of public money

87 (1) If public money is paid to a person by the government
(a) in excess of the authority conferred by an enactment,
(b) without the authority of an enactment, or
(c) contrary to an enactment,
and a right is asserted by the government to recover the payment or part of it, or to retain other money in full or partial satisfaction of a claim arising out of the payment, the person against whom the right is asserted may, subject to subsection (2), rely on any matter of fact or law, including estoppel, that would constitute a defence in a proceeding brought to recover the payment as if it had been made under a mistake.

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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)

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

Part H – Signatures

Print Name

JENNIFER ARMSTRONG

Signature of Chair

Date (Year/Month/Day)

2022/03/10

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2022/03/10

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2022/03/11