

PART C – Decision under Appeal

In a Reconsideration Decision dated May 4, 2012 the ministry required the appellant to repay the amount of income assistance received from September 2011 through to February 2012 because she was attending and was registered as a full-time student in a student loan fundable program during this period. The appellant was enrolled in a full-time 2 year program at a college. Year 1 of the program started January 8, 2011 and ended December 30, 2011. Year 2 of the program started December 31, 2011 and is scheduled to end December 14, 2012.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), sections 11(1) and 27
Employment and Assistance Regulation (EAR), section 16

PART E – Summary of Facts

The appeal record includes the following information available at the time of reconsideration:

- The appellant has been a recipient of income assistance as single recipient with 1 dependent child since April 2011.
- January 30, 2012 the ministry established confirmation from a college that the appellant is enrolled in a full-time 2 year program.
- A Certificate of Eligibility and Canada Student Loan Agreement signed by the appellant December 31, 2010.
- A Canada Student Loans Confirmation of Enrollment form (undated) that confirms the appellant is enrolled as a full-time student.
- A Notification of Assessment dated November 26, 2010 from the B.C. Ministry of Advanced Education and Labour Market Development that confirms the appellant's eligibility for a student loan and a subsequent payment receipt from the appellant's college of studies dated December 31, 2011 that indicates payment directly to it by BC Student Loans regarding the appellant's tuition.
- Monthly reporting stubs of the appellant for April 2011 to January 2012.
- April 11, 2012 the appellant is advised that she is required to repay the income assistance she was not eligible to receive for the period from September 2011 to February 2012.
- April 25, 2012 Request for Reconsideration in which the appellant argues that she did her due diligence in advising her worker that that she was attending school. She explained that the program was on-line and did not hinder her ability to work and look for work. The appellant argues that the benefits she received during the time she indicated on her monthly reporting stubs as being in school were an administrative error. She further advises that it was an oversight on her part not to check the correct box on the reporting stubs for the period September 2011 through February 2012. The appellant reports that she has no income other than a child tax benefit and has no means to repay the amount owing.

In her Notice of Appeal (NOA) dated May 14, 2012 in which the appellant reports she made an honest mistake in forgetting to check her student status and had checked this box on previous reporting stubs. The appellant indicates it is not fair to ask that she repay her benefits when it was an error of the ministry. She reports she no longer gets benefits as she was cut off and does not have adequate work to repay the monies owing.

The panel finds that the information contained in the NOA admissible under section 22(4) of the EAA as being in support of the information that was before the ministry at the time of reconsideration.

At the hearing, the appellant notes that from the very outset she was forthcoming with the ministry that she was a full time student. She reports that her mistake in checking the wrong box on her reporting stubs for the periods September 2011 through February 2012 that she was not attending school was an oversight on her part because she was often in a hurry and too quickly filled the forms out. The fact that she checked the right box prior to this on the reporting forms and was paid income assistance represents an administrative error on the part of the ministry. The appellant has no income other than a casual job to support her and her young child and has no means not only paying back her student loan when she finishes her courses, but this overpayment the ministry seeks repaid. As a result it is unfair to penalize her under the circumstances.

The ministry stood by the record. It observes that the monthly reporting requirement by the appellant is a legal requirement and is taken at its face value. It notes that whether the appellant intended to obfuscate or mistakenly filled out the reporting forms in question is immaterial. Documentation indicates and confirms the appellant is enrolled in a full time funded course of studies and, as a result, the legislation does not permit the appellant eligibility to receive income assistance.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry decision to require the appellant to repay the amount of income assistance received from September 2011 through to February 2012 pursuant to section 27 of the EAA because she was attending and was registered as a full-time student in a student loan fundable program during this period as provided in section 16(1) (a) of the EAR.

The relevant legislation applicable to this appeal is as follows:

Employment and Assistance Act

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*].

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.

Employment and Assistance Regulation

Effect of family unit including full-time student

16 (1) A family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student

(a) in a funded program of studies, or

(b) in an unfunded program of studies without the prior approval of the minister.

(2) The period referred to in subsection (1)

(a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and

(b) is not longer than one year.

The ministry argues that the appellant fails to meet the eligibility requirements for income assistance for the period September 2011 through to February 2012 because of her attendance as a full time student in a funded program of studies and is liable to repay the amount received for the period as set out in the above regulations.

The appellant argues that she did initially complete the monthly reporting forms correctly and received income assistance which was an administrative error. She submits that subsequent errors on her monthly reporting stub wherein she reported she was not attending school were an honest oversight on her part. She submits that she has always been honest and forthright with the ministry and should not be penalized under the circumstances.

The panel notes that that the ministry was informed of her status as a full time student from the onset of her studies, but continued to pay her income assistance. While the panel acknowledges the ministry is responsible for an administrative error there is no dispute the appellant was at the time and still is a full time student and that she received a student loan for full time studies. The legislation is clear and unequivocal. The panel finds it was reasonable for the ministry to determine the appellant

was not eligible for income assistance for the time enrolled as a full time student from September 2011 through to February 2012. Further, the panel finds that under section 27 of the EAA, the ministry was reasonable in determining that the appellant is required to repay the income assistance for this period. The panel finds that there is no legislative authority for the ministry to allow the appellant to keep the income assistance received for the above period and, in so doing, forgive the debt.

Therefore, the panel finds that the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the ministry's reconsideration decision dated May 4, 2012.