

PART C – Decision under Appeal

The decision under appeal is the Ministry's October 17, 2012 reconsideration decision in which the Ministry determined that in June, July, August and September 2012, the Appellant received income assistance for which she was not eligible because she had a non-exempt asset worth more than the \$3,000 asset limit set out in section 11 of the Employment and Assistance Regulation. The Ministry also determined that the Appellant must repay the income assistance she received for those four months as required by section 27 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act ("EAA") Sections 27 and 28.

Employment and Assistance Regulation ("EAR") Sections 1 and 11.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its files that:

- On June 21, 2012 while applying for income assistance, the Appellant advised that she had a motorcycle worth more than \$6,500, which she was trying to sell.
- On June 29, 2012, the Ministry determined that the Appellant was eligible for income assistance.
- On September 10, 2012, the Ministry reviewed the Appellant's August 30, 2012 monthly reporting stub for October benefits and noted that the Appellant had sold her motorcycle for \$9,500.
- Ministry records for the month of September 2012 indicate that the Appellant received \$424.44 in income assistance (\$471 total allowance minus \$46.56 reported income).
- On September 13, 2012, the Ministry advised the Appellant that she should not have been found eligible for income assistance in June 2012 because at the time of her application she had assets above the allowable asset limit. She also was not eligible for the assistance she received from June 2012 to September 2012.
- The Appellant is not receiving income assistance currently.
- On September 14, 2012, the Ministry asked the Appellant to sign a repayment agreement to recover the income assistance paid in June 2012 for \$330, in July 2012 for \$424.44, in August 2012 for \$424.44 and in September 2012 for \$424.44.

2. Appellant's October 2, 2012 reconsideration request in which she wrote that she is certain that she will be required to pay back the benefits regardless of her feelings or opinion of these matters. She wrote that there is no mention of the total amounts paid, June benefits being a partial month and the deductions made in August. The Appellant stated that she hopes that she would not be expected to pay any penalties or interest for what is an "administrative error".

The Appellant also wrote that the sole purpose for her application for income assistance was so she could apply for persons with disabilities designation. She did not qualify for federal disability benefits. The Appellant stated that she intended to sell her motorcycle to pay for roof repairs. The Appellant indicated that it took her three months to sell the motorcycle for a price that she thought fairly reflected its value. After selling it in August 2012, she paid back borrowed money, retrieved pawned items and caught up on bills. She wrote that she was left with considerably less than required to fix her roof. She paid a professional to patch the roof good enough for the winter, but he agreed with her that it would be better to move into her garage and tear her house down. The Appellant wrote that after reporting the income from the sale she was contacted by the Ministry, stating they had made a mistake and she had to pay back the assistance she received. The Appellant indicated that she has no expectation of being able to work for the next two years or ever if her surgeries are not successful. Therefore, she has no expectation of being able to fix her house or her garage as a safe place to live.

The Appellant stated that she was told by a Ministry worker that her monthly rate was way below normal and an adjustment could be discussed after other issues were resolved. The Appellant wrote that she had not received full benefits. After meeting all requirements through months of stress and discouragement, being told that she has to pay back and then reapply for assistance has put undue financial and emotional stress on her. The Appellant also wanted to point out that people who abuse and defraud welfare would lie about the value or even possession of assets. She did not. The defrauders are getting their checks and she is not. The Appellant suggested that the Ministry re-vamp the screening process and re-educate personnel regarding the process and procedure.

The Appellant wrote that she explained all of her efforts to the Ministry and she had months with no income. She attended counseling because of depression and stress. Her doctor gave her prescriptions for four different medications, which she could not afford except for one. The Appellant also stated that she was told she had to re-apply for assistance because her claim was closed due to lack of activity for three months. The Appellant stated she was told she would qualify for assistance but had to continue efforts to sell the vehicle and continue with doctor follow-ups, which she did.

In her October 30, 2012 notice of appeal, the Appellant wrote that she did not understand why she is no longer receiving income assistance. She was also unsure why she has to repay September's money and the repayment amounts are incorrect.

The Appellant submitted a written statement for this appeal in which she stated that she lives in a semi-remote area and must travel to access any government services, faxing or photocopying. Due to the suspension of her benefits, she had to let her insurance expire. Even walking to the corner store is not an option for her as she is on the waiting list for re-constructive knee surgery(s). The Appellant wrote that she has found the whole reconsideration and appeal processes rather painful and confusing in that three or more sets of paperwork have gone back and forth. None of her questions or remarks have been addressed, including that the amounts of the monthly benefits the Ministry stated that she received is wrong. Her usual monthly benefit is \$471. The Appellant stated that she submitted a copy of a Ministry's report card showing a deduction from her benefits of a tax refund she declared in the amount of \$46.56, making her benefit for the month only \$424.44. This discrepancy has not been addressed, even though she pointed it out a number of times.

Regarding the statement that she was not eligible for assistance from June to September 2012 because she had an asset, the Appellant stated that the asset was sold on or about August 15, 2012. She has also been denied benefits for October 2012. The Appellant wrote that she applied to social services in order to qualify for provincial disability, not because she was an alcoholic or drug addict or an irresponsible pregnant teen, which seem to be the usual excuses for collecting welfare. She was forced to sell that motorcycle asset and live on the proceeds instead of being able to combine it with the equity in her home to borrow enough to fix her house properly. The Appellant stated that for the last two years, her depression has increased and she was unable to work. Now she only sees herself becoming more ill with her depression (PTSD) and with a less than adequate income. All the while in her house rafters, dry rot and black mold take over. The Appellant also wrote that even though she may have to re-pay a larger amount there can be no resolution until the appropriate paperwork is amended and then agreed upon.

The Panel finds that the information in the Appellant's written statement for this appeal is related to information about the Appellant's financial and medical circumstances, which the Ministry had at the time of reconsideration. Therefore, the Panel admits that information under section 22(4) of the EAA as being in support of evidence before the Ministry when it made its reconsideration decision.

For this appeal, the Ministry submitted a letter dated December 11, 2012 addressing issues raised by the Appellant. In response to the Appellant's statement that the monthly amounts of assistance listed in the reconsideration decision were incorrect, the Ministry submitted screen print outs from the Ministry case management system to confirm that the Appellant received the following amounts of assistance: \$330 for June 2012, \$471 for July 2012, \$471 for August 2012 and \$424.44 for September 2012. Regarding the Ministry's decision to find the Appellant ineligible for assistance

between June 2012 and September 2012, the Ministry submitted that the value of the motorcycle asset exceeded the legislated asset limit both before and after the Appellant converted that asset to cash. The Ministry also cited section 11(2) of the EAR, which allows a person with PWD designation to own one vehicle for day to day transportation needs. It noted that during the Appellant's application for assistance the Appellant advised that her motorcycle was in a workshop pending its sale and that her primary vehicle was a 2003 Chevrolet Impala.

The Panel makes the following findings of fact:

1. The Appellant was found to be eligible for income assistance in June 2012.
2. The Appellant owned two vehicles in June 2012. One was a motorcycle she valued at about \$6,500 and the other was her primary vehicle, a car.
3. The Appellant sold the motorcycle for \$9,500 in August 2012.
4. The Appellant received income assistance in June, July, August and September 2012.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that in June, July, August and September 2012, the Appellant received income assistance for which she was not eligible because she had a non-exempt asset worth more than the \$3,000, as set out in section 11 of the EAR and that the Appellant must repay that income assistance that she received, as required by section 27 of the EAA.

The following sections of the EAA apply to the Appellant's circumstances in this appeal:

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 the 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.

The following sections of the EAR apply to the Appellant's circumstances in this appeal:

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.

Asset limits

11(1) The following assets are exempt for the purposes of subsection (2)

(a) clothing and necessary household equipment;

(b) one motor vehicle generally used for day to day transportation needs if (i) the equity in the motor vehicle does not exceed \$5,000,

(c) a family unit's place of residence.

(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.

(2.1) Despite subsection (2), a family unit that includes an applicant or a recipient who has applied for and has not been denied, or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities under section 2 of the *Employment and Assistance for Persons with Disabilities Act* may receive income assistance, subject to all other eligibility criteria, if the family unit has assets with a total value of no more than

- (a) \$3 000, if the applicant or recipient has no dependants, or
- (b) \$5 000, if the applicant or recipient has one or more dependants.

In its reconsideration decision, the Ministry noted that at the time the Appellant applied for income assistance the non-exempt asset limit was \$1,500 for single applicants or \$3,000 if an applicant was in the process of applying for persons with disabilities designation. The Ministry pointed out that on October 1, 2012 the regulatory asset limit amount was increased to \$2,000 for income assistance applicants and \$5,000 for persons with disabilities designation applicants. The Ministry also referred to section 11(2.1)(a) of the EAR which provides that a single person, who has applied for and has not been denied or who the minister is satisfied has a genuine intention to apply for designation as a person with disabilities under section 2 of the *Employment and Assistance for Persons with Disabilities Act*, may receive income assistance, subject to all other eligibility criteria, if that person has non-exempt assets valued at no more than \$3,000. The Ministry applied this \$3,000 non-exempt asset limit to the Appellant's circumstances

Based on the information it had, the Ministry determined that during the months of June 2012, July 2012, August 2012 and September 2012 the Appellant received income assistance while she was in possession of assets valued at more than \$3,000; that is, the motorcycle the Appellant had valued at \$6,500. Therefore, the Ministry found that she was not eligible for the income assistance she received during this period. The Ministry also referred to section 27 of the EAA, which provides that if income assistance is received by a person who was not eligible for it, that person, must repay the amount or value of the overpayment provided for that period. Under section 28 of the EAA, the debt may be recovered in a court that has jurisdiction or deducted from subsequent disability assistance payments. The Ministry noted that a repayment agreement may be created for the recovery of the debt.

The Minister did not dispute the Appellant's statement that she was not attempting to defraud the Ministry. However, because the Ministry determined that the Appellant was not eligible for the assistance she received for the four months, it is the Ministry's position that she must repay \$1603.32.

The Appellant's position is that the Ministry made an administrative error but now she must repay assistance benefits that she received. She submitted that she was told that she would qualify for assistance but had to make efforts to sell her motorcycle. The Appellant argued she did sell the motorcycle and reported the sale to the Ministry. She used the sale proceeds to pay debts and wanted to be able to fix her home. The Appellant also argued that she has medical conditions and intends to apply for persons with disabilities designation. The Appellant also disputes the amount that the Ministry stated she owes.

The Panel finds that the Appellant does not dispute that she had two vehicles when she applied for income assistance in June 2012. One was a car for transportation and one was a motorcycle, which in June 2012 she valued at more than \$6,500. The Appellant sold that motorcycle for \$9,500 in

August 2012. Therefore, based on the evidence the Panel finds that it was reasonable for the Ministry to determine, in accordance with section 11(2.1)(a) of the EAR, that the Appellant had a non-exempt asset of more than \$3,000 in personal property that could be converted to cash in June and July 2012 and a non-exempt cash asset of more than \$3,000 in August and September, 2012.

The Appellant does not dispute that she received income assistance in June, July, August and September 2012. Further to its previous finding about the Appellant's non-exempt assets exceeding the regulatory limits during those four months and the Appellant's admission about receiving income assistance, the Panel also finds that it was reasonable for the Ministry to determine, in accordance with section 11(2.1) of the EAR, that the Appellant was not eligible for the income assistance she received in June, July, August and September 2012. And therefore, the Panel finds that it was reasonable for the Ministry to determine that the Appellant must repay these assistance overpayments as required by section 27(1) of the EAA.

The Appellant does dispute the amounts she received and the amount she must repay. The Panel notes that under section 27(2) of EAA the Ministry's decision about the amount that must be repaid is not appealable. Therefore, the Panel has no jurisdiction to review that part of the Ministry's reconsideration decision. The Appellant must address her disagreement about the amounts of assistance she received and what she must repay directly with the Ministry.

In conclusion, the Panel confirms the Ministry's decision because it was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances.