

### PART C – Decision under Appeal

This is an appeal of the Ministry's reconsideration decision dated December 23, 2011 which denied the Appellant's request to be reimbursed for the amount deducted from her disability payment because of retro-active federal child support payment.

The Ministry treated the retro-active cheque as 'unearned income' under section 10 of Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Under sections 1, 6 and 7 of Schedule B, the Ministry found that retroactive family support payments were not exempt and that the income must be deducted pursuant to section 24 of the EAPWDR.

### PART D – Relevant Legislation

Sections 1, 6, 7 and 10 of Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

Sections 24 and 58 EAPWDR

## PART E – Summary of Facts

The following evidence was before the Ministry at the time of reconsideration:

- The Appellant receives disability assistance from the Ministry for her daughter.
- She receives the Canada child tax benefit, which is normally \$290.41 per month.
- This amount is not deducted from her disability payments by the Ministry.
- The Appellant has received previous Canada child tax benefit cheques at her current address.
- The Appellant's October Canada child tax benefit was returned to sender by the rural Post Office, despite being correctly addressed.
- Canada Revenue Agency's policy is not to issue a new Canada child tax benefit cheque in these cases, but rather pay twice the amount in the following month.
- The Appellant received \$580.82 for her November 2011 Canada child tax benefit payment; double the normal amount in compensation for the missed October 2011 payment.
- The Ministry has a protocol with the Federal Government, which alerts them to Canada child tax benefit payments in excess of what the Ministry will allow.
- The November 2011 Canada child tax benefit cheque to the Appellant raised such an alert and the Ministry deducted the amount from the subsequent disability payment to the Appellant. The amount the Ministry deducted was \$176.50.

## PART F – Reasons for Panel Decision

The issue before the Panel is to determine whether the Ministry's reconsideration decision dated December 23, 2011 was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The Ministry's decision denied the Appellant's request to be reimbursed for the amount deducted from her disability payment because of retro-active federal child support payment.

Section 1 of the EAPWDR defines family bonus:

**"family bonus"** means an amount consisting of the sum of the BC basic family bonus and the national child benefit supplement;

Sections 10 of Schedule B of the EAPWDR states:

- 10** (1) If that portion of a child benefits cheque attributable to family bonus, the payee of which is a person in the applicant's or recipient's family unit, includes an amount attributable to family bonus for one or more calendar months preceding the calendar month in which the cheque was issued, the amount for each preceding calendar month must be treated as unearned income.
- (2) For the purposes of subsection (1), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from a family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.
- (3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus
- (a) to replace a lost or stolen cheque for which an amount was advanced under section 58 [*advance for lost or stolen family bonus cheque*] of this regulation, or
  - (b) to replace a cheque for which no amount was advanced under section 58 [*advance for lost or stolen family bonus cheque*] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued,

Section 1 of Schedule B of the EAPWDR sets out which money received is exempt from income calculations. A family bonus is not exempt in this section. Nor is a family bonus included exempt from income calculations under Section 6 or 7 of Schedule B

Sections 24 sets out the calculation for determining the amount of disability assistance to be paid. The mechanism reduces a payment if a family earns income which is not exempt under the regulations.

Section 58 of the EAPWDR discusses advances the Ministry may make to a family unit if a family bonus cheque is lost or stolen. Such advances must be repaid.

The Ministry does not dispute the Appellant's assertion that the October Canada child tax benefit cheque was not received by the Appellant. However, it determined that the retroactive payment included in the November payment to compensate for October must count as unearned income and therefore not exempt from being deducted from the subsequent disability payment.

The Appellant argues that the Canada child tax benefit cheque was returned to the federal government through no fault of her own, but rather by a mistake on the part of Canada Post. She should not be penalized for receiving her October cheque in November.

For the purposes of this appeal, the Panel deems that the fact that the Canada child tax benefit cheque was returned in error to the Canada Revenue Agency by the post office falls within the plain meaning of "lost." The Appellant did not receive the cheque, as it was misdirected due to no fault of her own. We don't find it essential that the Appellant lost the cheque, only that it did not reach its intended destination through no fault of the Appellant.

Section 10 discusses family bonus cheques as counting towards unearned income in the preceding month(s). Section 10(1) designates family bonus cheques received in the preceding month as unearned income, which is then deducted from a subsequent disability payment. It states:

10(1) If that portion of a child benefits cheque attributable to family bonus, the payee of which is a person in the applicant's or recipient's family unit, includes an amount attributable to family bonus for one or more calendar months preceding the calendar month in which the cheque was issued, the amount for each preceding calendar month must be treated as unearned income.

However, it has a provision for family bonus cheques which have been lost or stolen and for which the Ministry has not reimbursed. Section 10(3) states:

- (3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus
- (a) to replace a lost or stolen cheque for which an amount was advanced under section 58 *[advance for lost or stolen family bonus cheque]* of this regulation, or
  - (b) to replace a cheque for which no amount was advanced under section 58 *[advance for lost or stolen family bonus cheque]* of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued

In plain words, a family bonus cheque is not deemed as unearned income if it replaces a cheque "for which no amount was advanced under section 58 *[advance for lost or stolen family bonus cheque]*." Section 58 permits the Ministry to advance moneys for lost or stolen cheques but requires reimbursement. No such advance or reimbursement was provided to the Appellant due to the loss of her October Canada child tax benefit cheque. Therefore, the retroactive amount provided by the Canada Revenue Agency in November for the missed October payment does not count as unearned income, pursuant to 10(3)(b). As such, it was not reasonable for the Ministry to include it in her income calculation and deduct it from her subsequent disability payment.

The Panel finds that the Ministry's decision was not a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and the decision is rescinded.