

Reasons for Decision:

Order #AP1718-0573

On <date removed>, the appellant appealed the decision of the Director to close their file on <date removed>, due to excess unearned income.

Neither the Appellant nor the Department provided a copy of the closure letter, but the Department stated in its report to the Board that the letter was sent on <date removed>, and the appellant did not dispute the Department's statement.

At the start of the hearing, the appellant's advocate sought to introduce an updated doctor's note and the Department fact sheet on disability trusts. The Department agreed to the acceptance of the documents as information to the Board.

The Department stated that the appellant was granted disability status on <date removed>, for a period of one year. In <date removed>, the appellant disclosed an upcoming inheritance from their mother's estate, and asked their worker how to stay on assistance. The appellant declared the income in <date removed>, and declared an upcoming Canada Pension Plan payout from their mother's estate. The Department closed their file on <date removed>.

The Department's position is that unearned income is not an exempt financial resource. In support of its position, the Department cited Section 8(1) of the Manitoba Assistance Act Regulation (Calculating Financial Resources), and EIA Circular Number 2012-09 (dated January 20, 2012).

The Department stated inheritances were not listed as exempt income in Section 8(1) of the Regulation. Furthermore, Circular 2012-09 states:

Unearned sources of income that are not exempt in regulation continue to be treated as a financial resource and cannot be "sheltered" in an EIA Disability Trust or RRSP.

The appellant's advocate stated that the appellant decided to proceed with the appeal because they are aware of a recent EIA case where a client's inheritance was sheltered in a disability trust. The advocate noted they met with the Department with a different client last week, and that client's worker stated inheritances could be sheltered in a disability trust.

The advocate noted the fact sheet on disability trusts currently available on the Department's website states inheritances can be placed in a disability trust.

You can save money in an EIA disability trust or RDSP from any source except job wages or money to replace or supplement income (ex: Canada Pension Plan Disability payments, Employment Insurance, Workers' Compensation for loss of income).

Examples of eligible income sources include:

- inheritances
- life insurance policies
- gifts from family or friends
- money from the sale of a secondary house, land or car

The appellant was granted disability status in <date removed>. Their advocate stated by <date removed> their file should have been transferred to a district office, but it was left with Centralized Services. The appellant sought assistance from the Fair Practices Office, but their file did not get transferred.

The appellant's advocate asserted that, at that time the appellant disclosed their pending inheritance to their worker, they were eligible for a disability trust account. Their worker should have advised them about the disability trust option, but did not. The appellant was told the inheritance was income and they had to use it before reapplying for assistance.

Given the appellant's serious mental health conditions, the worker's failure to advise them of their options had significant consequences. The appellant was unprepared to manage a large lump sum payment. Approximately <amount removed> of the two payments is left.

The appellant described the circumstances of their <date removed> meeting with their worker. They noted the worker they met with had just been assigned to them. The appellant stated they had been trying to be transferred from Centralized Services, because they were not satisfied with the treatment they were receiving. They stated they were told their file could not be transferred because information was missing from it. The appellant advised their insurance company had stated the Department was not legally entitled to the information it was seeking.

The appellant stated they specifically asked about some sort of trust at the <date removed> meeting, because they had heard that there was such an option. Their worker told them without reservation they were not eligible for a trust because there was too much money. The worker told the appellant they had to spend the inheritance. The appellant stated they took the Department at its word, until some of their health care workers told them they had been ill advised.

The appellant stated they has extreme and complex allergies , which makes finding

rental accommodations difficult and expensive. Their plan was to use the inheritance money to buy property or supplement their rent costs. The appellant feels the Department's failure to advise them properly has taken away that chance.

The appellant's advocate stated the Department's failure impacted the appellant in two ways - by requiring them to spend their inheritance money on daily living costs, and by precluding them from applying to renew their disability eligibility in <date removed>, as their file was closed. The appellant's advocate stated an appropriate remedy would be the restoration of their disability eligibility from <date removed> through to the present time.

At the hearing, the Department took the position that Circular 2012-09 was consistent with the Act and Regulation, and the fact sheet available on the Department's web site was not. The Department also argued that Circular 2012-09 was more current than the fact sheet available on the website.

The appellant's advocate disputed the Department's characterization of the fact sheet as out of date, noting district offices were still handing it out. The Board questioned if it was possible that a publicly available fact sheet had not been updated for six years. The Department argued that, even if the fact sheet is current, it cannot supersede the Act and Regulation.

The department contended that the appellant had not been clear about their desire to shelter their income. The appellant's advocate produced an e-mail from the appellant to their worker, in which the appellant inquired about whether there was an option available to set aside their income and draw small amounts from it on a periodic basis.

The Department opposed the advocate's suggestion the Board consider the appellant's disability eligibility as part of the appeal.

After reviewing the submissions of the Parties, the Board determined that the essence of the appeal is captured by the following questions:

1. Can lump sum payments through inheritances by assistance recipients be sheltered in a disability trust?
2. If inheritances can be sheltered in a disability trust, did the Department properly advise the appellant of their options?
3. If the Department did not properly advise the appellant of their options, did that lack of advice result in consequences for the appellant that are within the power of the Board to remedy?

The Department relied heavily on Section 8(1) of the Manitoba Assistance Act and Regulation and EIA Circular Number 2012-09 in arguing that inheritances cannot be sheltered in a disability trust. The Board notes that Section 8(1) applies generally to

recipients, while Section 8.1 sets out the rules governing disability trusts. The Board does not understand why the Department did not reference the section of the Regulation governing disability trusts in its presentation to the Board.

In summary, Section 8.1 states:

- The Director must exempt contributions to a disability trust by an eligible person from the calculation of financial resources;
- An eligible person includes a person enrolled under clause 5(1)(a) of the Manitoba Assistance Act;
- "property" in the form of money is eligible, unless it is derived from employment income, income replacements or income supplements (i.e. it is earned); and
- Up to \$200,000 in property may be placed in a disability trust.

The Board finds that the fact sheet currently available from the Department is consistent with Section 8.1 of the Regulation. The Board can find nothing in Section 8.1 to suggest it is limited in any way by Section 8(1). Therefore the Board determines that inheritances are "property" within the meaning of the Regulation, and are exempt from the calculation of financial resources when held in a disability trust.

After carefully reviewing the written and verbal evidence presented to it, the Board finds that the appellant not only asked the Department what options were available to them, they described an option that closely resembled a disability trust. The Department acknowledged in its written report that the appellant's worker told them there were no options available to shelter their money. The Board is not persuaded by the Department's argument at the hearing that the appellant did not ask for a disability trust by name, since the Department has a positive obligation to explain options to its clients.

The failure of the Department to advise the appellant correctly on the disability trust option caused their direct loss, because they were required to use money they could have saved to support themselves. The appellant has also experienced an ongoing loss, because they were not able to apply for a continuation of their disability eligibility past <date removed>.

The Board determines the Department incorrectly advised the appellant about their ability to direct their inheritance into a disability trust, and this error caused the appellant material harm. Therefore, the decision of the Director is rescinded, and the Board orders the Department to restore the appellant's eligibility under Section 5(1)(a), effective <date removed>, and to extend that eligibility to <date removed>.

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