

**PART C – Decision under Appeal**

This is an appeal of a reconsideration decision of the Ministry of Social Development (“the ministry”) dated February 6, 2013, in which the ministry required the appellant to repay an overpayment of income assistance resulting from the appellant having assets in excess of the limits prescribed in the Employment and Assistance Regulation (EAR). The ministry relied on EAR sections 10, 28 and Schedule B.

**PART D – Relevant Legislation**

EAA 14, 17, 27  
EAR 11, 31

## PART E – Summary of Facts

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

- Reports from a credit union indicating RSPs in the appellant's name totaling \$4502.62.
- A letter from the appellant's mother to the ministry stating that she placed the money into her appellant's RSP without appellant's knowledge.
- Ministry reports showing an overpayment to the appellant for March to December 2011 due to the appellant's RSP holdings, in the amount of \$4502.92 (later corrected to \$4502.62).

The request for reconsideration contains the first written decision which found the appellant ineligible for income assistance due to the existence of the RSP. The request states that the appellant was informed of the decision on December 31, 2012 with an effective date of January 2, 2013. It notes that the RSP was established in June 2005 and it came to light in June 2012. The appellant's file was closed and she reapplied for assistance in August 2012 after cashing the assets and living on the proceeds. The appellant was assessed an overpayment of \$3002.62, calculated by subtracting the \$1500 permissible asset limit for a single person from \$4502.62.

The overpayment was upheld in the reconsideration decision, although the amount owing was reduced by \$1000 to account for the permissible asset limit for a single person with dependants of \$2500. The result was an overpayment assessment of \$2002.62.

Information received at the hearing:

- The appellant and her mother stated that the RSP was established by the appellant's mother. While it was in the appellant's name, her mother funded it and the contact information belonged to her mother.
- The appellant had been in a relationship and gone on and off assistance.
- The appellant stated that she was advised by the ministry in May 2012 to spend the proceeds of the RSP and provide receipts when she reapplied. She followed these instructions and reapplied in July 2012. She was approved for assistance on a prorated basis for August 2012.

The appellant agreed with the ministry's sequence of events set out in the reconsideration decision with the exception that her children were taken into care in April 2012, not June 2012.

Under section 22(4)(b) of the Act, the panel admitted the new evidence as it is in support of information and records which were before the ministry at the time of its decision. The ministry did not submit a challenge to the Appellant's introduction or the content of this evidence.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision to require the appellant to repay an overpayment of income assistance resulting from the appellant having assets in excess of the limits prescribed in the Employment and Assistance Regulation (EAR), was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

### *Jurisdictional Issue*

As a preliminary matter, the panel must address its jurisdiction in this case. The ministry stated in its decision that there was no right of appeal as per sections 17(3) and 27(2) of the EAA.

### Section 17 states:

(1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
  - (i) the maximum amount of the supplement under the regulations, and
  - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

...  
 (3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 18 and 27 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

### Section 27 states:

- (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*].

Pursuant to section 17(1), a ministry client may appeal certain reconsideration decisions including those that result in a discontinuance or reduction of income assistance. However, in accordance with section 17(3) and section 27(2) the "amount a person is liable to repay" is not appealable. Accordingly, the tribunal has the authority to hear appeals respecting the receipt of income assistance for which a person was not eligible and any resulting overpayment of income assistance but not the amount of an overpayment.

Having established the panel's jurisdiction, the panel will consider the reasonableness of the ministry's decision.

#### *Appellant's submission*

The appellant argues that she had no knowledge of the existence of the RSP and shouldn't be penalized for something her mother did without her knowledge. Second, she argues that she faces double jeopardy in that she was rendered ineligible for income assistance and required to live on the proceeds of the RSP before becoming eligible for assistance once more. To then require her to repay the ministry the amount of the assets in excess of the permissible amount is the equivalent of paying twice.

#### *Ministry's submission*

The ministry stood by the reconsideration decision and argued that despite her lack of knowledge of the RSP, it was legally in her name and therefore subject to the asset limits contained in the legislation which for a single person with dependants is \$2500.

#### *Reasoning*

In examining the reasonableness of the ministry's decision, the panel must examine the legislative basis upon which the reconsideration rests. In this case, the front page of the decision references sections 10, 28 and Schedule B of the EAR. The panel notes that these sections deal with qualifying clients for assistance based on their income levels. They do not refer to assets held.

Attached to the decision as 'Applicable Legislation,' sections 2, 4, 17 and 27 of the EAA are listed. Sections 2 and 4 deal with general eligibility while 17 and 27 deal with reconsideration and appeal rights, as discussed above. Also attached is section 11 of the EAR which discusses allowable asset limits and exempt assets for the purposes of determining eligibility for assistance. Highlighted is section 11(2) which prohibits a single applicant or recipient with dependent children to hold more than \$2500 of assets.

The ministry relied on this section to calculate the amount required to be repaid by the appellant, namely \$2002.62.

The appellant was in receipt of income assistance most recently from November 2011 to June 2012. The Ministry informed her of the existence of the RSP in May and advised her to cash it and live on the proceeds until she again became eligible. The appellant followed this instruction and was reinstated in August 2012 once the proceeds were exhausted.

The panel finds the ministry reasonable to include the RSP in calculating the appellant's assets with respect to her eligibility. While the panel accepts the appellant's assertion that the RSP was established without her knowledge, once discovered it was reasonable for the ministry to assign it to her as it was created in her name.

Although not referenced in the decision, the legislative basis for declaring the appellant ineligible until

the excess assets have been exhausted is contained in section 14 of the EAA, which states:

**Consequences of not accepting or disposing of property**

**14** (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;

...

(3) In the circumstances described in subsection (1), the minister may

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

Once the existence of the RSP became known, the ministry was reasonable to find that the appellant had failed to pursue it in accordance with 14(1)(a). In such a circumstance, the remedy available to the ministry is set out in 14(3). In the instant case, the ministry chose 14(3)(b) and in May 2012 declared the appellant ineligible for income assistance. The period for which she was ineligible was until she had exhausted the funds from the RSP. This instruction was consistent with section 31(2) of the EAR:

**31** (2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied

Once the RSP proceeds were exhausted and the appellant once again became eligible for assistance the failure would appear to have been remedied.

The provisions for dealing with assets in excess of legislated limits are detailed and were followed by the ministry in this case. The question remains as to whether its subsequent decision to seek a repayment was reasonable. As noted above, the reconsideration decision cites sections 10, 28 and Schedule B of the EAR as its authorities. The panel does not find these sections reasonable for the case at hand as they discuss permissible income levels, not asset limits.

Additionally, the panel finds that the ministry has unreasonably applied section 27 of the EAA respecting overpayments, given that the circumstances of this case involve assets in excess for which a remedy has already been sought.

The panel finds that the decision of the ministry was not a reasonable application of the legislation in the circumstances of the appellant.

The panel rescinds the decision.