



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of July 18, 2013 in which the Ministry of Social Development and Social Innovation (the Ministry) determined that the appellant had received income assistance payments of \$6,992.79 and \$1,035.58 under the Employment and Assistance Act for which the appellant was not eligible. Under Section 27 of the EAA, the appellant is required to repay to the minister the total amount of \$8,028.37 (\$6,992.79 for the period June 2011 through April 2012 and \$1,035.58 for November 2012) for failing to comply with Section 17 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 27
Employment and Assistance Regulation (EAR), Section 17

PART E – Summary of Facts

The appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration consisted of:

- The appellant was receiving income assistance as a single parent with two dependent children. She was in continuous receipt of assistance from March 2011 through November 2012.
- On March 25, 2011 she applied for income assistance as a single, pregnant applicant.
- On April 4, 2011 she was determined eligible for income assistance, effective May 1, 2011.
- On February 28, 2012 the Ministry mailed a letter to the appellant as a Ministry worker noted that she had not added her child to her file and that her employment plan needed updating.
- On April 11, 2012 the appellant's income assistance file was closed by the Ministry as she had not had any contact with the Ministry.
- On May 2, 2012 the appellant reapplied for income assistance as a single parent with two dependent children. Her application was approved and she began receiving assistance again. This resulted in there being no discontinuation of assistance.
- On October 24, 2012 the appellant spoke with a Ministry worker and confirmed that she was still living in BC and was not planning on moving back to [country x]. The appellant was advised that she was required to advise the Minister if her plans changed.
- On October 26, 2012 the Minister was advised by a third party that the appellant had moved back to [country x].
- On November 9, 2012 the Ministry mailed a letter to the appellant (at her BC address) advising her that she had an overpayment of assistance due to her being out of the Province for more than 30 days. It was returned to the Ministry marked: "Moved to [country x]".
- On November 22, 2012 the Ministry closed the appellant's income assistance file.
- On December 11, 2012 the Ministry determined that the appellant also had an overpayment of assistance in November 2012.
- On May 30, 2013 the Minister began a review of the appellant's income assistance file. According to her passport, she arrived in [country x] on April 21, 2011 and returned to BC on April 11, 2012.
- On June 18, 2013 the appellant reapplied for income assistance.
- On June 25, 2013 the Ministry mailed a letter to the appellant advising that she had an overpayment of assistance due to her being out of Province for more than 30 days.
- On June 27, 2013 the appellant requested a reconsideration of her overpayment.
- On July 5, 2013 the Minister received the appellant's signed Request for Reconsideration. She stated that she needed the money at the time and that she will never get ahead if she has to repay the funds.
- On July 18, 2013 the Minister reviewed the appellant's Request for Reconsideration.

The panel determined the additional documentary evidence provided by the Ministry representative at the hearing was admissible under section 22(4) of the EAA as it was in support of the records before the Minister at reconsideration. The Ministry's documentary evidence, submitted as "submissions only", consisted of two Ministry internal memoranda which read as follows:

PART E - Summary of Facts (continued)

"10/24/2012

Call from [appellant's name] – calling from a local phone # – confirms still living in Canada ongoing & no plans to leave the country – father of chdn lives in [country x] , but now that she has her chdn back, she plans to stay in the country. [appellant's name] is aware to inform MSD of any change of plans. OK to pick up 12 Nov. chq".

"11/07/2012

The following comment is for record purposes per instruction by PLMS supervisor as 10 (presume Ministry worker) is completing PLMS file review. 10 was contacted by EAW J.B. on October 30, 2012 to advise a call had been received from a gentleman who identified himself as "[appellant's name] Dad" and stated that [appellant's name] moved back to [country x] this past Friday (October 26, 2012) to live with the father of her children".

No findings of fact were determined by the panel from submission of the two above mentioned documents except to confirm what is mentioned in the Ministry's Summary of Facts as evidence before the Ministry at reconsideration.

[Redacted]

PART F – Reasons for Panel Decision

The issue on appeal is as to whether the Ministry's decision to determine that the appellant was ineligible for employment assistance payments in terms of section 17 of the EAR and is therefore required, under section 27 of the EAA, to repay to the Minister overpayments is reasonably supported by the evidence and is a reasonable application of the applicable legislation in the circumstances of the appellant.

The applicable legislation in this matter is:

Employment and Assistance Regulation. Section 17.

Effect of recipient being absent from BC for more than 30 days

The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for income assistance or hardship assistance unless the minister has given prior authorization for the continuance of income assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program`
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

Employment and Assistance Act. 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 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*).

The Ministry argues that section 17 of the EAR states that a client and their family unit cease to be eligible for income when a client is outside of British Columbia for more than a total of 30 days in a year. Section 17 (a),(b) and (c) of the EAR enables the Minister to give prior authorization for an exemption to participate in a formal education program, to obtain medical therapy prescribed by a medical practitioner or to avoid undue hardship.

The appellant did not request prior authorization to leave British Columbia and there is no evidence that she did so to participate in a formal education program, to obtain medical therapy prescribed by a medical practitioner or to avoid undue hardship.

The Ministry did not authorize an exemption to the eligibility criteria under section 17 of the EAR

The Ministry's examination of the appellant's Canadian passport document showed that she entered [country x] on April 21, 2011 and did not leave until April 11, 2012. The Ministry's findings were that the appellant ceased to be eligible for assistance as of the 31st day out of province and as she was eligible for assistance on May 1, 2011, the Ministry concluded that the appellant's ineligibility for income assistance payments affected June 2011 onward. Furthermore, the Ministry found that she remained ineligible for assistance until she re-applied in May 2012. The total amount of assistance that the appellant received from June 2011 through April 2012 was \$6,992.79 (June 2011:\$680, July 2011:\$610, August 2011:\$610, September 2011:\$610, October 2011:\$610, November 2011:\$610, December 2011:\$645, January 2012:\$610, February 2012:\$610, March 2012:\$610, April 2012:\$787.79). She was ineligible for all funds received during this period.

PART F - Reasons for Panel Decision (continued)

Also, the Ministry found that the appellant became ineligible for income assistance immediately after having left the province in October 2012 as she had already been out of province for more than a total of 30 days in the year. The Ministry ruled that as the appellant was eligible for assistance on October 1, 2012 and concluded her ineligibility affects November 2012. The appellant received a total of \$1,035.58 in November 2012 for which she was ineligible. No passport evidence was presented to indicate the appellant's absence from Canada in October 2012. The Ministry reported a telephone call received by a Ministry worker from a gentleman identifying himself as "[appellant's name] Dad" that she had moved back to [country x] October 26, 2012 to live with the father of her children.

Under section 27 (1) of the EAA the Ministry requires that the appellant repay the government the overpayment sum of \$8,028.37 (\$6,992.79 for the period June 2011 through April 2012 and \$1,035.58 for November 2012) for which she was ineligible and that under section 27(2) of the EAA the amount the appellant is liable to repay, is not appealable to the tribunal.

In her July 3, 2013 Request for Reconsideration the appellant argued that: "I feel that due to my circumstances I should be reconsidered. I am a single mother of twins and can barely (sic) get by as is. I was in an emergency situation and needed the money at the time. I am living with my mother at the moment in a small house, and if I have to pay this back I will never get ahead. I feel that I barely (sic) have the means to pay this based on what little support and shelter payments I am receiving from the ministry I will be further behind paying this back and the kids will go without." In her Notice of Appeal dated July 29, 2013 the appellant states that she disagrees with the reconsideration decision and added: "As I stated in the last application, I feel that even though I was out of the country and collected assistance I was in need of it. My ex-partner had refused to support me and actually trapped me in the country. He refused to sign the passports and would not give me any money. The government in [country x] would not support us either."

The appellant did not provide evidence that she had sought, or was given, prior authorization for continuance of income assistance under section 17 of the EAR. The Panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the Ministry's reconsideration decision.