

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated August 27, 2013 which held that the Appellant was not eligible for income assistance from January through October, 2011 because his assets exceeded the allowable limit under section 11(1) of the EAR, resulting in an overpayment totalling \$6,545.85 for income assistance he received during that period which he is required to repay.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 11, 27, 28

Employment and Assistance Regulation (EAR) sections 1, 22, 23

PART E – Summary of Facts

Evidence before the Ministry at Reconsideration included:

1. The Appellant's Request for Reconsideration, signed August 9, 2013, in which the Appellant wrote that he has MS which affects his mind and memory and that to the best of his knowledge he received the money in question while he was not receiving income assistance.
2. A letter from the Ministry to the Appellant dated July 12, 2013, advising him of the results of a review of his file which determined that he had received an overpayment of income assistance for which he was not eligible.
3. A Ministry Overpayment Chart for the months of January to October, 2011, dated July 12, 2013.
4. A computer printout, untitled, dated July 23, 2013, listing the Appellant's name and address with a vehicle description, licence and decal number and a section titled "LIC HIST", with an eff date of 2009-11-24 and an exp date of 2011-11-04. The VIN number is the same as that on the motor vehicle purchase agreement.
5. A copy of a printout from "VMR Canada" listing values of vehicles of the type and year of the vehicle at issue with various options.
6. A copy of the Appellant's BC Driver's Licence.
7. A copy of a motor vehicle purchase agreement dated November 3, 2011, listing the Appellant as purchaser of a vehicle and a trade-in allowance of \$30,995.00 for a vehicle of the type and year of the vehicle at issue.
8. A copy of a letter from a lawyer dated June 3, 2011, advising that a mortgage was filed on June 2, 2011, with an enclosure of a trust cheque in the amount of \$144,163.15 representing the net mortgage proceeds due.
9. A copy of a Ministry Employment and Assistance Rate Table, listing asset exemptions and asset levels.

At the hearing, the Appellant stated that with respect to the Ministry's statement that he received funds from the sale of his home, he has not sold his home, and the money in question was a mortgage loan. He stated that as a result of a dispute with his spouse, whose signature is needed for a sale, the home did not sell. With respect to the car, the Appellant stated that he traded it in and received approximately \$11,000. The Appellant stated that he agrees that he had an asset valued at over \$5,000 during the period he received income assistance, but he wasn't aware of the rule about vehicle value. In addition, he stated that the vehicle in question was in impound and he didn't have access to it. In addition, the vehicle was registered in his company's name, not his.

In response to questions from the Ministry, the Appellant stated that he traded in the vehicle at issue for an older vehicle of lesser value and a cash payment of approximately \$10,000. He stated that he sold the second vehicle in 2012. In response to questions about the sale of his home, the Appellant stated that he did not sell the home; he received a mortgage loan of approximately \$42,000.

The Ministry stated that the Appellant is currently designated as a person with disabilities, as of October, 2012. At the time of the overpayment in 2011, the Appellant was in receipt of income assistance, and the legislation in effect at that time stated that in order for an applicant for income assistance to be eligible, the maximum value of an exempt motor vehicle was \$5,000. The Ministry stated that a review of the Appellant's file determined that he owned a vehicle valued over the allowable limit from November, 2009 to November, 2011. The Appellant provided the Ministry with information about vehicles in impound, but the vehicle in question was not shown as being one of them. The vehicles in impound were considered by the Ministry to have no value. The Appellant's vehicle was matched through a B.C. licence plate, VIN number and the Appellant's driver's licence. In addition the Ministry stated that the Appellant did not report this asset on his monthly reports to the Ministry as required.

In response to questions from the Panel, the Ministry stated that regardless of whether the Appellant received payment from the sale of his home, the possession of a vehicle valued over the asset limit during the period under review made him ineligible for income assistance, and section 27 of the EAR requires repayment. With respect to the Appellant's statement that he did not know about the requirement to disclose ownership of a vehicle, the Ministry stated that the application form asks about assets, and the question must be answered in order for the application to be processed. The application form also contains a section where the applicant gives permission for verification checks to be made. The Ministry stated that the Appellant provided no information to show that the vehicle was in impound. With respect to the Appellant's statement that the vehicle was registered to his company, the Ministry stated that the ICBC search, which is part of the Appeal record, showed that it was registered in his name.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which held that the Appellant was not eligible for income assistance from January through October, 2011 because his assets exceeded the allowable limit under section 11(1) of the EAR, resulting in an overpayment totalling \$6,545.85 for income assistance he received during that period which he is required to repay.

Relevant legislation:

Employment and Assistance Act

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.

Employment and Assistance Regulation

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;

Asset limits

11 (1) The following assets are exempt for the purposes of subsections (2) and (2.1):

- (a) clothing and necessary household equipment;
- (b) subject to subsection (2.3), one motor vehicle generally used for day to day transportation needs if
 - (i) the equity in the motor vehicle does not exceed \$5000,
 - (ii) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit,
 - (iii) the motor vehicle is used to transport a disabled dependent child, or
 - (iv) the motor vehicle is used to transport a disabled foster child, if the child is in the care of the applicant or recipient;
- (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 or sole recipient has no dependent children and has
 - (i) assets with a total value of more than \$1500, 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 \$1500

Monthly reporting requirement

33 (1) 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;

The Appellant's position is that he did not sell his home; therefore the Ministry's assertion that he received proceeds from the sale is incorrect. With respect to the vehicle, the Appellant's position is that he did not know about the requirement to report this asset, and, in any event, the vehicle was registered to his company, not to him.

The Ministry's position is that the Appellant did not report his vehicle as required on his application for income assistance nor on his monthly reports as required. The vehicle was registered to the Appellant as reported by ICBC. Because the Appellant was not eligible for income assistance, he received an overpayment which he is required to repay.

The Panel finds that the Ministry's decision did not make a determination on how the amount from the sale of the Appellant's home would affect his eligibility for income assistance, therefore this issue was not before the Panel as this was not a basis of denial.

The Panel notes that the vehicle licence history shows one owner from 2009 to November 4, 2011, the day after the date of the motor vehicle purchase agreement. The VIN number is the same on both documents. The trade-in value exceeds \$30,000. The Appellant agreed that he owned the vehicle, stating that it was registered to his company; however he is listed as the seller on the purchase agreement and on the ICBC printout. The Panel finds that the Ministry reasonably determined that at the time of his application for income assistance the Appellant owned a vehicle valued over the asset limit of \$5,000 for a vehicle used for day to day transportation set out in section 11(1)(b), EAR, and as a result was not eligible for income assistance while he owned the vehicle. The Panel finds that the Ministry reasonably determined that the Appellant is required to repay the income assistance he received during the period of January to October, 2011 inclusive, pursuant to sections 27 and 28, EAA, because his equity in a motor vehicle was greater than the amount of the exemption in the legislation.

The Panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.