

PART C – Decision under Appeal

The Decision under Appeal is the Ministry's Reconsideration Decision, dated Sept. 18, 2012, which found the Appellant had been overpaid approximately \$675. The Ministry determined that the Appellant was required to repay the funds notwithstanding advice initially from the ministry that funds would be exempt.

PART D – Relevant Legislation

| | |
|-----|--|
| EAA | Employment and Assistance Act, Section 27. |
| EAR | Employment and Assistance Regulation, Sections 1, 28, 33, and Sched. B |

PART E – Summary of Facts

The evidence before the ministry at reconsideration was the following.

- 1-One page document, “Overpayment Chart”, showing the Appellant had received CPP orphan’s benefit and the amounts received.
- 2-One page document with copies of two cheque stubs from the Gov’t of Canada to the appellant showing the two amounts received from CPP, with the daughter’s social insurance number.
- 3-One page document addressed to the appellant advising the Application for CPP survivor’s pension or children’s benefit had been approved, and showing the Child’s name for which it was approved and the amount received monthly.
- 4-Two page Statutory Declaration of the Appellant, signed July 31, 2012, which stated, among other things: she is the mother of the child to whom the survivor benefits are being paid; the father passed away in Feb. 2012; she applied for Orphan’s benefits for the child and was informed the child would receive benefits in a monthly amount; the amounts were attributed to her daughter under the daughter’s social insurance number; when completing her Income Assistance Stubs for the ministry she was unsure how to report the child benefit so she called the ministry’s call centre and was advised to report it as her daughter’s income and that it would not be deducted from her IA; the appellant reconfirmed with the agent that it was her daughter’s income and would not be deducted from her cheque; the Appellant finds it unjust that she is expected to repay these amounts when she was informed by the ministry it was not deductible and it is money used for her daughter; and, the funds have already been used and repayment would cause undue hardship on the family.
- 5-Three page “Request for Reconsideration,” signed by the appellant Aug. 31, 2012, containing the original ministry decision and the appellant’s initial reasons for requesting reconsideration. The document states, among other things: the appellant declared in July the CPP survivor’s benefits received and she was asked to bring in documentation into the ministry for their information; the appellant provided documents showing eligibility for the CPP benefits and the two cheques which had been issued; a worker reviewed the file and determined there was an overpayment due to the CPP benefits received; the Appellant requested a reconsideration attaching her statutory declaration and stating she was misinformed about the benefits, the money had been spent, her and her daughter were going through very difficult times, and the appellants health is not good.

On Sept. 18, 2012 the ministry rendered its reconsideration decision and found the Appellant was required to repay the amounts received through CPP. On Oct. 1 the Appellant appealed the decision stating on the Notice of Appeal she did not believe she should pay back the money as the ministry should be accountable for their employee’s mistakes; she was told the money was her daughter’s and to declare it as her income.

The Reconsideration Decision set out that the Appellant had confirmed receipt of the CPP benefits. Sec. 1 of the EAR states any type or class of CPP benefits are considered unearned income. Further, sec. 28 of the EAR requires all unearned income, as calculated under Sched. B, must be deducted from IA.

The ministry acknowledged the funds were issued to the daughter but stated Sched. B, Sec. 1(d) requires all funds (sic) received by the family must be included in the calculation of the family’s

income. (Sec. 1(d) requires all unearned income, not all funds, be included, except allowable deductions, in the family unit's income.)

The ministry also acknowledged the Appellant was advised the income would be exempt. However, there was no legislated authority to support this. The decision speculated the legislation was misunderstood by the agent the appellant spoke to.

At the hearing the Appellant gave evidence reiterating the material which was before the ministry in reconsideration. She did not feel it was right to have to repay the funds as she followed the information that was provided by the ministry through their call centre. If she had known that she would have to deduct this from her IA she would never had spent the funds as now she had to repay this, making things even more difficult for her family. Her daughter needed so many things and the funds were used for her benefit. She had lost her job, her daughter was very upset about losing her father, her daughter had lost her friends, as they recently had to move, and this only added to the problems. The funds were needed and were used as they were in great need. She trusted the advice she received from the call centre and it was not fair to require repayment now.

The Ministry reiterated the synopsis of events contained in the reconsideration decision and stated that the funds had to be deducted from the appellant's IA as it was unearned income and there were no exceptions to these types of funds being excluded. The ministry confirmed the appellant will be required to repay \$20 off each month's IA to repay the amount.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably determined the Appellant had received an overpayment by the funds received for her daughter as CPP Survivor benefits.

The relevant Legislation is as follows.

Employment and Assistance Act

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*].

Employment and Assistance Regulation

Definitions

1 (1) In this regulation: ...

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: ...

(f) any type or class of Canada Pension Plan benefits...

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.

Monthly reporting requirement

33 (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of each calendar month, and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the

Forms Regulation, B.C. Reg. 95/2012:

- (i) whether the family unit requires further assistance;
- (ii) changes in the family unit's assets;
- (iii) all income received by the family unit and the source of that income;
- (iv) the employment and educational circumstances of recipients in the family unit;
- (v) changes in family unit membership or the marital status of a recipient.
- (vi) any warrants as described in section 15.2 (1) of the Act.

Schedule B

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) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (xxi) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (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 under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;

(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,

(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;

(xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,

(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 unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [*asset limits*] of this

regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.

(2) Subsection (1) (d.1) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

- (A) is not assignable, commutable or transferable, and
- (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,
- (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
- (iv) remain liable to make the payments required by the settlement agreement.

(3) In this section, "**structured settlement annuity payment**" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

The issue to be determined is whether the ministry was correct in determining that the Appellant had received an overpayment and that this must be repaid to the ministry. The Appellant argues she should not have to repay the funds as she received erroneous information from the ministry's call centre and she would not have spent these funds for her daughter if she knew it would be deducted from her IA and required a repayment. The ministry argues the legislation does not allow any exemption for the funds here as they were required to be included as unearned income when received.

Sec 33 of the EAR stipulates a monthly reporting requirement where the family unit must submit a report by the 5th day of each calendar month, and includes a requirement to report all income received by the family unit and the source of that income. It is clear in the legislation that sec. 1 of the EAR designates any CPP benefits as "unearned income." Under sec. 28 of the EAR, IA is provided to a family unit in the amount determined under Sched. A, minus the amount of the family unit's net income under Sched. B. Under Sched. B, sec 1(d), all unearned income must be included, except deductions permitted under sec. 6-8. As such, unearned income must be reported and deducted in the monthly income calculation. As such, the Appellant is required to report the CPP survivor benefit as income in her family unit's monthly report, and, under Sched. B it is to be deducted from the amount of income she is receiving as IA. As such, the CPP benefits received by the Appellant's family unit were unearned income to be included in the deduction under Sched. B.

Sec. 7(e) of Sched. B does contain an exemption for a portion of CPP Benefits as calculated by the formula contained within that subsection. This section refers to the tax portion of a CPP cheque. CPP is derived from pre-tax dollars therefore it is taxable when paid out. Because some individuals may have to pay income tax on their CPP payments the province has established a calculation to exempt that each month. This calculation is based on the basic tax amount (divided equally by 12 months) and the corresponding tax rate. Sec. 27(b) of the EAA does not allow an appeal to the Tribunal for an amount repayable as an overpayment. As such, although the Appellant may be entitled to a deduction of a portion of the CPP benefits as described above, the Tribunal does not have authority to deal with the amount of overpayment repayable.

The Appellant argues she has acted to her detriment by relying on the advice of the ministry through their call centre and the ministry does not dispute this. Unfortunately, the appellant now has to repay this amount and will have \$20 deducted off her cheque each month. The Tribunal does not have the ability to provide the Appellant with an equitable remedy as it is governed by legislation and derives its authority from that legislation. The panel finds that the Appellant has acted to her detriment and would not have spent these funds requiring a

later payback to the ministry. However, the Tribunal has no jurisdiction to provide a remedy to the Appellant for this. The legislation is clear that the Appellant was required to deduct the funds received from her IA and as such is required to repay the funds to the Ministry.

As such, the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the evidence and confirms the Decision.