

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated August 28, 2012, in which the Ministry of Social Development (“Ministry”) confirmed its decision that the Appellant has received an overpayment of income assistance of \$2258.83. The Ministry based its decision on the results of an investigation which found that the Appellant had failed to report business income from his electrician business between September 2011 and July 2012.

PART D – Relevant Legislation

The relevant legislation is section 27 of the *Employment and Assistance Act* (EAA) and sections 10 and 28 and *Schedule “B”* of the *Employment and Assistance Regulation* (EAR).

PART E – Summary of Facts

The Appellant has owned and operated an electrician business since 1993. For the past few years the business has not done well. The Appellant applied for income assistance for the first time in September 2011. He has continued to receive income assistance since that date.

The Appellant has also suffered a medical condition in the past which led to his having one foot amputated. At the time of the Reconsideration Decision he had not applied for PWD status. Neither was he identified as a person with persistent multiple barriers to work (PPMB). The Appellant was not participating in a self-employment plan.

The Appellant is a first generation immigrant from Eastern Europe who speaks English as a second language. The Appellant also does not have a clear understanding of the income assistance system in British Columbia.

A Ministry Investigative Officer (IO) conducted an investigation of the Appellant's file which covered September 2011 to July 2012. The IO found that the Appellant had earned income from his business during that period which he had failed to report to the Ministry. This income would have had an impact on the amount of income assistance provided.

On July 16, 2012, the IO sent the Appellant an Overpayment Letter, with explanatory attachments, advising that he had received \$2258.83 in income assistance to which he was not entitled.

The Overpayment Letter also contained notice to the Appellant that the Ministry would be imposing a sanction of a reduction to his income assistance of \$20 per month for 3 months beginning in August 2012.

On August 10, 2012, the Appellant requested a Reconsideration of the decision that there was an overpayment. The Ministry's decision confirming the IO's finding of an overpayment was rendered on August 28, 2012.

The evidence before the panel consisted of the Ministry's reconsideration decision, the Appellant's request for reconsideration (including a statement of the Appellant's income and expenses between September 2011 and July 2012 showing a net loss of \$6796.96 excluding income assistance in the amount of \$6380.32), an Overpayment Notification from the Ministry to the Appellant dated July 16, 2012 (including an overpayment chart), and an overpayment letter to the Appellant dated July 16, 2012.

In addition to this evidence, the Ministry provided a written Tribunal Submission to the panel and the Appellant on September 26, 2012. This submission presented only the Ministry's arguments with no additional evidence.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision to confirm the finding of the IO that there was an overpayment to the Appellant.

The relevant legislation is section 27 of the 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*].

And sections 10 and 28 and Schedule "B" of the EAR:

Limits on income

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 dependant.

(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.

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"

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.

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

(a) purchase of supplies and products;

(b) accounting and legal services;

(c) advertising;

(d) taxes, fees, licences and dues incurred in the small business;

(e) business insurance;

(f) charges imposed by a savings institution on an account and interest;

(f.1) payments, including principal and interest, on a loan that is

(i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

(ii) received and used for the purposes set out in the business plan;

(g) maintenance and repairs to equipment;

(h) gross wages paid to employees of the small business, but not including wages paid to

(i) the person participating, or

(ii) a person in the family unit of the person participating;

(i) motor vehicle expenses;

- (j) premiums for employment insurance or workers' compensation benefits;
 - (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
 - (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
 - (m) office expenses;
 - (n) equipment purchases or rentals.
- (2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if
- (a) the recipient is participating in a self-employment program, and
 - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

The Appellant argues that he was not aware of the rules regarding the deduction of earned income, that these were never clearly explained to him, that he has always been candid with the Ministry about his business activities and did indeed tell the Ministry worker that he was receiving income from his business, and that his net income during the period in question was negative each month.

The Ministry refers to the legislation in supporting its decision. As per sections 10 and 28 of the EAR, all income is deducted from the amount of income assistance payable to a recipient except as provided in Schedule "B" of the EAR. Sections 3 and 4 of this Schedule allow for exemptions for those who are designated PWD or a PPMB. As at the time of the overpayments the Appellant was not designated either PWD or PPMB, the Appellant does not qualify for the small business exemptions. This means that the Appellant should have reported his income from his business and should have had his income assistance deducted accordingly.

The panel finds that sections 10 and 28 of the EAR establish that income received by a recipient in any given month is to be deducted from the recipient's income assistance entitlement except as provided as an exemption in Schedule "B". Sections 1 through 4 of Schedule "B" deal with "earned income", which the income received by the Appellant is. Sections 1 and 2 set out a number of items that are specifically exempted from the calculation of earned income. Sections 3 and 4 identify specific types of recipients who qualify for specific exemptions.

The income received by the Appellant does not qualify under any of the exemptions in sections 1 or

2. Neither does the Appellant meet the qualifications under section 3 because he is not a PPMB or have dependants (s.3(1)(c)). And finally, the Appellant does not qualify under section 4 because he was not at the time participating in a self-employment program (s.4(2)(a)).

As the Appellant received income which should have been reported and would have been deducted from his income assistance during the period in question, the Ministry's reconsideration decision to uphold the findings of the IO to find an overpayment was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Ministry's decision.