

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (Ministry) reconsideration decision dated January 3, 2013 which found that the appellant was ineligible for \$2,420.33 income assistance he received during the period May 2011 – October 2012 and that the appellant is required to repay it, pursuant to Sections 4, 7, 11, 27 and 28 of the *Employment and Assistance Act (EAA)*, Sections 2, 10, 33, and 77 of the *Employment and Assistance Regulation (EAR)* and Sections 1, 2, 3, and 7 of the Schedule B of the EAR. The Ministry determined that based on the full amount of the appellant's gross earnings in the said period, \$2,420.33 income assistance was overpaid to the appellant and the appellant is liable to repay this amount.

PART D – Relevant Legislation

Employment and Assistance Act – EAA Sections 11, 27 and 28
Employment and Assistance Regulation – EAR Sections 2, 10, 33, 77.1
Employment and Assistance Regulation, Schedule B – Sections 1, 2, 3, and 7

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- A copy of the Ministry's letter to a payroll office requesting information of net earnings of the appellant dated January 4, 2012;
- Confirmation of Earnings stating that the appellant's net earnings for the period 2010-2011 was a total of \$554.57;
- A copy of a Psychological Report dated February 6, 2012;
- A handwritten document signed by the appellant on December 31 requesting Persons with Persistent Multiple Barriers (PPMB) designation;
- A handwritten, undated request for reconsideration respecting "Sanction";
- A handwritten undated request for reconsideration respecting "Overpay Chart";
- Two pages of Calendar for 2011 and 2012;
- A copy of a letter from the Ministry to the appellant dated December 7, 2011 requesting information;
- Copies of the Ministry's decision dated October 31, 2012;
- Overpayment Chart for the period May 2011 – October 2012;
- A copy of the Provincial Court of B.C. order in action number E06128 dated March 30, 2004;
- A copy of the Supreme Court of B.C. order in action number D040150 dated June 18, 2009;
- A copy of the Background Performer Voucher dated September 10, 2012;
- Copies of a receipt of payments for commission for March to October 2012 indicating that the appellant paid the following amounts to his agent:
 1. March 28/12 \$29.92
 2. April 4/12 \$30.07
 3. April 4/12 \$275.40
 4. April 24/12 \$43.38
 5. May 18/12 \$112.71
 6. June 12/12 \$25.31
 7. August 21/12 \$50.48
 8. October 10/12 \$29.92
- A copy of a Payroll account dated September 28, 2012 including a copy of a cheque in the amount of \$620.13 payable to the appellant;
- Request for reconsideration signed by the appellant on December 31, 2012;

The appellant made the following handwritten notes on a copy of the Ministry's letter dated December 7, 2011:

{Ministry's decision contravenes Section 28(b)1, 2, and (c) therefore the decisions are wrong because it "disregard, misinterpreted, mistaken, miscommunicated, and/or disregarded, misinformed, ignored relevant legislations which created". The appellant said that the Ministry miscalculated amounts that he is presently liable to repay. The appellant said that it would be unfair and unjust for him to repay an inaccurate and unsubstantiated amount. The appellant requests that the decision be reversed, overturned, cancelled or struck down}.

In the request for reconsideration dated December 31, 2012 the appellant stated that he is requesting reconsideration to three decisions of the Ministry:

1. Overpayment for Income Earned \$416.18 – September 10 or 11/2012
2. Overpayment for Income Earned \$2,629 – March 12, 2012

3. Sanction for 1st time \$75.00.

Respecting the "Overpay Chart" the appellant wrote the following:

- The decision calculating the overpayment amount is wrong by \$522.32 as the correct amount of gross income is \$2,098.00;
- The decision of overpayment for the period May 2011 – October 30, 2012 overrides prior decision of the Ministry and contradicts with similar and exact deductions, formula conducted by the Ministry's office on December 20, 2012.
- The Ministry's decision on December 20, 2012 allows deductions and garnishments as per legislation;
- The decision incorrectly calculated \$20 repayment for 5 months as credits paid by the Ministry and not \$20 debit paid by the appellant to the Ministry;
- The last entry on the chart dated October 2012 shows \$300.47 overpayment and does not take into the consideration the new and revised legislation as of October 1, 2012;
- The chart calculated the overpayment based on gross pay and not as net pay based by the Ministry's policy;
- The decision counters Ministry's purpose of support for the appellant and does not include the support for his children;
- The appellant requests to review the relevant legislation and overturn the Ministry's decision.

The appellant in the Notice of Appeal signed on January 21, 2013 stated that:

- 1- "I feel the legislative Acts for allowable deductions and income exemptions were mis-administered.
- 2- The amounts are wrong.
- 3- The time periods are wrong.
- 4- The original decision amount over-rode a previous decision.
- 5- The same decision over-rides a subsequent decision.
- 6- Contradicts "expected to work client" intentions, meaning and spirit.
- 7- Creates severe and punitive financial, professional hardships.
- 8- File an (F.O.I) Dec 20/12, never received".

The appellant did not attend the hearing of appeal number 2013-00054 at 11:00 a.m. After establishing that the appellant had been notified of the hearing and waiting for 25 minutes, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).

The appellant attended the subsequent hearing of appeal number 2013-00035 at 1 p.m., stating that he assumed both hearings were scheduled at 1 p.m. The appellant requested that his submissions respecting to his appeal of the reconsideration decision on overpayment, appeal 2013-00054, be considered in this hearing. The Ministry did not object, and the panel noted that the factual context in 2013-00035 and this appeal are much the same. The panel agreed to accept the appellant's submission on the appeal 2013-00035 as part of the appellant's submission in this appeal.

The appellant's submissions on appeal 2013-00035 are as follows:

1. Union Permit Fee

The appellant submitted that the union permit fee is the same as union dues. He said that although he is not a full member of the union, he is an apprentice member and in order to

work, he must pay the union permit fee. The appellant submitted that the Ministry should have interpreted the legislation to include the union permit fee as it is "a necessary expense".

2. Family Maintenance Enforcement Program (FMEP)

The appellant submitted that he has two children aged 22 and 19 and he is required to pay support by the court order. The appellant stated that his payment through FMEP should be considered as an exemption from income based on Section 1 of Schedule B of the EAR. The appellant submitted that the legislation is clear and states that the portion of the maintenance paid for and passed on to a person aged 19 or older under a maintenance order is exempt from income. Furthermore, the appellant submitted that the funds that FMEP garnished from his pay cheque should not be considered as income, and this should be an exception to subsection (b) of the Section 1 of Schedule B which states that any amount garnished from income is considered to be income.

3. HST and Agent Fee

The appellant stated that the Ministry should interpret the legislation in his favour as he has to pay the agent fee and HST in order to work. The appellant said that "having an agent is an integral part of the industry I worked in". The appellant said that the Agent fee is a necessary expense and the Ministry should consider it as an allowable expense. The appellant further submitted that it is not fair that the legislation, in the Self Employment Program for Persons With Disabilities (PWD), states that the agent fee is an allowable expense. The appellant further submitted that the HST is the same as Agent Fee and he must pay the tax in order to work.

4. The appellant submitted that the Ministry deducted the amount without any consultation or prior notice. This has created severe and punitive financial hardship for him.

5. Inconsistent decisions

The appellant submitted that the Ministry made a decision in his favour in 2011 in that he was allowed deductions from gross income for funds garnished by FMEP, agents' fees, HST and permit fees. The next investigator officer ruled differently, on the same facts. The appellant further stated that the Ministry-contradicted itself by making yet another decision in his favour.

6. Freedom of Information request

The appellant said that he has filed a Freedom of Information (FOI) request but the Ministry has not responded to his request.

The appellant further submitted that "the Ministry should have had a discretion to interpret the gray areas of the legislation in favour of its clients".

The Ministry relied on its reconsideration decision, stating the following:

1- Union Permit Fee

Union permit fee is a permit to work and it is a requirement to work; however, union dues are membership fees for those who are members of the union. The investigative officer had contacted the union and asked if union permit fees were equivalent to union dues, and had been advised they were different. The Ministry has to follow the legislation and uses the legislation to apply the rules. The Ministry cannot interpret the legislation in favour of one

client and make different decision on a similar issue for another client. The legislation is clear and only permits union dues as deductions from earned income. The Ministry further submitted that the small business exemptions are only allowed under the Self Employment Program and for those clients who are designated PWD.

2- FMEP

The Ministry submitted that the amount garnished from the appellant's pay cheque under the FMEP is part of the appellant's gross income. Funds garnished by FMEP are not-listed among the deductions permitted from earned income pursuant to Section 2 of the Schedule B of the EAR. The Ministry said that the amount garnished from the appellant's income is considered to be income and it is not considered as an exemption.

3. HST and Agent Fee

The Ministry submitted that HST and Agent Fee are not stipulated in the legislation as exemptions. The Ministry further stated that the Ministry has no discretion to change the legislation and or apply a rule that is not part of the legislation.

4. The Ministry stated that the appellant failed to report his income and as such, after a thorough investigation, the Ministry deducted the overpayment amount from the appellant's income assistance.

5. Inconsistent decision

The Ministry said that the investigator officer making the first decision made an error and did not calculate the deductions. The Ministry can, at any time, review any parts of the client's file. In this case, a new investigative officer reviewed the appellant's file and calculated the amount that was not considered as an exemption based on the legislation. The Ministry further reviewed this decision and found out that the second investigative officer made an error by not crediting the appellant \$200 for the October 2012 based on the new legislation. The Ministry revised the decision and deducted the allowable income exemption.

6. FOI

The Ministry submitted that it does not have any information or knowledge about the appellant's request under FOI. This request is dealt with, directly, by the FOI office.

The Ministry stated that the appellant is not eligible for exemptions related to a self-employment program as he is not designated PWD and has not been approved to participate in this program. The Ministry further stated that for the appellant is required to repay \$2,420.33 income assistance that he was not eligible to receive that was overpaid to him during the period May 2011 – October 2012.

The panel makes the following findings of fact:

- The appellant is a sole recipient of income assistance;
- From May 2011 – October 2012 the appellant received income assistance of \$8,724.67;
- From May 2011 – October 2012 the appellant's gross income was \$3,313.42;
- The appellant had certain deductions from his gross income, by way of garnishment by FMEP, permit fees, agent fees and HST and that he reported his net income to the Ministry;

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- The appellant has not been approved to participate in the self-employment program.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry reasonably determined that the appellant had to declare his gross income, including amounts garnished by FMEP, permit fees, agent fees and HST and that, as he failed to do so, he had received an overpayment of \$2,420.33 during the period of May 2011 to October 2012. The ministry concluded that the appellant is required to repay the amount he received for which he was not eligible.

The relevant sections of the EAPWDR are as follows:

EAA

Section 11 – Reporting obligations

- (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.

Section 27 – Overpayments

- 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)

Section 28 – Liability for and recovery of debts under Act

- 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**Section 1 – Definitions of earned income**

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;

Section 33 – Monthly reporting requirement

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.

Section 77.1 – Eligibility for self-employment program

To be eligible to participate in a self-employment program established or funded by the minister under section 7 of the Act, a recipient must qualify under section 2 of this regulation as a person with persistent multiple barriers to employment.

Schedule B of the EAR**Section 1 – Deduction and exemption rules**

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.

Section 2 – Deductions from earned income

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.

Section 3 – Exemption – earn income – Before October 1, 2012

- (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.

Section 3 – Exemption – earned income – Effective October 1, 2012

- (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.
- (2) If an application for income assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance under the *Employment and Assistance for Persons with Disabilities Act* for the calendar month immediately preceding that first calendar month.
- (3) Unless otherwise provided under subsection (4) or (5), the amount of earned income calculated under subsection (6) (a) is exempt for a family unit that qualifies under this section.
- (4) The amount of earned income calculated under subsection (6) (b) is exempt for the family unit if;

- a) The family unit includes a sole recipient who
 - (i) Has a dependent child, or
 - (ii) Has in his or her care a foster child, and
 - b) 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.
- (5) The amount of earned income calculated under subsection (6) (c) is exempt for the family unit if any person in the family unit is a person who has persistent multiple barriers to employment.
- (6) The exempt amount for family unit that qualifies under this section is calculated as follows:
- a) In the case of a family unit to which subsection (3) applies, the exempt amount is calculated as the lesser of
 - (i) \$200, and
 - (ii) The family unit's total earned income in the calendar month of calculation;

Section 7 – Exemptions – unearned income

- (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 appellant's position, as set out in his request for reconsideration and notice of appeal, is that the decision calculating the overpayment amount is wrong by \$522.32. The appellant argues that the recent reconsideration decision overrides prior decisions made by the Ministry and that the Ministry's decision is wrong in that it did not allow deductions of Agent fee, Union Permit fee, HST, and the amount garnished from his income under the FMEP. The appellant further argues that he reported his net income and he is not appealing the Ministry's decision regarding sanction. The appellant further argues that pursuant to Section 1 (a) (xxvii) of the Schedule B of the EAR the portion of the maintenance paid for a person aged 19 or older under a maintenance order filed with a court should be considered an exemption from income. The appellant requests that the panel overturn the Ministry's decision.

The appellant does not dispute that the amount of \$3,313.42 received by him during the period May 2011 - October 2012 was earned income. However, the appellant argues that the amount that was deducted from his income under FMEP, HST, and union permit fee, and the amount he paid to his agent should be deducted from the total amount of income.

The Ministry's position is that the Overpayment Chart demonstrates that \$2,420.33 income assistance was overpaid to the appellant. The Ministry further argues that the appellant is not eligible for exemptions related to a self-employment program and that the FMEP garnishment, the agent commission, and the union permit fee are not considered exempt income. The Ministry further submits that when the appellant completed the income assistance application he was made aware of his reporting obligations and that the reporting obligations are ongoing. In response to the appellant's argument that pursuant to section 1 (a) (xxvii) of the Schedule B of the EAR, the Ministry submits that this section of the legislation pertains to a parent who receives the maintenance for a person aged 19 or older under a maintenance order.

The panel notes that pursuant to Section 1 (a) (xxvii) of the Schedule B of the EAR, all earned income must be included in the calculation of net income. The panel finds from May 2011 – October 2012, the appellant received income assistance of \$8,724.67 and in the same period, the appellant's gross income from employment was \$3,313.42. Respecting Section 77.1 of the EAR, the panel finds

that the appellant is not eligible for exemptions related to a self-employment program as he is not qualified PPMB and has not been approved to participate in this program.

Respecting Section 3 of the schedule B of the EAR, the panel appreciates that the appellant has to pay expenses such as union permit fee, HST, and agent fee in order to be employed; however, the panel finds that the appellant did not assert that any of the listed exemptions applied to his situation and the panel does not find any evidence to indicate that any of the listed exemptions would apply to the appellant's situation. Furthermore, the panel finds that the legislation does not allow the FMEP garnishment to be considered as exempt income.

Section 2 of schedule B of the EAR sets out the only deductions permitted from earned income. The appellant argues that union permit fees is the same as union dues and must be permitted as deduction to his earned income. The panel finds that the union permit fees are different than the union dues and that the legislation is clear and only permits union dues as deductions from earned income.

Accordingly, the panel finds that the Ministry's decision that the appellant must repay income assistance he was not eligible to receive was a reasonable decision based on the evidence and is a reasonable application of the legislation in the appellant's circumstances.

In conclusion, the panel confirms the Ministry's decision.