

### PART C – Decision under Appeal

This is an appeal of a reconsideration decision of the Ministry of Social Development ('the ministry') dated March 18, 2013, in which the ministry determined that the appellant was required to repay an overpayment. The ministry relied on Schedule A, section 4 of the Employment and Assistance Regulation ('EAR'), finding that his shelter costs should have been calculated at their actual cost, which was \$30, not \$375, which he had been paid for 12 months. The \$30 figure was permitted to cover the appellant's telephone costs. As well, under section 28 EAR, the ministry determined that the appellant had undeclared unearned income of \$143.13 in the form of a tax refund. These items together resulted in an assessed overpayment of \$4283.13. The ministry relied on sections 27 and 28 of the Employment and Assistance Act ('EAA') and determined that the appellant must repay the overpayment and that it may be deducted from subsequent assistance payments.

### PART D – Relevant Legislation

EAR Schedule A, Section 4 (2.1)  
EAR Schedule A, Section 5 (2)  
EAR Section 28  
EAA Sections 27 & 28  
EAR Schedule B

## PART E – Summary of Facts

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

- A letter from the ministry dated December 5, 2012 demanding financial records from the appellant.
- A letter dated December 31, 2012 from the appellant's mother, stating that she has been 'paying 100% of his rent and other support.'
- Copies of the appellant's bank statements, income tax return showing a \$143.13 refund, a cellular phone bill and a notice of monthly rent in the amount of \$860.
- A letter with attachments from the ministry to the appellant dated January 31, 2013 stating the amount of \$4832.78 had been overpaid to the appellant and was subject to repayment.
- The appellant was in receipt of shelter assistance of \$375 for a period of 12 months.
- In the request for reconsideration, the ministry determined that the appellant was eligible for \$26.85, the basic telephone rate for a residential line. In the reconsideration, this was increased to \$30 per month to account for "basic 'unbundled' home-phone services as advertised on the [service provider] website."

Information received at the Hearing:

### *Appellant*

- The appellant stated that in his initial interview with the ministry he was told that his mother could pay his entire rent for 'a certain period' if she paid the landlord directly, not that she could pay only the difference. He stated he was also told that his medical condition made him eligible. He had medical reports that were seen by the initial worker but not mentioned by the investigating officer.
- He acknowledged that he did not declare his income tax refund as he was involved in the process of applying for Persons with Disabilities designation.

### *Ministry*

- The ministry stated that its worker's notes indicate that the appellant was told that it was permissible for his mother to pay the difference between the permissible shelter amount (\$375) and the actual rental cost.

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.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's determination that the appellant was required to repay an overpayment of \$4283.13 for shelter assistance and an income tax refund was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 4(2) of Schedule A EAR states:

The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Family Unit Size	Maximum Monthly Shelter
1	\$375
...	

### *Appellant's submission*

The appellant argues that he was told by a ministry worker that his mother could pay all of the rent for 'a certain period' without it affecting his assistance payment as he had a medical condition. He does not dispute that he should have declared his income tax refund to the ministry.

### *Ministry's submission*

The ministry argues that its worker advised the appellant that his mother could pay the difference between the support amount and the total rent cost. However, since his mother paid the entire amount of his rent, his actual shelter costs were \$30 (the amount the Ministry would pay for a residential telephone line), and he must repay the amount the ministry provided for shelter. As well, his income tax refund of \$143.13 should have been declared.

### *Reasoning*

The basic facts of this case are not in dispute: the appellant's mother paid the entire amount of the appellant's rent while he received a shelter allowance from the ministry for 12 months. With respect to the appellant's conversation with the ministry worker, the details of the exchange are not applicable to the panel's deliberations. The panel must review the reasonableness of the reconsideration decision in the light of the EAA and EAR. If the appellant was misled by the ministry worker he has the panel's sympathies but Section 4(2) is clear that the shelter allowance is the lesser of \$375 and the actual cost. The fact that his mother paid the entire amount of the rent rendered his actual rent costs as zero and the ministry was reasonable to find thusly.

The ministry calculated the cost of the appellant's residential telephone line at \$26.85 per month (increased to \$30 at reconsideration), which it agreed to pay as shelter support in accordance with Schedule A, Section 5(1)(f) EAR.

With respect to the income tax refund, the ministry was reasonable to include it as income to be declared pursuant to Schedule B, Section 1 of the EAR and Sections 28 and 33 of the EAA, which require such income to be reported and deducted. The appellant did not dispute this finding.

Section 33 states:

- 33** (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,  
(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:  
(iii) all income received by the family unit and the source of that income;

Schedule B lists the various exemptions for earned and unearned income. An income tax refund is not included in the list.

The essential issue in the case is whether the ministry was reasonable in assessing an overpayment with respect to the appellant's shelter costs.

Section 27(1) EAA addresses overpayments:

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.

As the appellant's actual shelter costs were \$30, the ministry was reasonable to find that its shelter payments to him of \$345 for 12 months and the tax refund were an overpayment and subject to repayment. Section 28 EAA permits the ministry to recoup overpayments from its clients:

- 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.

In conclusion, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The decision is confirmed.