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PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 5, 2012 which found that the retroactive portion of a family bonus payment to the appellant must be deducted from income assistance payable, pursuant to Section 28 of the Employment and Assistance Regulation (EAR), for the month of January 2012.

PART D – Relevant Legislation

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

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PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) Screen print out dated October 18, 2011 by the ministry for the appellant with handwritten notes stating in part that the top up of $90.06 times 4 months equals $360.24 that was paid to the appellant and that she "...should only have to re-pay the $360.24 back for the top up and not the entire $572.24 equaling a difference of $212.00 that should be mine";
2) Canada Child Tax Benefit Notice dated December 13, 2011 to the appellant indicating in part a Canada Child Tax Benefit amount of $113.91 and a National Child Benefit Supplement of $748.74 and that entitlement has been reviewed based on a change to marital information and the credit is $572.24 for August to November 2011 and $290.41 for December 2011, for a total payment issued of $862.65;
3) Screen print out dated March 2, 2012 by the ministry for the appellant indicating in part that for the benefit month of January 2012 the total income amount is $748.74; and,
4) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant refers to her Request for Reconsideration in which she states that she disputes the amount of $212.00 of the $572.24 deduction in January 2012. The appellant states that if she was receiving the proper calculation of her CTB- Family Bonus of $176.50 each month then it would not have been deducted as "unearned income" but because it was retroactively paid to her instead then it is deducted. The appellant states that she has no control over how or when she receives her CTB- Family Bonus from the Canada Revenue Agency (CRA). The appellant states that the CRA has its own regulations that she must wait 90 days to submit her marital status change and only after the wait period will they recalculate her eligible amount. The appellant states that she is being penalized monies because of how and when CRA decided to pay her eligible amount. The appellant states that she understands that she was given a "top up" amount of $90.06 each month for the four months that accumulated to the amount of $360.24. She states that the amount of $572.24 minus the amount that is owed back to the ministry of $360.24 for the top up equals a difference of $212.00 that should still be hers. The appellant states that if the ministry had topped up the entire amount of $572.24 throughout the previous 4 months then she agrees that the entire amount would have been owed to the ministry. The appellant states that the ministry is getting $212.00 more than what it paid out to her through the course of the 4 months and she strongly believes that the amount of $212.00 is hers.

At the hearing, the appellant reviewed her argument as set out in her Request for Reconsideration and stressed that it does not make sense that if she were to have received her CTB payment every month it would not be deducted from her assistance but because the CRA waited to pay the amount until later, the same CTB is deducted as "unearned income" from her assistance. The appellant stressed that she has no control over the CRA procedures and the waiting period that they require. The appellant stated that there is a 90 day waiting period while they re-calculate the amount due to her change in marital status. The appellant stated that she acknowledges she owed $360.24 to the ministry for the "top up" that was paid to her each month, but that the extra $212.00 should not have been deducted from her income assistance. The appellant stated that it may not seem like a lot of money to others, but for her it is money she needs for diapers and formula for her son. The appellant stated that she believes she is being reprimanded for something beyond her control.

The evidence of the ministry is that the appellant has been in continuous receipt of income assistance as a single employable parent since August 2011. The appellant received the family bonus top-up supplement of $90.06 until January 2012. In December 2011, the appellant received a family bonus payment of $748.74, and the retroactive portion of the payment ($572.24) was deducted from the appellant's January 2012 income assistance.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the retroactive portion of a family bonus payment to the appellant must be deducted from income assistance payable, pursuant to Section 28 of the Employment and Assistance Regulation (EAR).

Section 28 of the Employment and Assistance Regulation (EAR) provides 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.

Schedule A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

In calculating the net income of a family unit under Schedule B, various specific exemptions from income are provided for, but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B provides that:

Deduction and exemption rules

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

(a) the following are exempt from income:

... (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule; ...

(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.

Section 10(1) of Schedule B provides that:

Backdated family bonus treated as unearned income

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.

Section 6 of Schedule B provides that:

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

Section 7 of Schedule B provides that:

Exemptions — unearned income

7 The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) $50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 *[asset limits]* of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) *[assets held in trust for person receiving special care]* of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed $5 484;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula (A-B) x C, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.

The ministry's position is that the appellant received a family bonus payment of $748.74, of which the amount of $572.24 was for retroactive benefits. Section 1 of Schedule B of the EAR provides exemptions from the calculation of net income, including a family bonus except the portion treated as unearned income under Section 10 of the Schedule. Section 10 of Schedule B requires that any retroactive portion of a family bonus payment must be treated as unearned income. The ministry argues that it has no discretion when the language is directory in nature and the portion of the family bonus payment the appellant received attributable to a retro-active payment, or $572.24, must therefore be treated as unearned income. Section 6 of Schedule B set out deductions permitted from unearned income, and none of these apply in the appellant's circumstances. Section 7 of Schedule B exempts certain categories of unearned income, but does not include the retroactive portion of a family bonus payment. The ministry argues that under Section 28 of the EAR, the amount of assistance is determined by deducting the amount of income calculated under Schedule B from the amount of shelter and support allowance calculated under Schedule A and since the retroactive 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 admits that she received the amount of $748.74 in December 2011 for "CTB- Family Bonus" and that the amount of $572.74 is for retro-active payments. However, the appellant argues that if she received the her CTB- Family Bonus payment of $176.50 each month then it would not have been deducted by the ministry as "unearned income." The appellant points out that she has no control over how or when she receives her CTB- Family Bonus from the Canada Revenue Agency (CRA). The appellant argues that the CRA has its own regulations that she must wait 90 days to submit her marital status change and only after the wait period will they recalculate her eligible amount. The appellant acknowledges that she was given a "top up" amount of $90.06 each month from the ministry for the four months, that this amounted to $360.24. The appellant argues that the amount of $572.24 minus the amount that is owed back to the ministry of $360.24 for the top up equals a difference of $212.00 that should still be hers. The appellant argues that the ministry is getting $212.00 more than what it paid out to her through the course of the 4 months and she strongly believes that the amount of $212.00 is hers.

The panel finds that it is not disputed that the appellant received the amount of $748.74 in December 2011 for a national child benefit supplement, or "family bonus", and that the amount of $572.74 is for retro-active payments. Section 1 of Schedule B of the EAR provides exemptions from the calculation of net income, including a family bonus except for the portion of family bonus treated as 'unearned income' under Section 10 of the Schedule. Section 10 of Schedule B of the EAR states that the amount attributable to family bonus for one or more calendar months preceding the calendar month in which the cheque was issued "must" be treated as unearned income, and the panel finds that the language is directive and nature and does not provide discretion to the ministry regarding the treatment of the retroactive portion. The panel finds that the ministry reasonably determined that the portion of the family bonus payment the appellant received attributable to a retro-active payment, or $572.24, must be treated as unearned income. Pursuant to Section 28 of the EAR, the amount of assistance is determined by deducting the amount of income calculated under Schedule B from the amount of shelter and support allowance calculated under Schedule A and the panel finds that the ministry reasonably concluded that since the retroactive family bonus payments are not exempted from the calculation of monthly income, the funds must be deducted from the appellant's income assistance for January 2012.

The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision.