APPEAL

PART C – Decision under Appeal

The decision under appeal is the ministry's decision at reconsideration dated January 18, 2012. In that decision the ministry denied the appellant's request that her Income Assistance not be reduced by the amount of the retro-active portion of her family bonus payment. The ministry based their decision on Sections 28 of the *Employment and Assistance Regulation (EAR)* and Sections 1,6, 7 and 10 of Schedule B of the *EAR* which define how retro-active bonus payments such as that received by the appellant must be treated.

PART D – Relevant Legislation

Employment and Assistance Regulation, (EAR) Section 28 and Sections 1,6,7 and 10 of Schedule B, of the *EAR*.

APPEAL

PART E – Summary of Facts

At reconsideration the ministry had before them the Request for Reconsideration signed by the appellant on December 20, 2012, together with a 4-page letter from her.

In her letter the appellant told of the circumstances that delayed the filing of her 2011 tax returns which in turn delayed payment to her of family bonus payments. The result was that she received in October of 2011 retroactive payments for National Child Care Tax Benefits for three months in the amount of $871.23. The ministry then deducted $353.00 of this amount from her Income Assistance cheque for November, so that she received at that time only $43.00.

At the hearing the appellant spoke about the difficulties she had faced on relocation to British Columbia with her young daughter, her attempts to create a secure situation here, and the assistance she had received not only from ministry personnel but also from various support organizations dedicated to help families headed by single mothers. She was grateful for the assistance received. She stressed that being on social security was not a situation she wished to be in. She said that she had started receiving child support monies from her former husband in April/May of 2011.

The representative from the ministry explained the legislative framework governing the ministry in its decision making process around the situation in which the appellant found herself. She stated that based on the appellant's appeal of the reconsideration decision the ministry had paid the deducted funds back to the appellant. This payment had been made in December subject to a repayment agreement signed by the appellant which would come into force should the appeal confirm the ministry's decision at reconsideration.

Based on the written and oral evidence before it the panel's finding of facts are:

1. The appellant has been in receipt of Income Assistance since September of 2010.
2. The appellant has a two year old daughter.
3. In October, 2011 the appellant received retroactive payments for National Child Care Tax Benefits for three months in the amount of $871.23.
4. In November, 2011, the ministry deducted $353 from the appellant's Income Assistance cheque, this being the retroactive portion of the National Child Care Tax Benefits she had received in October, 2011.

PART F – Reasons for Panel Decision

The decision under appeal is the ministry's decision at reconsideration dated January 18, 2012. In that decision the ministry denied the appellant's request that her Income Assistance not be reduced by the amount of the retro-active portion of her family bonus payment. The ministry based their decision on Sections 28 of the *Employment and Assistance Regulation (EAR)* and Sections 1,6, 7 and 10 of Schedule B of the *EAR* which define how retro-active bonus payments such as that received by the appellant must be treated. The issue before the panel is whether the ministry's decision at reconsideration was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, did the ministry reasonably apply the *EAR* in the circumstances of the appellant?

The relevant legislation is found in the following sections of the *EAR*.

Section 28 states that, *"Income Assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than (a) the amount determined under Schedule A, minus (b) the family unit's net income determined under Schedule B."*

Section 1 of Schedule B lists monies that are exempt from income when calculating the net income of a family unit. Section 1 (a) (iv) reads, *"a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule."*

Section 10 of Schedule B deals with backdated family bonus treated as unearned income. It reads, *"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."*

At reconsideration the ministry relied on Section 10 of Schedule B in finding that any retro-active portion of a family bonus payment must be treated as unearned income. Therefore they concluded, the portion of the family bonus payment which the appellant received attributable to a retro-active payment ($353.00) is treated as unearned income. They pointed out that retro-active family bonus payments are not listed in Schedule B as a type of income that may be exempted from the calculation of income, therefore the $353.00 received by the appellant must be included in the calculation of her income. Finally they find that as the amount the appellant receives in assistance is determined by deducting the amount of income calculated under Schedule B from the amount of shelter and support allowances calculated under Schedule A, and as the family bonus payments are not exempted from the calculation of monthly income, the funds must be deducted from the appellant's Income Assistance.

The appellant's position when she sought reconsideration was that she had been in a very precarious and fragile situation when she moved back to this province and yet she had managed to find work and had been able to hold things together for her and her young daughter. She explained that complications with her absent husband had aggravated her situation and led to the late filing of her

Tax Returns in 2011. She argued that cheques for the National Child Tax Benefit are for her child and that as the Ministry does not declare this as income on a monthly basis, so back pay should not be declared as income. She pointed out that the ministry is already deducting from her income the amount she receives for child support and says that it is not fair that this $353 should also be deducted and used for the province and not her child.

When filling her Notice of Appeal the appellant wrote, "The Ministry has failed to consider all aspects of my case and the legislation in BC allows citizens to be treated fairly and on a case by case basis. I feel I have been discriminated against."

At the hearing the appellant said that she understood that the legislation probably supported the ministry's decision at reconsideration but said that it should be possible for the circumstances of persons such as herself to be taken into account when applying the legislation. It should be possible, she said, to sway the legislation depending on the situation of an individual. She expressed the view that the legislation was not working. She emphasized that she was not seeking a crisis supplement. Rather she was asking to get her money back. She was not asking for anything extra or anything that was not hers. The family bonus was clearly for her and her child and not the government and she did not see why she had to be supporting the government. The legislation, she said, should be changed so as to be able to take into account the individual circumstances of people.

The representative of the ministry described the Family Bonus Payments as part of the wider income support system. She explained how once the appellant's tax situation had been handled by Revenue Canada, the information became accessible to the provincial government and at that time the retroactive payments were spotted and deducted from the appellant's income assistance. This automatic system had to exist she explained otherwise it would not be possible for staff to efficiently manage the system. She emphasized that the only funds deducted from the appellant's November Income Assistance cheque were those for the two months which were retroactive payments. Addressing the appellant's position that the situation of individuals should be able to sway the legislation, she pointed out that if subjective matters were to come into play, such that each incident had to be dealt with on a "subjective" level it would be impossible for the ministry staff to cope with the work burden. The legislation, she pointed out, gave the ministry no discretion to vary the requirements. Finally, she drew the appellant's attention to the fact that the ministry had not made deductions from the Universal Child Benefit or the National Child Tax Benefit monies.

The panel's task is to determine whether the ministry at reconsideration reasonably applied the *EAR* in the circumstances of the appellant. The legislation at 1 (a) (iv) of Schedule B makes it clear that whereas a family bonus is exempt from income when calculating the net income of a family unit for the purposes of determining the amount of income assistance for an individual, the portion of family bonus mentioned in Section 10 (1) of Schedule B is not exempt. That portion is *"Backdated family bonus treated as unearned income".* Here the legislation clearly sets out that, *"If that portion of a child benefits cheque attributable to family bonus, the payee of which is a person in the applicant's or recipients' 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 of each preceding calendar month must be treated as unearned income."* This was exactly the situation in which the appellant was placed as a result of her late filing of her tax returns. There are exceptional circumstances, as set out in Section 10 (3) of Schedule B, but none of those circumstances apply to

the appellant's situation.

Consequently, the ministry at reconsideration had no discretion to grant the appellant's request that her Income Assistance in November not be reduced by the amount of the retroactive portion of her family bonus payment. Section 28 of the *EAR* above makes it clear that the deduction had to be made. There is no basis in the legislation by which the ministry could come to a decision supportive of the appellant.

Accordingly, the panel finds that the ministry's application of the applicable enactment in the circumstances of the appellant was reasonable and we therefore confirm that decision.