

### PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated March 13, 2012 which found that pursuant to section 27 of the Employment and Assistance Act ("EAA"), the Appellant was required to repay to the Ministry \$30,585.78 in income assistance benefits for which she was not eligible. The Appellant's ineligibility for the income assistance benefits in question arose due to her failure to report earned income as required between July 2002 and February 2010.

### PART D – Relevant Legislation

Employment and Assistance Act ("EAA") section 11, 27  
Employment and Assistance Regulation ("EAR") sections 1, 28 and Schedule B sections 1, 2 and 3

## PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's Request for Reconsideration dated December 18, 2011;
2. A letter dated December 22, 2011 prepared by the Appellant and attached to her Request for Reconsideration;
3. The Appellant's Employment and Assistance for Persons with Disabilities Review form dated August 17, 2011;
4. A letter from the Ministry of Social Development ("the Ministry") addressed to the Appellant and dated August 3, 2011 regarding her August 17, 2011 meeting with the Ministry;
5. A letter from the Ministry addressed to the Appellant and dated August 17, 2011 requesting that the Appellant provide the Ministry further information;
6. A letter and overpayment chart from the Ministry addressed to the Appellant and dated October 4, 2011 advising the Appellant that she had been overpaid income assistance between July 1, 2002 and December 31, 2009;
7. A letter from the Ministry addressed to the Appellant and dated October 4, 2011 advising the Appellant of the overpayment of income assistance;
8. Two copies of the Appellant's 2009 Canada Revenue Agency ("CRA") Notice of Assessment ("NOA");
9. 8 pay-stubs from the Appellant's employer PCL for the period of January 18, 2009 through May 9, 2009;
10. Records of hours worked by the Appellant for the period of September 16, 2009 through December 15, 2009 (employer not identified on records);
11. The Appellant's 2008 CRA NOA
12. 7 pay –stubs for the Appellant for the period of February 6, 2008 through May 14, 2008 (name of employer not identified on records);
13. 4 pay-stubs for Appellant from employer ARL for period of May 15, 2008 through July 9, 2008;
14. Record of hours worked by the Appellant for the period of September 1, 2008 through September 15, 2008 (employer not identified on records);
15. Pay-stub for Appellant from employer KT for period of August 11, 2008 through August 24, 2008;
16. 6 pay-stubs for the Appellant from employer PCL for the period of September 28, 2008 through December 20, 2008;
17. The Appellant's 2007 CRA NOA;
18. A handwritten pay-stub from YL for the period of June 1, 2007 through June 15, 2007;
19. A record of hours worked by "MR" for the period of September 16, 2007 through September 31, 2007;
20. The Appellant's 2006 CRA NOA;
21. Three records of hours worked by the Appellant for the periods of February 1 – 15, 2006, April 16 – 31, 2006 and May 1-15, 2006 (employer not identified on records);
22. 6 invoices issued by the Appellant (dates, amounts and person to whom these were issued not legible);
23. A record of hours worked by the Appellant for the period of October 16 – 31, 2006 (employer not identified on record);
24. The Appellant's 2005 CRA NOA;
25. A pay-stub for the Appellant from employer LESI for the period of January 3 – 9, 2005;
26. 9 pay-stubs for the Appellant from employer NLGS for the period of April 29, 2005 through September 30, 2009;
27. A cheque dated November 7, 2005 payable to the Appellant in the amount of \$455.00 from LL;
28. The Appellant's 2004 CRA NOA;
29. A pay-stub for the Appellant from employer MBGM for the pay period of December 18, 2004;
30. A pay-stub for the Appellant from employer LPLGM for the pay period ending April 30, 2004;
31. A pay stub for the Appellant from employer SSC dated March 21, 2004;

32. 7 pay-stubs for the Appellant from an un-identified employer for the period of May 28, 2004 through August 6, 2004;
33. A hand-written note dated September 20, 2004 recording the Appellant's hours worked between September 16 and September 30, 2004;
34. A hand-written note dated October 15, 2004 recording the Appellant's hours worked;
35. 3 pay-stubs for the Appellant from employer MBGM for the pay periods from November 6, 2004 through December 4, 2004;
36. The Appellant's 2003 CRA NOA;
37. Record of hours worked by the Appellant for employer BGS for the period of March 26, 2003 through June 26, 2003;
38. 3 pay-stubs for the Appellant from employer SSC for the period of March 5, 2003 through July 31, 2003;
39. 4 pay-stubs for the Appellant from employer DKG T for the period of October 23, 2003 through December 5, 2003;
40. 3 pay-stubs for the Appellant from an unidentified employer for the period of August 23, 2002 through September 8, 2002;
41. A receipt for \$1,860.00 in favor of the Appellant from employer RCBGS for the period of August 30 through September 26, 2002;
42. The Ministry's Reconsideration Decision dated November 17, 2011 relating to the Appellant's request for reconsideration on the income assistance overpayment being added to her file;
43. The Appellant's Request for Reconsideration dated October 29, 2011 relating to her request that her income assistance overpayment not be added to her file;
44. The Appellant's letter dated October 31, 2011 which was attached to her Request for Reconsideration as referenced above; and
45. Duplicate copies of items 3 through 41 as set out above.

No new evidence was submitted by the Ministry or the Appellant. The Ministry relied on the Reconsideration Decision.

The Appellant is a single person who applied for and began receiving income assistance on July 25, 2002. She was approved for Persons with Disabilities ("PWD") designation on September 30, 2002. The Ministry initiated a review of the Appellant's past and current eligibility for benefits in 2011. As part of that review, the Ministry requested that the Appellant provide to it employment information from July 25, 2002 to present. On August 23, 2011, the Ministry reviewed the employment information provided by the Appellant and determined that the Appellant had been overpaid income assistance benefits. On October 4, 2011, the Ministry wrote to the Appellant and advised her that based on income received by the Appellant from July 2002 through December 2009 and not declared, the Appellant had received \$30,512.85 in income assistance benefits for which she was not eligible and which she was required to re-pay. The Appellant requested that the Minister reconsider that decision and, based on errors made by the Ministry in calculating the overpayment, the Minister agreed to re-calculate the overpayment chart which resulted in a revised overpayment amount of \$30,585.78 based upon receipt of actual income by the Appellant totaling \$71,268.48 between October 2002 and February 2010 and the Appellant's receipt of income assistance benefits for the same period in the amount of \$76,361.38 despite her being eligible for only \$45,775.60.

In the written submissions attached to her Notice of Appeal, the Appellant says that she was diagnosed with a brain tumor at the age of 18 while living abroad and that she returned to [redacted] for health reasons in 1993. While at a [redacted] hospital from May through June 2002, the Appellant was given medication that was contra-indicative to her medical condition and she developed a staph infection which resulted in the Appellant not being able to return to her pre-condition career. While in [redacted], the Appellant states that she was told by a social worker and her mother that she was required to apply for income assistance prior to her being discharged from the hospital. The Appellant recalls telling the social worker that she preferred to work rather

than receive income assistance and that as it would not be enough to pay her financial and medical obligations, she would pay it back although the social worker told her she did not have to pay it back. The Appellant states that she applied for income assistance because she was told she had to in order that she could be discharged from the hospital.

The Appellant goes on to state that she has had a past debt to re-pay which resulted in her experiencing anxiety and pressure to work which has negatively affected her health. The Appellant says she works too much gardening and landscaping which is exhausting and physically demanding. She says that any money she earns is used to pay her debt, other bills, her health and food. She says that she wears used clothing, she rents an apartment and she does not own a vehicle. The Appellant states that in accepting income assistance she was not attempting to take advantage of the system but only did so because she felt she was caught between a rock and a hard place. She says that only having a grade 7 education and a brain tumor creates a constant struggle for her as she needs to get better in order to study, go to school and achieve a high school diploma in order that she can get a job to support herself. She is optimistic that although there is no conventional cure for her condition, she hopes she can get better in respect of her disability.

The Appellant disagrees with the legislation that restricts or limits allowable earnings for persons on disability as she argues they should be encouraged at any attempt at improvement. She states that people on social assistance or who are on disability are vulnerable and should have as much support as possible, both from government and from themselves, to surpass the poverty line and that they should have free and full access to resources and social support to allow them to achieve this independently. The Appellant argues that there should be a plan to integrate people receiving assistance into society without being limited and that someone who is disabled is compromised and without the same privileges as others and that if they require finances, they should be given an allowance regardless of what they do.

In her submissions, the Appellant takes issue with and seeks to clarify some of the communication that she had with a Ministry auditor. Based on these discussions, the Appellant questions whether the auditor's role is to judge and she asks that the reality of this situation and the burden it creates be considered. The Appellant also comments on a number of in-person and telephone meetings that had been scheduled between herself and the Ministry auditor.

The Appellant submits that persons receiving social assistance should have the right to access unlimited earnings with Government support to the Low Income Cut-Offs or the poverty line with regulations to apply thereafter. The Appellant submits that deducting earnings from assistance is akin to giving them something to stand on and then taking away their arms to help themselves.

The Appellant concludes by submitting that she would prefer not to have received financial assistance but appreciates the support she has received. She maintains that there is still the disability and comments that the Ministry has ceased support payments. The Appellant says she is going to attempt to sustain herself independently. She asks that the requirement that she re-pay her overpayment be dismissed.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which found that pursuant to section 27 of the Employment and Assistance Act ("EAA"), the Appellant was required to repay to the Ministry \$30,585.78 in income assistance benefits for which she was not eligible. The Appellant's ineligibility for the income assistance benefits in question arose due to her failure to report earned income as required between July 2002 and February 2010.

Sections 11 and 27 of the EAA provide as follows:

### Reporting obligations

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 recipient.

### 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 1 of the EAR in respect of the definition of "earned income" provides as follows:

#### Definitions

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;

Section 28 of the EAR provides as follows:

### 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.

Schedule B, sections 1, 2 and 3 of the EAR provide as follows:

**Net Income Calculation  
(section 28 (b) )****Deduction and exemption rules**

- 1 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:
    - (i) any income earned by a dependent child attending school on a full-time basis;
    - (ii) the basic family care rate paid for foster homes;
    - (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
    - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
    - (v) the basic child tax benefit;
    - (vi) a goods and services tax credit under the Income Tax Act (Canada);
    - (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);
    - (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
    - (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
    - (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
    - (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
    - (xii) money that is
      - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
      - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
    - (xiii) the BC earned income benefit;
    - (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
    - (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
    - (xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
    - (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
    - (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
    - (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
    - (xx) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
    - (xxi) payments granted by the government of British Columbia under section 8 of the Child, Family and Community Service Act [agreement with child's kin and others];
    - (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
    - (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;

- (xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child to a person other than a parent of that child;
- (xxv) a loan that is
  - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
  - (B) received and used for the purposes set out in the business plan;
- (xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
  - (A) Autism Funding: Under Age 6 Program, or
  - (B) Autism Funding: Ages 6 — 18 Program;
- (xxvii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
- (xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the Mental Health Act, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxix) a refund provided by the Fair PharmaCare program of the Ministry of Health Services;
- (xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxi) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
- (xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the Income Tax Act (Canada);
- (xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (xxxvi) the climate action dividend under section 13.02 of the Income Tax Act;
- (xxxvii) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age,
- (xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry,
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,
- (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.

### **Deductions from earned income**

- 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;

- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

### Exemption — earned income

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 who

(A) has a dependent child, or

(B) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (p).]

(C) has in his or her care a foster child,

and the child has a physical or mental condition that, in the minister's opinion, precludes the sole recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week.

(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).

(3) A transient is not entitled to an exemption under this section.

The Appellant argues that requiring her to re-pay the income assistance benefits she received is immoral, unrealistic and unreasonable. She submits that she was told that she was required to apply for income assistance as a pre-condition of being released from hospital and that further, someone who receives social assistance should have the right to unlimited earnings with support at least to the poverty line.

The Ministry argues that the Appellant's file does not indicate that she was given advice by a Ministry financial worker that applying for income assistance was a pre-condition to her being discharged from hospital. The Ministry argues that the Appellant was in receipt of earned income between July 2002 and February 2012 and as these earnings are not exempt in the calculation of the Appellant's net income, they must be deducted from her income assistance. The Ministry argues that deducting the Appellant's earned income from her income assistance results in the Appellant receiving income assistance benefits for which she was not eligible and which must be repaid.

The Panel finds that between October 2002 and February 2010 ("the Period"), the Appellant received income in the amount of \$71,268.48 which is properly defined as earned income pursuant to s.1 of the EAR. The Panel further finds that the Appellant's earned income during the Period is not exempt in the calculation of the Appellant's net income as provided by Schedule B, sections 1, 2 and 3 of the EAR. During the Period, the Panel finds that the Appellant received \$76,361.38 in income assistance benefits and, in view of her earned income during the Period, she was eligible pursuant to section 28 of the EAR to receive \$45,775.60 in income assistance benefits resulting in an overpayment of \$30,585.78. Section 27 of the EAA is clear that where income assistance benefits are received by recipients who are not eligible, the amounts received are



overpayments that recipients are liable to repay to the government. There is no discretion in the EAA as to the Appellant's obligation to repay the overpayment and the Panel does not have the jurisdiction to review the amount of the overpayment.

The Panel finds that the Ministry's determination that due to the ineligibility the Appellant is required to repay income assistance benefits totaling \$30,585.78 to the government is a reasonable application of the applicable enactment in the circumstances of the Appellant and the Panel therefore confirms the Ministry's decision.