

Reasons for Decision:

Order # AP1516-0397

The appellant appealed that the appellant's income assistance file was closed due to excess unearned income, funds from a Locked In Retirement Account (LIRA). The appellant attended the hearing with an advocate.

The appellant reported that the appellant was able to access funds from the appellant's LIRA account in the amount of <amount removed>, after taxes <amount removed>. The appellant stated that the appellant advised the Department of this account and declared it on the application dated <date removed>. The appellant researched and reviewed the Employment and Income Assistance brochure as well as the Manitoba Assistance Act and the Regulations to be sure the appellant was following policies when the appellant accessed this money.

Following the appellant's receiving these funds the Department closed the appellant's file due to excess income. The appellant accessed these funds to send to <reference removed> and <reference removed> residing out of the country. The appellant stated that when the appellant received the notice of appeal, the appellant saw that the Department inserted a policy which the appellant was not aware of, Section 15.2.8 of the Employment and Income Assistance Manual, Lump Sum Payments – Liquid Asset Provisions. The appellant feels that the LIRA is a liquid asset and the liquid asset exemption applies. This income should not be deducted from the appellant's budget as an unearned income. The appellant stated that if the appellant had been advised of this policy when the appellant inquired, prior to withdrawing the funds, the appellant would have been able to make a more informed decision.

15.2.8 LUMP SUM PAYMENTS - LIQUID ASSET PROVISIONS

When certain types of unearned income are received as a lump sum, all or part may be regarded as an exempted liquid asset and therefore not available for current maintenance. Examples of such types of unearned income are:

1. cash replacements for material assets lost and not to be replaced. Loss might be a result of sale, transfer, fire or theft;
2. lump sum compensation for injury, disability, retirement or death, as long as the lump sum is not part of an ongoing stream of pension income. Funeral costs normally have first claim on items such as death benefits and life insurance, and so such lump sum payments received by survivors receiving income assistance should be reduced accordingly prior to applying provisions noted; and
3. inheritances and windfalls not subject to some other facet of policy such as some parts of trust policy.

When lump sums of these kinds are received by an income assistance household,

the following procedures shall apply:

1. Determine whether or not the household is below its liquid asset exemption limit.
2. If the household is below the limit, then include as much of the lump sum in the household's liquid assets as is possible without exceeding the liquid asset exemption level.
3. Any amount of the lump sum that remains after applying the liquid asset exemption must be treated as completely available to reduce current assistance or to reduce an outstanding overpayment.

A lump sum payment received as an age of majority allowance from a child-caring agency should be assessed in accordance with the established policy detailed in section 15.2.7 entitled "Age of Majority Allowance".

Unearned income in lump sums, other than the kinds noted above, are not subject to whole or partial exclusion from available resources under liquid asset exemption provisions. These other sources of lump sums might be maintenance, training allowances, insurance for income lost and various kinds of ongoing private and public pensions such as the Canada Pension Plan.

The Department reported that the appellant's LIRA does not qualify under liquid asset exemption. The Department sent a letter to the appellant on <date removed> requesting that the appellant submit information from the bank regarding the retirement account. The Department advised that once the appellant accessed the funds, it exceeded the appellant's monthly budget for <date removed> and therefore the appellant's file was closed effective <date removed>. On <date removed> the appellant reapplied for income assistance and was provided with a <amount removed> purchase voucher. Further financial information has been requested before eligibility can be determined. The Department stated that the appellant's LIRA is income from a pension and treated it under the Lump Sum Policy, the same as Canada Pension Plan and Employment Insurance income, therefore it is deducted dollar for dollar.

After carefully considering the written and verbal information, the Board has determined that the Department has erred in closing the appellant's income assistance file effective <date removed>. The appellant declared, at the point of intake, that the appellant has a LIRA in the amount of <amount removed>. The Board finds that the appellant did withdraw money from the LIRA account in the amount of <amount removed>. The Manitoba Assistance Regulation 8 (1) (iv) states: "In calculating the financial resources of an applicant's or recipient's household, the director shall exempt (a) the following assets: (iv) liquid assets of up to \$4,000 per person, to a maximum of \$16,000 per household". As the appellant is a family unit of two the appellant has a liquid asset exemption of \$8,000, the withdrawal of <amount removed> should have been exempt and the appellant's file should not have closed due to excess unearned income. Therefore, the Board has rescinded the decision of the Director and orders the Department to re-enrol the appellant effective <date removed> and apply the \$8,000 exemption, as per the appellant's family size.

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