

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation ("the ministry") dated 11 July 2013 that denied the appellant's request to repay a family bonus supplement in \$20 monthly payments. The ministry determined that the backdated amount of family bonus the appellant received in May 2013 was unearned income pursuant to sections 1(a)(iv) and 10 of Schedule B of the Employment and Assistance Regulation and in accordance with section 28 of the Regulation was correctly deducted from her July 2013 income assistance as calculated under Schedule A of the Regulation.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 28 and 61, Schedule A, and Schedule B, sections 1(a) and 10.

## 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 is from the ministry's file, as set out in the appellant's Request for Reconsideration and in the reconsideration decision:

- The appellant is currently in receipt of income assistance as a single parent. Her file opened in 2009.
- On 21 May 2013, the appellant received from the ministry a family bonus supplement.
- On 26 June, the appellant's monthly report form was processed. She had reported receiving a family bonus payment of \$989.20 in May 2013. This was confirmed by an electronic data match with the Canada Revenue Agency (CRA).
- The ministry determined that of the \$989.20 payment, \$494.62 was the appellant's family bonus payment for that month and \$494.58 was a backdated payment to which section 10 of Schedule B of the EAR applied, deducting this amount from her July 2013 income assistance.

In her Request for Reconsideration, dated 26 June 2013, the appellant writes that she was not told she had to pay back the supplement all at once. She only got one "child tax" cheque that month and she used that to try to catch up on other bills. She was told she could pay \$20 back per month off her income assistance. Now she does not have much food and she writes she "had already went for other recourse".

In her Notice of Appeal, dated 17 July 2013, the appellant states that she disagrees with the reconsideration decision because she was told when she got the "top-up" that she only had to pay \$20 back per month. She adds that she did not receive any "child tax" in June; she got only one payment from [the CRA].

At the hearing, the ministry representative provided a full copy of the appellant's Request for Reconsideration, including page 2, with the appellant's Reasons, signature and date, which was missing from the Appeal Record.

The ministry representative stated that she wished to correct an error in the reconsideration decision. The reconsideration decision left the impression that a family bonus supplement or subsequent deduction was based on the information provided by the client in the monthly report submitted by the 5<sup>th</sup> of each month. In practice, this is not the case. Like the ministry's income assistance cheques, the CRA child benefit cheques for one benefit month are issued in advance, near the end of the preceding month. The CRA cheques are issued around the 20<sup>th</sup> of the month, with the ministry cheques issued some days later. If there is an anomaly or irregularity in the CRA checks, this will show up in a CRA/ministry data tape match and the ministry is able to adjust its income assistance cheque immediately and as appropriate, in time for the upcoming cheque issue, without waiting for the monthly report and the next cheque issue. This means that usually if there is some irregularity in the CRA cheque, within a few days an adjustment is made so that the client's total income from both the CRA and the ministry for the upcoming benefit month remains stable.

In answer to a question, the ministry representative stated that it was unlikely that an employment

and assistance worker would advise the appellant that she could repay the family bonus supplement through \$20/month deductions to her income assistance; further, there is no record on the appellant's file that such advice was given. The ministry representative also stated that upon examination of the appellant's file, apart from the missing family bonus amount in May 2013 and the subsequent cheque that restored the missing amount, there was no record of any irregularities in her CRA child benefit payments before or since. The CRA had not been able to explain why the family bonus amount was missing from the May cheque.

The panel finds that the information provided by the ministry at the hearing is in support of the information before the ministry at the time of the reconsideration. The panel therefore admits as evidence the ministry's testimony pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision, which denied the appellant's request to repay a family bonus supplement in \$20 monthly payments, and instead determined that the backdated amount of family bonus the appellant received in May 2013 was unearned income pursuant to sections 1(a)(iv) and 10 of Schedule B of the EAR and in accordance with section 28 be deducted from her July 2013 income assistance as calculated under Schedule A, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the EAR:

### Amount of income assistance

**28** Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

### Supplement for delayed, suspended or cancelled family bonus

61

- (2) The minister may provide a supplement to or for a family unit that is eligible for income assistance or hardship assistance if
  - (a) payment of the family bonus for a calendar month to a person in the family unit is delayed, suspended or cancelled under the *Income Tax Act* (Canada) or the *Income Tax Act* (British Columbia) for any reason other than that
    - (i) the person refuses to apply for the family bonus,
    - (ii) the person refuses to provide information necessary to determine eligibility for the family bonus, or
    - (iii) the person refuses to accept the family bonus, and
  - (b) the minister considers that the supplement is immediately needed for basic needs of food, clothing or shelter.

And from Schedule B of the EAR:

### Deduction and exemption rules

**1** 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: [*a list of several categories of unearned income, including*]:
  - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
  - (v) the basic child tax benefit;
  - (xiii) the BC earned income benefit;
  - (xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

### Backdated family bonus treated as unearned income

10 (0.1) In this section:

**"backdated family bonus payment"** , in relation to a child benefits cheque, means the portion of the cheque, if any, attributable to the family bonus for one or more calendar months preceding the calendar month in which the cheque is issued;

**"supplement"** means a supplement referred to in section 61 [*supplement for delayed, suspended or cancelled family bonus*] of this regulation.

- (1) If a person in the applicant's or recipient's family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the lesser of the following amounts must be treated as unearned income:
- (a) the portion of the backdated family bonus payment that is attributable to those calendar months for which the family unit was provided with a supplement;
  - (b) the sum of the supplements that are attributable to those calendar months for which the family unit received the backdated family bonus payment.

The position of the ministry is that the legislation does not provide any discretion for the appellant to repay the family bonus supplement through \$20/month deductions from her income assistance. She received a backdated family bonus amount of \$494.58 for which she was also earlier provided with a supplement to make up for the missing amount in her 21 May 2013 CRA child benefits cheque. The legislation is clear that this amount must be treated as unearned income and pursuant to section 28 of the EAR, deducted from the next income assistance cheque, in this case that for July 2013.

The appellant does not dispute that she must repay the family bonus supplement provided her in May 2013. Her position is that she was told that she could repay the amount through \$20/month deductions from her income assistance. She submits that paying the full amount in one monthly deduction has created undue hardship for her and her family.

The panel notes that section 10 of Schedule B of the EAR states that when a family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the amounts must be treated as unearned income. The panel finds that the ministry reasonably determined that this is the case with the \$494.58 that the appellant received included in the CRA child benefit cheque in May 2013, subsequent to an earlier CRA cheque with that amount of family bonus amount missing. Under section 28 of the EAR, unearned income is considered in the calculation of net income to be deducted from the monthly support and shelter amounts applicable under Schedule A. The panel finds that the ministry applied the legislation in calculating the amount of the appellant's July 2013 income assistance. The panel also finds that the legislation relating to the family bonus supplement does not provide for any other repayment alternative, such a repaying the amount owed through a \$20/month deduction from income assistance.

The panel therefore finds that the ministry's decision, which denied the appellant's request to repay a family bonus supplement in \$20 monthly payments and instead determined that the backdated amount of family bonus the appellant received in May 2013 was unearned income to be deducted from her July 2013 income assistance, was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision.