

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision, dated May 28, 2012 which held that the Appellant was not eligible for income assistance, for the period April 2011 through July 2011, because she was a full time student enrolled in a funded program and therefore excluded from eligibility for income assistance in accordance with Section 16 of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Act - Section 11
Employment and Assistance Act - Section 27
Employment and Assistance Act - Section 28
Employment and Assistance Regulation – Section 1
Employment and Assistance Regulation – Section 16

PART E – Summary of Facts

The Appellant did not attend the hearing. After confirming that the Appellant was notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration consisted of:

1. A letter from the Ministry to the Appellant dated April 19, 2012, requesting a meeting about an overpayment of \$ 3060.31 because of an error by the Ministry.
2. A chart prepared by the Ministry detailing an overpayment from April 2011 to August 2011.
3. A letter from the Financial Aid Officer at the Appellant's college dated January 30, 2012.
4. A Certificate of Eligibility and Canada Student Loan Agreement signed by the Appellant on December 31, 2010.
5. A completed form from the Canada Student Loans Program confirming that the Appellant is enrolled in a college program.
6. A Notification of Assessment regarding the student financial assistance provided to the Appellant.
7. A receipt for payment of tuition fees to the Appellant's college.
8. Copies of the monthly report submitted by the Appellant to the Ministry for the months from April 2011 to January 2012.
9. The Application for Reconsideration dated May 9, 2012 in which the Appellant states " I believe I did my due diligence in providing the Ministry with information stating that I was a student when I applied for benefits. I do not think it is fair that I be penalized when this was an administrative error. I don't think its fair to expect me to know the legislation and penalize me for a mistake made by the Ministry's worker whom provided me with benefits. I am not longer on assistance and do not have any means to repay such debt".

The Appellant received the Reconsideration decision on May 29, 2012 and submitted a Notice of Appeal on June 3, 2012 in which she stated " I did my due diligence in providing the Ministry with the information that I was a student. Despite this they approved my application for benefits. I believe this is an administrative error and I should not be penalized for their mistake. I can't be expected to know the legislation as their employees are. I am in financial hardship and can barely afford to support my son and I let alone pay a debt for someone's mistake".

At the hearing the Ministry said that irrespective of motivations the Appellant received assistance that she was not entitled to. He said that intention or motive is not relevant and that the Ministry does not dispute the Appellant's assertion that there was due diligence on her part. He said that the Appellant was already a student when she applied for benefits. He said that what is at issue is the legislation that states that a full time student is not eligible for income assistance and that the Appellant is also not eligible for benefits because she is in a funded program of studies. He said that Section 27 of the Employment and Assistance Act states that recipients are required to repay benefits that they are not eligible for and there are no exemptions from the obligation to repay regardless of whether information was provided to the Ministry or there was intent to willfully deceive the Ministry.

The Ministry said that he agreed with the Appellant that she should not be penalized for an administrative error. He said that this is why there have been no sanctions applied, no interest charged and no penalty assessed.

The Ministry said that the situation was revealed when there was a Canada Student Loan data

match. The Ministry stated that the reconsideration decision only deals with the benefits received in the period April 2011 through July 2011 and that the income assistance received after that date were considered a client error because the Appellant stopped declaring that she was a full time student. He said that the subsequent overpayment was dealt with in Appeal # 2012-00423. The panel did not ask the Ministry to provide further information about that Appeal.

The panel makes the following findings of fact: The Appellant received income assistance in the period April 2011 through July 2011. The Appellant was a full time student in a funded program of studies in the period April 2011 through July 2011. The Appellant advised the Ministry that she was a full time student when she requested income assistance in the period April 2011 through July 2011.

PART F – Reasons for Panel Decision

The issue under appeal is the Ministry's reconsideration decision, dated May 28, 2012 which held that the Appellant was not eligible for income assistance, in the period April 2011 through July 2011, because she was a full time student enrolled in a funded program and therefore excluded from eligibility for income assistance in accordance with Section 16 of the Employment and Assistance Regulation.

The relevant legislation is Section 11, 27 and 28 of the Employment and Assistance Act (EAA) 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*].

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.

Also relevant is section 1 and 16 of the Employment and Assistance Regulation (EAR) which states:

Definitions

1 (1) In this regulation:

"full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

"funded program of studies" means a program of studies for which student financial assistance may be provided to a student enrolled in it;

"student financial assistance" means funding provided to students under the *Canada Student Financial Assistance Act* (Canada);

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. (B.C. Reg. 284/2003)

The Ministry determined that the Appellant received an overpayment of Income Assistance because she was a full time student at the time that she applied for income assistance and continued to be a full time student in the period April 2011 to August 2011. The Ministry acknowledged that the overpayment was due to a Ministry error given that the Appellant advised the Ministry that she was a full time student. The Ministry stated that the legislation requires a repayment of income assistance when an overpayment occurs - regardless of the circumstances - and that there are no exemptions allowed by the legislation.

The Appellant said in her Notice of Appeal that she did not consider it fair to penalize her when she was approved for benefits even though she told the Ministry that she was a student. The Appellant stated that she is unable to repay the Ministry because of financial hardship.

The panel finds that the Appellant was a full time student in a funded program of studies in the period April 2011 through July 2011 and was therefore not eligible for income assistance in that period. The panel finds that the Appellant received income assistance in the period April 2011 through July 2011 even though she advised the Ministry that she was a full time student. The panel finds that the Appellant is required to repay the Ministry the overpayment of income assistance in accordance with Section 27 of the Employment and Assistance Act and notes that the law does not allow the Appellant an exemption from this obligation although income assistance was provided because of an error by the Ministry.

The panel therefore finds that the Ministry's reconsideration decision that the Appellant must repay the sum of \$3060.31 – the income assistance provided to the Appellant in the period April 2011 through July 2011 - was reasonably supported by the evidence and was a reasonable application of the legislation.

The panel therefore confirms the Ministry's decision.