



**PART C – Decision under Appeal**

The decision under appeal is the ministry of social development's (the ministry's) reconsideration decision of May 8, 2012 in which the ministry denied the appellant's request to fully reduce the income assistance overpayment amount because the appellant had unreported earned and unearned income determined by the ministry to be included in the family unit's net income as specified under the rules of schedule B of the Employment and Assistance Regulation (EAR).

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA): sections 11, 17, 27, 28.  
Employment and Assistance Regulation (EAR): section 28, 33, schedule B.

## PART E – Summary of Facts

The evidence relevant to this appeal includes

- Account histories of the appellant's accounts at two banks submitted by the appellant to the ministry. For one bank, the account history covers the period June 1, 2011-January 1, 2012. For the other account history, the dates on the deposits shown are not indicated though the appellant states in her letter to the ministry of April 25, 2012 (below) that she sent all her bank statements to the ministry since being on assistance last July, 2011.

- The ministry's overpayment chart for the period from August 2011 to November 2011. The ministry states on the chart that the income undeclared by the client and indicated on the chart was "confirmed by the client [appellant]" on March 14, 2012.

The chart reviewed by the ministry with the appellant on March 27, 2012 indicates 8 items of income. (The number on each item below has been added by the panel to facilitate the presentation of this decision. The income listed is from deposits into accounts in the appellant's name in two different banks from August 2011 to November 2011 and all the deposits are indicated by the ministry to be unearned income.)

#1-4 Four "Priv Ret Pen" [health pension] deposits of \$424.11 each on June 30, July 29, September 1, and September 30. The income the appellant declared for each of these four deposits from her health pension was \$420. The chart indicates the actual income was \$424.11 for each deposit.

#5 A "Maint[enance] from ex spouse" deposit of \$575 on July 14 which the appellant did not declare.

#6 A "tax return" [income tax refund] deposit of \$1,025.70 on August 5 which the appellant did not declare.

#7 A "Maint[enance] deposit from ex spouse" of \$170 on September 15 which the appellant did not declare.

#8 A student grant of \$1200 on September 27 which the appellant did not declare.

The ministry indicates on the chart that the appellant's actual income as \$4,667.14, declared income as \$1,680 and the total overpayment amount [the amount the appellant must repay] as \$2,027.88.

- The "Section 2 decision to be reconsidered section" of the appellant's "request for reconsideration" that she signed on April 26, 2012 includes a "line by line review" of the items on the overpayment table by the ministry's IO. The ministry states the review took place during a telephone conversation between the IO and the appellant on March 14, 2012. The ministry states that the appellant indicated she "understood the overpayment." The ministry makes the follow points with respect to each overpayment item:

#1-4, the appellant was told that she had under-declared each of these amounts as \$420, whereas the actual income was \$424.11 for each of the four deposits.

#5, the appellant confirmed that this was a maintenance payment from her ex-spouse that she did not

declare to the ministry.

#6, the appellant confirmed this was a tax return payment (not including HST credits) from Revenue Canada which she did not declare to the ministry.

#7, the appellant confirmed this was a maintenance payment from her ex-spouse that she did not declare to the ministry.

#8, the appellant confirmed that this was a student grant which she declared to the ministry but it was not deducted due to an administrative error.

- The appellant's letter of April 25, 2012 submitted with her "request for reconsideration" in which the appellant states she wishes to appeal part of the \$2027.88 overpayment determined by the ministry.

With respect to the ministry's statement in "Section 2: decision to be reconsidered" noted above that the client stated that she understood the overpayment," the appellant states that she had not received the overpayment chart when the ministry's IO discussed it with her by telephone. She states that it was not mailed to her until March 25, 2012. The appellant states the following respect to the items on the overpayment chart:

#1-4: "The overpayment from the pension I received was my error and when I noticed the increase I declared that amount."

#5: She states that when she discussed this deposit with the IO: "I had thought [the deposit of July 14, 2011] I could not remember last July was child-maintenance from my ex-husband yet when I reviewed my bank statements I realize[d] my bank exchanges funds into Canadian funds and this reads on all payments he has sent. My ex-husband lives in America. The deposits on July 14, 2011 of \$575 were gifts from family in 2 separate checks for my daughter, born the day before."

#6: "The \$1025.70 on August 5, 2011 I believe was a federal tax payment and may or may not be deductible."

#7: "The \$170 on September 15, 2011 was also not maintenance since it was not in American funds, though I cannot remember what this was from."

#8: "On September 27, 2011 I received and declared a part-time student government grant for \$1200 . . . and [it] was not for living expenses. I believe the administrative error read 'disability' because there might not be a category for my situation . . . ."

- The ministry's reconsideration decision of May 8, 2012. In the "decision under consideration" section of the decision the ministry stated that the appellant is an employable single parent of two dependent children. In Appendix A of the reconsideration decision the ministry stated that the appellant failed to report earned and unearned income. The ministry made the following determinations with respect to the items on the overpayment chart:

#1-4: the ministry stated that the appellant had not reported any of these deposits to the ministry. The panel notes that the evidence of the ministry in the overpayment chart shows the appellant did report



her 4 health pension deposits but under-declared them. Her actual income was \$424.11 for each of the 4 deposits.

With respect to #5, the ministry references the appellant's statement in her letter of April 25 that the deposit of July 14, 2011 was not for child maintenance, though she told the IO that she thought it was when she discussed it with him by telephone on March 14, 2012. The ministry writes: "Your] rationale for changing your mind is because there [is] no conversion rate from US funds into Canadian funds listed on your bank statement. A follow up of this discrepancy has been done with the IO this date. He advised you told him that it was indeed child support and he gave you the money as *he was visiting in Canada at the time* [the ministry's italics]. The ministry concludes it is child support – unearned income."

With respect to #6, referencing the appellant's letter of April 25, 2012, the ministry stated: "You state that you believe that the \$1025.70 [deposit #6] was a Federal tax payment and may not be deductible. Income tax refund is defined under the regulations as earned income . . . and is deducted from assistance." Also with respect to #6 the ministry stated that it had incorrectly entered the appellant's tax refund as unearned income, whereas it should have been entered as earned income because it meets the definition of earned income. The ministry stated, however, that the error does not affect the overpayment total due from this item because the appellant is not designated a person with persistent multiple barriers or a person with disabilities and therefore the appellant is not eligible for the earnings exemption from earned income.

With respect to #7, the ministry stated that only \$50 of the \$170 amount shown on the ministry's overpayment chart above was for child support and the ministry amended the overpayment chart to reflect a child care payment of \$50 dollars for this item rather than \$170.

With respect to #8, referencing the appellant's statement about this item in her letter of April 25, 2012, the ministry wrote: "Student grants were unearned income to you" and the ministry states the appellant failed to report this income and as such this amount must be repaid.

- a letter submitted by the appellant with her "reasons for appeal" on May 18, 2012. She states that after she received the reconsideration decision from the ministry she spoke to the IO about what he was reported by the ministry in the reconsideration decision to have said about deposit #5. She acknowledges that she "initially said [the \$525] deposit may have been child support since I don't keep any records and this was many months ago." She states that the deposit could not have come from her ex-husband because the record shows no conversion from American to Canadian funds, and all of the checks from her ex-husband come as American funds and are converted into Canadian funds. Referring to the ministry's statement in the reconsideration decision that the IO reported that she had said he was visiting in Canada at the time, the appellant writes: ". . . there must have been some misunderstanding or miscommunication because my ex-husband has never visited [the region of BC where she lives] . . . . This payment was the day after my daughter . . . was born and I did have relatives visit . . . who gave me cash gifts for the baby which may have been the misunderstanding."

- At the hearing the ministry's representative stated that her purpose at the hearing was "to uphold the ministry's reconsideration decision." She reviewed the applicable legislation and went over the ministry's arguments in its reconsideration. The panel finds that the ministry's statements at the



hearing do not constitute new evidence and admits them as arguments already made by the ministry in its reconsideration decision.

- At the hearing the appellant stated that her only issue with the reconsideration decision concerned the ministry's position that deposit #5 was a contribution to the appellant for child support from her ex-husband. The appellant stated at the hearing that when she discussed this item with the ministry's IO likely a misunderstanding arose on the IO's part because she told the IO that the deposit was from relatives visiting her the day after her baby was born, and the IO may have heard her as saying the money was from one relative, whom the IO assumed to be her ex-husband. She stated that deposit #5 was from cash gifts for her baby from relatives, not a maintenance payment from her ex-husband, who she stated lives in the US and has never visited her. She stated that her recollection of which relatives gave her gifts or how many relatives gave her gifts the day after the baby was born was hazy because it was a busy time for her as a single parent with a second child to care for, and she has never been in the habit of keeping track of her finances.

The panel found that the appellant's letter with her "reasons for appeal" of May 18, 2012 and her statements at the hearing as summarized above contained information in support of the information and records that were before the minister when the decision being appealed was made; and therefore the panel determined that the items were admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

The ministry representative at the hearing had no objection to the items being admitted as new evidence.

[Redacted Box]

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision in which the ministry denied the appellant's request to fully reduce the overpayment amount was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The basis of the decision was that the appellant had unreported earned and unearned income determined by the ministry to be included in the family unit's net income as specified under the rules of schedule B of the Employment and Assistance Regulation (EAR).

The following provisions apply directly to this appeal

• Section 11, EAA

**11** (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each

• Section 17(1)(c) EAA specifies that a person may request the minister to reconsider

(c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;

• Section 27 EAA

Overpayments

**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*].

• Section 28 EAA

**Liability for and recovery of debts under Act**

**28** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the income assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

• definitions of earned and unearned income in the EAR

• Section 28 EAR

**Amount of income assistance**

**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.

• Section 33 EAR

**Monthly reporting requirement**

**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, B.C. Reg. 315/2005:

- 
- (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 income;
  - (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 B EAR Net income Calculation (Section 28(b))

- 1. Deduction and exemption rules
- 2. Deductions from earned income
- 3. Exemption – earned income
- 6. Deductions from unearned income
- 8 Minister's discretion to exempt education related unearned income
- 9 Application of deductions and exemptions

The ministry's position is that the income assistance program is an income and asset tested program. The appellant is required to report any changes to her income and/or assets to the ministry. The appellant failed to report deposits (indicated on the overpayment table) which the ministry determined to part of her net income. The ministry contends the appellant has been issued income assistance for which she is ineligible (the overpayment) and therefore she must repay this amount.

The appellant's position, as she stated at the hearing, is that she is appealing the reconsideration decision because she disagrees with the ministry's determination in its reconsideration decision concerning only one of the deposits listed on the overpayment table. Her position is that deposit #5 on the overpayment table was not a child maintenance payment from her ex-husband but a gift from some relatives which they gave her in cash the day after her second child was born. As such, she contends it should not be included in her net income and therefore not deducted from her assistance.

The panel finds that the evidence shows the ministry's reconsideration decision with respect to overpayments #1-4, #6, #7 and #8 is reasonable.

As the appellant agrees that all the items on the overpayment table except #5 are part of her net income, should have been reported to the ministry and should be deducted from her assistance, the panel will focus on the ministry's decision with respect to deposit #5. The panel notes that the substance of the appeal within its purview is whether or not the ministry's decision, in this case with respect to deposit #5, the deposit at issue, was reasonable. The panel notes that, in accordance with





Section 27(2) EAA it is not within its purview to determine the amount of the overpayment the appellant must pay back.

The evidence shows that in reaching its decision with respect to deposit #5, the ministry relied on the reports of its IO. He initially reported that when he discussed deposit #5 with the appellant on March 14, 2012 she confirmed it was a maintenance payment. In her letter to the ministry of April 25, 2012 submitted with her request for reconsideration the appellant stated she "could not remember" the deposit, which was made on July 14, 2011 but thought it was for child maintenance from her ex-husband. She states she later realized it could not have been from her ex-husband because there was no indication that it was converted to Canadian from American funds, and her ex-husband lives in the U.S. She writes: "The deposits on July 14, 2011 were gifts from family in 2 separate checks for my daughter, born the day before."

In its reconsideration decision of May 8, 2012, the ministry takes issue with the appellant's statement in her letter of April 25, 2012. In following up with the IO, the ministry was informed that the appellant had told the IO on March 14, 2012 that deposit #5 was from the appellant's ex-husband who gave it to her as a child maintenance amount during a visit to Canada.

In her letter with her "reasons for appeal" and later in her statements at the hearing, the appellant denies having said she got the money from her husband during a visit, as he has never visited the area of BC where she lives. Her position is that the IO misunderstood her during their phone conversation on March 14, 2012 and took her to be saying she got the money from her ex-husband when she actually told him she got it from relatives as a gift for her new baby in the form of a cash payment.

The ministry's position is that the appellant did not receive deposit #5 as a gift because she initially told the ministry's OD that it was for child maintenance. The panel notes that apart from what the IO stated the appellant told him initially during his phone conversation with her on March 14, 2012, the ministry does not provide evidence that deposit #5 is from the appellant's ex-husband. The panel notes that the evidence shows the appellant first discussed deposit #5 with the ministry's IO on March 14, 2012 and the deposit was made several months earlier, on July 14, 2011 the day after the appellant had given birth to her daughter. The panel also takes note of the appellant's statements that she has never kept careful track of her financial affairs and that she was preoccupied at the time she made deposit #5, as a single parent having giving birth the day before to her second child. In the light of this evidence of the circumstances of the appellant, the panel finds that the ministry's position that the appellant did not receive deposit #5 as a gift because she initially stated otherwise to the IO is an unreasonable determination. The panel therefore rescinds the ministry's decision. The ministry's decision is overturned in favor of the appellant and the panel refers its decision back to the Minister for a decision as to amount.