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PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development's (the "Ministry") August 17, 2012 reconsideration decision in which the Ministry determined that, in accordance with sections 10 and 28 of the Employment and Assistance Regulation, the Appellant was not eligible for income assistance for the month of August 2012, because in July 2012 he received unearned income of $794.25 in backdated family bonus, which exceeded the total monthly support and shelter allowances for his family unit as provided for in the regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation ("EAR") Sections 1, 10, 28, Schedule A and Schedule B.

PART E – Summary of Facts

The Panel notes that there is a typographical error in the reconsideration decision. The date beside the Ministry's Reconsideration Officer's signature is April17, 2012. However, in the decision itself the officer states that the minister completed the review of the Appellant's August 3, 2012 Request for Reconsideration on August 17, 2012. At the hearing the Ministry confirmed that August 17, 2012 was the correct date. Therefore, the Panel finds that the reconsideration decision was made on August 17, 2012.

For its reconsideration decision the Ministry had the following evidence:

1. Information from Ministry files indicating the Appellant receives income assistance in the amount of $671.58 ($375.58 support and $296 shelter).
2. Canada Revenue Agency Report to the Ministry in July 2012 that the Appellant received an $884.95 family bonus payment. Of this $90.70 was a current payment and $794.25 was a retroactive family bonus payment.
3. Appellant's August 3, 2012 Request for Reconsideration in which he stated that the money that came through his account was just done as an accounting reconciliation by the federal government to separate his and his ex-wife's child tax money. He stated that no money came to him; it just passed through his account to his ex-wife. He provided documents to show this.
4. Documents from the Appellant as follows:
   a. Copy of a bank draft dated July 31, 2012 payable from the Appellant to his ex-wife in the amount of $1798 and a note that he paid her back so she can pay back Service Canada.
   b. Note from the Appellant that he talked to his ex-wife and they agreed to figure out the money when it comes in. They have been splitting the child benefits and he will reimburse her for money he receives.
   c. Copy of Canada Child Benefit Application dated June 15, 2012 and completed by the Appellant for his daughter. In that application, he reported that he shares custody of his daughter 50/50 and the change in his marital status to separated started on August 25, 2011.
   d. Copies of the following notes stating that the Appellant's daughter has been living with the Appellant 50% of the time and with his ex-wife 50% of the time from September 1, 2011 to the present – from his ex-wife dated June 12, 2012; from the community Fire Chief dated June 15, 2012; from a doctor dated June 14, 2012; and, from a daycare manager dated June 13, 2012 which also stated the daughter attended the daycare since the age of 2.
   e. Copy of Child Tax Benefit and BC Family Bonus Notice dated July 20, 2012 indicating a Canada Child Tax Benefit of $571.17, a National Child Benefit Supplement of $884.95 plus a provincial Earned Income Benefit of $26.63 for a total of $1,482.75 for the Appellant.
   f. Copies of Child Tax Benefit and BC Family Bonus Notices for the payment period of July 2011 to June 2012 indicating amounts payable during that time to the Appellant's wife and showing amounts to be repaid by her to the federal government.

In his notice of appeal, the Appellant wrote that he clearly showed that he received no money. He stated that the Ministry deducted money that he did not receive. He submitted that he had claimed all the money that he did receive and that family bonus money in July 2012 was not his child tax benefit money; it was what he called an accounting balance.

At the hearing the Appellant explained that when he and his ex-wife first separated in September

2011 they did not immediately apply to the federal government for separate child benefits because they weren't sure the marriage would be over. At that time the Appellant's ex-wife was receiving the child tax benefits; however, when his daughter starting living with him 50% of the time, his ex-wife paid him half of the child benefits each month. The Appellant stated that he reported these child tax payments from his ex-wife to the Ministry every month as income. He said that he was honest and straightforward about that arrangement and the money he was receiving. The Appellant said that eventually he and his ex-wife decided the marriage was over and so in June 2012 he applied for the Canada Child Tax benefit for the 50% custody arrangement. He and his ex-wife knew that this meant she would have to repay an overpayment to the federal government and he would get additional money. However, the Appellant said it was always his intention to transfer any excess child benefit he received immediately to his ex-wife so that she could repay the overpayment.

The Appellant referred to documents in the record addressed to his ex-wife showing that she owes money to the federal government based on the adjustment to the family's circumstances and the split in child benefit payments. The Appellant submitted that in fact he immediately started transferring the family bonus to his ex-wife as indicated by the bank draft for $1798, which is in the record. He said that he still owes her about an additional $200. The Appellant explained that his repayments to his wife also included Universal Child Care Benefits. The Appellant referred to the retroactive family bonus amount that the federal government reported in July 2012 as a "transfer of money". He said that it went directly to his ex-wife to repay the child benefit amounts she had "transferred" to him and which she now owed the federal government as an over-payment.

The Panel finds that the Appellant's testimony is related to information about the Appellant's child benefit receipts and payments which is in support of the evidence that the Ministry had about the Appellant's child benefit circumstances at the time of reconsideration. Therefore, the Panel admits that testimony into evidence under section 22(4) of the Employment and Assistance Act.

At the hearing, the Ministry confirmed that the Appellant reported the child benefit payments he received monthly from his ex-wife as income. The Ministry treated that income as exempt income because it was a regular family bonus payment as provided for in the regulations. The Ministry suggested that the Appellant should have immediately applied for his own child benefits in September 2011. The Ministry pointed out that it had to apply the applicable legislation and it reaffirmed its decision.

The Panel makes the following findings of fact which are not in dispute:
1. The Appellant is eligible for monthly support allowance as a sole applicant with one or more dependent children and for a monthly shelter allowance for one person.
2. In July 2012, the federal government reported a regular family bonus payment of $90.70 and a lump sum backdated family bonus payment of $794.25.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that, in accordance with sections 10 and 28 of the EAR, the Appellant was not eligible for income assistance for the month of August 2012, because in July 2012 he received unearned income of $794.25 in backdated family bonus, which exceeded the total monthly support and shelter allowances for his family unit as provided for in that regulation.

The following sections of the EAR apply to this appeal:
1 (1) In this regulation:
"family bonus" means an amount consisting of the sum of the BC basic family bonus and the national child benefit supplement;

10 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependent.
(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

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 A
Maximum amount of income assistance before deduction of net income
1 Subject to sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) *[amount of income assistance]* of this regulation is the sum of
(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance
2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of
(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus (b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
Sole applicant/recipient and one or more dependent children	Applicant/recipient under 65 years of age	$375.58

Monthly shelter allowance
4 (2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of (a) the family unit's actual shelter costs, and (b) the maximum set out in the following table for the applicable family size:

Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1 person	$375

Schedule B
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; (v) the basic child tax benefit.

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 of 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.
(2) For the purposes of subsection (1), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.
(3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family income (a) to replace a lost or stolen cheque for which an amount was advanced under section 60 *[advance for lost or stolen family bonus cheque]* of this regulation, or (b) to replace a cheque for which no amount was advanced under section 58 *[advance for lost or stolen family bonus cheque]* of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued.

In its reconsideration decision, the Ministry indicated that it reviewed the Appellant's file, the Appellant's request for reconsideration and the applicable legislation. The Ministry noted that in July 2012, the Canada Revenue Agency reported the Appellant's family bonus payment as $884.95, of which $90.70 was a current payment and $794.25 was a retroactive payment. The Ministry also noted that under the EAR the Appellant was eligible for total monthly assistance of $671.58 ($375.58 support and $296 shelter). The Ministry found that the retroactive family bonus payment was not exempt from income under the EAR and therefore the amount of $794.25 was considered unearned income for the month of July 2012. It acknowledged the Appellant's information that he gave a portion to his ex-wife; however, the Ministry pointed out that there is no legislation to give the minister the discretion to exempt the retroactive family bonus payment. Therefore, the Ministry determined that because the Appellant's unearned income of $794.25 in July 2012 exceeded the total assistance allowance that he was eligible for in July 2012, the Appellant was not eligible for income assistance for the month of August 2012.

The Appellant's position is that when he and his ex-wife first separated she gave him half of the child benefits she received. He reported those payments as child benefit income to the Ministry and the Ministry accepted it as such. When he and his ex-wife decided their marriage was over, he applied for the child benefit on the basis of having his daughter live with him 50% of the time. He submitted that he did this to harmonize the financial situation with his ex-wife, and that he and his ex-wife knew this would mean she would have to repay the government for overpayments to her. The Appellant argued that the July 2012 report from the federal government was not a report of a payment to him,

but was actually a transfer of money from him to his ex-wife. According to the Appellant, this was not income for him, just a transfer of funds to his ex-wife to reconcile their financial arrangement.

For some reason the EAR treats regular family bonus payments differently than backdated family bonus payments. Under Schedule B, section 1(a)(iv), family bonus payments are exempt from income for the purposes of calculating assistance eligibility. However, under Schedule B section 10, backdated family bonus payments are not exempt and are treated as unearned income, unless the circumstances in section 10(3) apply. There is no evidence of lost or stolen cheques in this case.

The Panel notes that the Appellant applied for child benefits in June 2012, but reported that the change to his marital status and shared custody started August 25, 2011. The Panel acknowledges that from the time of their separation, the Appellant and his ex-wife arranged for shared custody and that they also arranged to share the family bonus payments the ex-wife received until the Appellant received his own benefits. The Appellant even reported the monthly family bonus amounts he received from his ex-wife to the Ministry. The Ministry confirmed it received those reports and treated those payments as exempt family bonus income.

In July 2012, shortly after the Appellant's June 2012 application for his own child benefits, the federal government reported that the Appellant received $794.25 as a retroactive family bonus payment. To the Appellant, this July 2011 amount of $794.25 was not a payment for him, but rather a lump sum that he immediately transferred to his ex-wife to reconcile the financial arrangements they had made starting with their separation. He was paying her back for what she paid him starting in about September 2011. However, even if to the Appellant the lump sum of $794.25 was not a family bonus payment for him, the Panel finds that the federal government reported that amount as payable to him because he applied for his own child benefits. And he reported the change in his marital status and child custody arrangement as starting several months before June 2012. The Panel also acknowledges that the Appellant and his ex-wife were taking care of the family bonus payments between themselves, but those arrangements are not part of how the federal government makes or reports family bonus payments. Therefore, the Panel finds that the Ministry reasonably applied section 10 of Schedule B and determined that the July 2011 retroactive family bonus payment was unearned income. The Ministry then also reasonably determined that the Appellant's unearned income exceeded his total July 2012 income assistance so that he was not eligible for August 2012 income assistance.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel confirms that decision.