

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of November 7, 2012 wherein the ministry determined that the appellant incurred an overpayment as defined in section 1 of the Employment and Assistance Regulation (EAR) in the amount of \$668.55 and must repay the money to the ministry as required in Employment and Assistance Act (EAA) sections 27 and 28.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sections 11, 27, 28
Employment and Assistance Regulation (EAR) Sections 1, 10, 11, 28, Schedule B

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Bank statements for one year in the name of the appellant dated Aug, Sept, Oct, Nov, Dec 2011, Jan, Feb, Mar, Apr, May, Jun, Jul, Aug. 2012.
- Copies of two cheques that were deposited into the appellant's bank account on March 7, 2012. Both cheques were issued to the appellant from ICBC. One was for \$565.46 and the other for \$47.40.
- A Bank Profile form completed by the appellant's bank dated August 14, 2012. The profile states that the appellant has one chequing account in his name only.
- An undated handwritten note asking for the ministry to reconsider the decision. The appellant writes that when he made the deposits to his account he was under stress. He added that he was receiving small amounts of financial assistance from family, friends, and church members but was not aware that he needed to declare the money to the ministry. He concludes the note by writing that he is unable to pay back the overpayment because the money he received was used to recover from his "financial duress."
- Two paystubs in the name of the appellant dated June 29 and July 7, 2012 from the appellant's employer. The amounts are \$179.23 and \$107.62 net pay.
- A rent receipt in the amount of \$450 dated August 1, 2012 received from the appellant.
- A confirmation of earnings form completed by the appellant's employer on August 14, 2012. It stated he earned \$172.20 on June 8, \$196.68 on June 15, \$179.23 on June 29, and \$107.62 on July 6 2012.
- A confirmation of earnings form completed by the appellant's employer on August 14, 2012. It stated he earned \$120.44 on June 24 and \$39.29 on July 8, 2011.
- A ministry Overpayment Chart calculating the appellant's assistance and other income from Aug 2011-Aug 2012. The resulting calculation states an overpayment of \$2356.57.
- A typed letter dated August 21, 2012 asking for the ministry to reconsider the decision. The appellant writes that when he made the deposits to his account he was under stress. He added that he was receiving small amounts of financial assistance from family, friends, and church members and that he was not aware that he needed to declare any money he received to the ministry. He continued writing that he is unable to pay back the overpayment because the money he received was used to recover from his "financial duress." He concluded that he had difficulty getting the bank statements from his bank.

As this appeal was conducted by a written hearing it proceeded on the record, with neither party introducing new evidence.

The panel finds:

- The appellant was employed for a total of six pay periods from June 16, 2011 to June 27, 2012 earning a total of \$815.46. It is known that the appellant did not receive \$39.29 of the total from his employer and the ministry deducted \$107.62 from his assistance in September 2012. The total amount the appellant received from his employer that was not reported to the ministry was \$668.55.
- The appellant was under stress when he received other small amounts of support from family and friends. The money received was not reported to the ministry.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant had received an overpayment and was therefore required to repay the ministry \$668.55.

The relevant legislation is as follows:

EAA

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.

EAR

Definitions

- 1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,

- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party
 that must pay it to the person or the dependant on demand,
- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) tax refunds,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) widows' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;

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.

Asset limits

11(2) A family unit is not eligible for income assistance if any of the following apply:

- (a) a sole applicant has no dependent children and has
 - (i) assets with a total value of more than \$1 500, or
 - (ii) cash assets in an amount that is equal to or greater than the sum of the amount the applicant would otherwise be eligible for under section 28 [*amount of income assistance*] and \$150;
- (b) a sole recipient has no dependent children and has assets with a total value of more than \$1 500;

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) 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;

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

(xii) 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 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.

Withdrawals and expenditures from reserve account

5 The amount of any expenditure or withdrawal out of a separate account described in section 4 (2) (b) (ii) of this Schedule is earned income for all purposes of this regulation, unless

- (a) the expenditure or withdrawal is for the payment of permitted operating expenses of the small business referred to in section 4 (2) of this Schedule, and
- (b) in the case of a withdrawal, the amount withdrawn is used within one month after the date of withdrawal to pay permitted operating expenses of the small business referred to in section 4 (2) (b) (i) 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.

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"**day care costs**" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit, for a semester.

"**education costs**" means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs from the total amount of

- (a) a training allowance,
- (b) student financial assistance, and
- (c) student grants, bursaries, scholarships or disbursements from a registered education savings plan

received for the semester.

(3) An exemption under subsection (2) may be authorized in respect of a student who is

- (a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,
- (b) an applicant or a recipient enrolled
 - (i) as a part-time student in an unfunded program of studies, or

- (ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
- (c) a person in a category listed in section 29 (4) [*consequences of failing to meet employment-related obligations*] of this regulation enrolled as a part-time student in a funded program of studies.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

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 for 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 a 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 bonus

- (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 60 [*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.
- (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (q).]

Backdated CPP treated as unearned income

11 (1) In this section, "**pension benefit**" means a pension or other payment under the *Canada Pension Plan* (Canada).

(2) If

- (a) income assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and
- (b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the *Canada Pension Plan* (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month, the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

The argument of the appellant is that he was not aware that he was required to declare any income that he received while he was receiving benefits from the ministry. The appellant argues that he was

under stress when he received the money. He states that the money he was given was used to help him out of financial duress and that he cannot afford to repay the ministry any overpayment.

The argument of the ministry is that the appellant did not make the requisite declaration of income that he received as per EAA section 11. The ministry calculated that the appellant received \$668.55 in employment income that was not reported. The ministry refers to a confirmation of earning statement from the appellant's employer as support for their decision.

In coming to its decision the panel reviewed all the evidence in the appeal package. The panel reviewed the ministry's calculation that showed the appellant received a total of \$815.46 from his employer for a total of six pay periods from June 16, 2011 to June 27, 2012 but that the appellant did not receive \$39.29 from his employer and the ministry deducted \$107.62 from his assistance in September 2012. The panel is satisfied with the ministry's calculation of the appellant's actual overpayment of \$688.55 and that the money falls within the definition of "earned income" as defined by EAR section 1. The panel considered the appellant's earnings in relation to the deduction and exemption rules in EAR Schedule B and the panel is satisfied that the ministry reasonably applied the exemptions for the employer's CPP and EI deduction from two of the appellant's pay cheques. The panel found that the ministry was reasonable in determining that the appellant was obligated to report the income he earned as required by EAA section 11.

The panel considered the appellant's argument that he was not aware of his obligation to report any income that he receives however the legislation is unambiguous in the requirement for the appellant to report any change in circumstance that may affect the eligibility of the family unit. The panel accepts that the appellant was under stress however the panel finds that the obligation to report is unconditional and therefore the panel finds that the ministry was reasonable in expecting that the appellant would report his income as required.

The panel finds that the ministry's decision was a reasonable application of the legislation and therefore confirms the ministry's decision.