

### PART C – Decision under Appeal

The decision being appealed is the Ministry's February 23, 2012 reconsideration decision in which the Ministry determined that the Appellant was overpaid income assistance for certain months from September 2008 to October 2011 and therefore under section 27(1) of the Employment and Assistance Act she is required to repay any overpayment of income assistance. The Ministry determined that under section 10 of the Employment and Assistance Regulation the Appellant was not eligible for some or all income assistance for those months because of the amount of her earned income during those months.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 27.

Employment and Assistance Regulation (EAR) Section 1, 10, 28, 33 and Schedules A and B.

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

### 1. Information in the Ministry's records as follows:

- Appellant and her husband have been receiving income assistance since December 2007.
- Letter dated June 2, 2010 to the Appellant stating she was approved for Persons with Persistent and Multiple Barriers (PPMB) designation and that she was eligible for an earnings exemption of \$500 per month per family unit on any work income.
- On August 23, 2011 and again on September 27, 2011 the Ministry asked the Appellant to provide confirmation of earnings for herself and her husband, all bank statements from January 1, 2009 to December 31, 2010 and Income Tax Assessments for 2009-2010.
- Letter dated November 8, 2011 to the Appellant with attached overpayment charts advising her that there had been overpayments of assistance and the Appellant was asked to schedule an appointment to review the information.
- On January 5, 2012 the Ministry received confirmation of the Appellant's employment income from the Appellant's employer for September 2008 through September 2011, earnings which the Appellant had not declared. The Ministry re-assessed her assistance eligibility for that period resulting in a decision that the Appellant had received assistance for which she was not eligible.
- Letter dated January 10, 2012 to the Appellant with an overpayment chart advising that her eligibility for assistance for the period of September 2008 to October 31, 2011 had been re-assessed based on confirmation of earnings provided by her employer.
- Copies of overpayment charts, including one indicating the Appellant's income from an employer for November and December 2008 and for each month in 2009, 2010 and 2011. That chart also indicated that the Ministry applied the PPMB \$500 income exemption in certain months, the amount of assistance the Appellant was eligible for and the overpayment of assistance amount for certain months.
- Letter dated January 24, 2012 to the Appellant stating that the Ministry had re-assessed her eligibility and that she had received \$28,200.57 in assistance for which she was not eligible.
- Copy of declaration for assistance completed by the Appellant and her husband on September 12, 2011 in which she declared no income.
- Copies of confirmation of earnings statements from the Appellant's employer indicating months of employment and earnings in 2008, 2009, 2010, and 2011.

2. Appellant's request for reconsideration in which she wrote that she thought the Ministry's decision was wrong because she was told by a welfare worker that she was allowed to make up to \$3,000 a month before being cut off. She also wrote that she was laid off for a week the first 3 years which didn't help, and knowing that it's harder and there's a longer wait period to get back on. The Appellant stated that she is laid off work again. While working she never made over \$2,000 a month. She also wrote that her spouse had a heart attack and payment for some of the medicine he had to take came out of what she made at work. Because of the heart attack her spouse is unable to work and he was about to apply for person with disability designation when they stopped getting welfare.

At the hearing the Appellant said she was told by a Ministry worker that she could earn up to \$3,000 a month. She also said sometimes she works part-time and sometimes full-time, but she also is laid off from time to time. She stated that she understood she was allowed to have \$5,000 in assets and that this included money from work. The Appellant acknowledged that she had not reported her earnings.

Her husband described his medical conditions and said the income assistance was used for his medical bills. The Appellant confirmed this.

The Panel finds that the testimony from the Appellant and her husband is related to information the Ministry had at the time of reconsideration. Therefore the Panel admits that testimony as being in support of the Ministry's reconsideration decision in accordance with section 22(4) of the EAA.

At the hearing the Ministry reviewed the information it had for its reconsideration decision and the sections of the EAA and EAR it applied in that decision. The Ministry also referred to the overpayment charts in the record which showed that it had applied the \$500 PPMB exemption to the Appellant's earnings in certain months. The Ministry also reviewed the months that the Appellant received income assistance from September 2008 through October 2011 and pointed out that the Appellant did not report any earnings during that period.

The Panel makes the following findings of fact:

1. The Appellant and her husband received income assistance from December 2007 to October 2011.
2. The Appellant had monthly income from an employer from September 2008 to September 2011.
3. The Appellant did not report any income from September 2008 to September 2011.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was overpaid income assistance for certain months from September 2008 to October 2011 and therefore under section 27(1) of the EAA she is required to repay any overpayment of income assistance. The Ministry determined that under section 10 of the EAR the Appellant was not eligible for some or all income assistance for those months because of the amount of her earned income during those months.

The following sections of the EAA and EAR apply to the Appellant's circumstances in this appeal:

### EAA

27 (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [*reconsideration and appeal rights*].

### EAR

1(1) In this regulation:

"earned income" means (a) any money or value received in exchange for work or the provision of a service, (b) tax refunds, (c) pension plan contributions that are refunded because of insufficient contributions to create a pension, (d) money or value received from providing room and board at a person's place of residence, or (e) money or value received from renting rooms that are common to and part of a person's place of residence.

10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

28 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.

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

(a) the report must be submitted by the 5th day of each calendar month, and (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, (i) whether the family unit requires further assistance; (ii) changes in the family unit's assets; (iii) all income received by the family unit and the source of that (iv) the employment and educational circumstances of recipients in the family unit; (v) changes in family unit membership or the marital status of a recipient.

### Schedule A Income Assistance Rates

1 Subject to sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of  
 (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus  
 (b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
8	Two applicants/recipients and no dependent children	One applicant/recipient is person who has persistent multiple barriers to employment and the other is not but both applicants/recipients are under 65 years of age	\$396.22

4 (1) For the purposes of this section:  
 "family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of (a) the family unit's actual shelter costs, and (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

**Schedule B Net Income Calculation**

1 When calculating the net income of a family unit for the purposes of section 28(b) [amount of income assistance] of this regulation..

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for (i) income tax, (ii) employment insurance, (iii) medical insurance, (iv) Canada Pension Plan, (v) superannuation, (vi) company pension plan, and (vii) union dues;

3 (1) The amount of earned income calculated under subsection (2) is exempt for a family unit if (a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed

(i) income assistance under the Act, (ii) disability assistance under the *Employment and Assistance for Persons with Disabilities Act*, (iii) income assistance or a youth allowance under a former Act, (iv) a disability allowance under the *Disability Benefits Program Act*, or (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv),

- (b) each person in the family unit is under 65 years of age, and  
(c) either (i) any person in the family unit is a person who has persistent multiple barriers to employment, or (ii) the family unit is composed of a sole recipient.  
(2) The exempt amount for a family unit that qualifies under subsection (1) is calculated as the lesser of the family unit's total earned income in the calendar month of calculation, and  
(a) \$300 in the case of a family unit that is composed of a sole recipient described in subsection (1) (c) (ii), or (b) \$500 in the case of a family unit described in subsection (1) (c) (i).

The Ministry's position is that it reviewed all the information relevant to the Appellant's case as well as the applicable sections of the EAA and the EAR. The Ministry determined that the Appellant had employment income which had to be treated as "earned income" under the EAR. It also calculated that the Appellant was eligible for \$896 in shelter and support allowances. The Ministry then deducted the Appellant's monthly employment earnings from her total monthly assistance for each month from September 2008 through September 2011 and also in certain months it applied the \$500 PPMB exemption the Appellant was entitled to. The Ministry then determined that in certain months the Appellant was overpaid income assistance and that she had to repay that overpayment of income assistance.

The Appellant submitted that she thought she was allowed to earn up to \$3,000 a month and still receive income assistance. The Appellant did not dispute that she had employment earnings during the period indicated by the Ministry in its overpayment charts, the amounts of monthly income the Ministry cited or that she failed to report her employment income.

Based on the evidence the Panel finds that the Ministry reasonably determined that the Appellant had employment income for certain months from September 2008 through September 2011, income which she did not report. The Ministry considered the monthly amount of income assistance the Appellant was eligible for, used the employer's reports of the Appellant's earnings and applied the \$500 PPMB exemption in applicable months. The Panel finds that based on this evidence the Ministry reasonably determined that the Appellant was overpaid income assistance for certain months during that period and further that under section 27 of the EAA she is required to repay those overpayments. The Panel confirms the Ministry's reconsideration decision.