

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of June 11<sup>th</sup>, 2013 wherein the ministry determined the appellant had earned income that was not reported to the ministry as required under section 33 Employment and Assistance Regulation (EAR) and the appellant is now liable to repay the overpayment to the government as stated in section 27(1) Employment and Assistance Act (EAA).

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), section 11, 27  
Employment and Assistance Regulation (EAR), section 1, 10, 33

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Ministry form dated May 2<sup>nd</sup>, 2013 – confirmation of earning;
- Wage subsidy obligation form signed by appellant on May 19<sup>th</sup>, 2011;
- Ministry letter to appellant dated May 23<sup>rd</sup>, 2013 advising him of file review;
- Letter from appellant to ministry dated May 30<sup>th</sup>, 2013;
- Ministry overpayment chart;
- Invoice dated June 30<sup>th</sup>, 2011 for vehicle repairs totaling \$597.08
- Cheque history report showing support cheque issued to appellant for month July 2011 to October 2011 issued in amount of \$585/month;

On May 23<sup>rd</sup>, 2013 the ministry wrote the appellant advising a review of his file had been conducted on income assistance he had received between July 1<sup>st</sup>, 2011 and October 31<sup>st</sup>, 2011. The ministry advised the appellant A Confirmation of Earnings report completed by his employer showed that the appellant had received employment earnings in May 2011 of \$557.35; June 2011 of \$1,253.22; July 2011 of 1,297.43 and August 2011 of \$1148.94 which had not been reported to the ministry. The review revealed that since the appellant did not report his employment earnings this resulted in the appellant receiving \$1,727.34 in income assistance that he was not eligible to receive and funds he is required to repay to the government. The Overpayment Chart provided by the ministry showed the appellant received income assistance of \$585.00 each month for months of July, September and October in 2011. He was not paid income assistance in August 2011.

The appellant had signed a Wage Subsidy Participant Program agreement on May 19<sup>th</sup>, 2011 which provided him with employment from May 11<sup>th</sup>, 2011 to August 31<sup>st</sup>, 2011 as a hotel maintenance worker. The agreement outlined the appellant's contractual obligations to the Province of British Columbia (BC) and the employer. Should the employee (appellant) quit his position for any reason other than just cause or be dismissed, this could affect his eligibility for Employment Insurance Benefits as well as future participation and / or ability to access programs of the Province of BC. The participant understood that the results of the wage subsidy agreement would be reported to the local Employment Services office, and then be entered into the Province of BC accessible management systems. During the period of this 2011 program the appellant had earnings in May of \$557.34; in June of \$1,253.22; in July of \$1,297.43 and in August of \$1,148.94. The intent of the program was to provide full-time employment at the end of the contract. The appellant did not receive assistance in August 2011.

The ministry did not attend the hearing and, being satisfied the ministry was notified of the date and time, the hearing proceeded under section 86(b) EAR.

At the hearing, the appellant testified that he had been on income assistance for several years and wanted employment. He testified that he was employed on a work subsidy program from early May until end of August 2011. Initially the appellant was working inside the business but later found that all his work would be outside and that he required transportation to take him from worksite to worksite. The appellant testified that he had a vehicle but it needed some repair so his father assisted him with some of the repairs but he needed the July income assistance cheque in order to have the other repairs done. The appellant testified that he knew he was bending the rules but only did what he needed to do and he needed the July assistance cheque in order to have the necessary repairs done and have a reliable vehicle. The appellant testified the repairs were safety related and could not wait; that all the money he received from the July assistance cheque (\$585) went to fixing his car. The appellant testified he needed his vehicle on a daily basis for transportation from worksite to worksite and to satisfy the work subsidy program and the agreement that he signed. The appellant testified that he didn't think he would be back on assistance (welfare) as he had arranged another job interview before this contract was completed but the interview was not successful. The appellant testified that when his contract ended and he didn't have any employment he went back to the welfare office; he gave them all his papers and

the employment and assistance worker (EAW) completed all his forms. The appellant testified that at the conclusion of the contract he attended a meeting with EA worker and his employer and everyone seemed more concerned about the job ending than anything else. The appellant testified that when he went into the EA office for welfare (assistance) he just gave all his papers to the clerk and she completed the necessary forms for him to receive welfare (assistance). The appellant testified that he had exhausted all his earnings and that he thought that several weeks had passed before going back to the office for assistance.

The panel finds the appellant's testimony is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) of the Employment and Assistance Act (EAA).

The panel makes the following finding of fact:

1. The appellant entered into a Wage Subsidy Program on May 19<sup>th</sup>, 2011 with a term of May 11<sup>th</sup>, 2011 to August 31<sup>st</sup>, 2011;
2. The appellant received employment earnings in May 2011 of \$557.34; in June 2011 of \$1,253.22; in July 2011 of \$1,297.43 and in August 2011 of \$1,148.94.
3. The appellant received assistance of \$585.00 each month for the month of July, September and October of 2011. He did not receive income assistance in the month of August.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant received an overpayment of income assistance benefits because the appellant had unearned income that was not reported to the ministry (section 33 EAR) and the appellant is now liable to repay the overpayment to the government as stated in section 27(1) EAA.

The legislation considered:

### Employment and Assistance Act

#### Overpayments

##### Section 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*].

### Employment and Assistance Regulation

#### Definitions

Section 1(1) In this regulation:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed (B.C. Reg. 197/2012)
- (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;

#### Limits on income

##### Section 10

(1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

#### Monthly reporting requirement

##### Section 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, (BC Reg. 334/2007)
  - (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. (B.C. Reg. 85/2012)

In the reconsideration decision the ministry argued that a review of the appellant's file in 2013 revealed that he had employment earnings from May 2011 to August 2011 inclusive that were not reported. The ministry argued that for the income assistance months of July, September and October 2011, the appellant was eligible to receive some income assistance in July but was not eligible for income assistance in September and October because he did not declare the earned income he received during the months of May, June, July and August. The ministry argued that section 33 EAR requires the appellant to report any changes to his income by the 5<sup>th</sup> day of the following month and the appellant did not report his earnings so these earnings were not deducted from his rate of income assistance. The ministry argued that since the appellant did not report the changes in his income the appellant received \$1,727.34 in income assistance that he was not eligible to receive and that he is liable to repay these funds to the government as set out in section 27(1) EAA.

The appellant argued that he did not report the employment earnings from the wage subsidy program because his intention was to gain full-time employment from the program and not be on assistance. The appellant argued that he needed the funds from the July assistance cheque to repair his vehicle and he needed his vehicle to fulfill the contract that he had signed. The appellant argued that when the interview for employment failed and he had exhausted all his funds he went back to the welfare office. He argued that when he went back to the office he gave the EAW all his employment papers and responded to all the questions; that the EAW completed the forms and then he received the money. The appellant argued the EAW seemed more concerned about the job and what had happened than anything else.

Section 33(1) EAR states that 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, (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; ... .

The issue for the panel is the appellant's obligation to report his employment earnings which then impacts on the appellant's eligibility for income assistance. The appellant received employment earnings in May, June, July and August of 2011 and he received income assistance in June and July whilst employed and in September and October after his employment ended. The ministry argued the employment earnings must be reported as income (as set out in section 33 EAR) so the ministry can determine his eligibility for income assistance and because the ministry works two months after the fact his earnings in May affects his eligibility for income assistance in July and so on; June affects August; July affects September and August affects October. The appellant argued that he did not consider himself on income assistance while he was employed and that he was not aware that his monthly employment earnings needed to be reported to the ministry.

The evidence is that the appellant participated in a wage subsidy program from May 2011 until August 2011 from which he received employment earnings. The ministry will then apply the reported income to determine an applicant's eligibility for income assistance and when, as in this matter, the income was not reported the ministry issued the income assistance cheque. During this same period the appellant was employed he continued to receive income assistance except for the month of August and once his employment ended he returned to the ministry office (in September) seeking income assistance. There was no evidence provided to the panel to explain why the appellant was not issued income assistance for August 2011. The appellant testified that he knew he was not eligible to receive income assistance for the month of July 2011 because he was working but when the income assistance cheque was deposited into his bank account he utilized these funds to assist him with the needed repairs to his vehicle which he used for transportation on his job.

The panel finds the appellant is compelled to comply with the criteria set out in section 33 EAR to report

changes in family income by 5<sup>th</sup> day of the month and the evidence supports that the appellant had earned income (employment earnings) for the months of May, June, July and August of 2011 which was not reported to the ministry. The panel finds that because the ministry works two months after the fact the appellant's employment earnings in May will affect his eligibility for income assistance in July; June's income will affect his eligibility for income assistance for August and so on. The appellant testified that he has been on income assistance for several years and that he had received assistance in July 2011 knowing that he was not eligible to receive income assistance for that month.

The panel finds the impact of the appellant not reporting his employment earnings to the ministry resulted in the appellant receiving income assistance in July, September and October of 2011 for which he was not eligible to receive.

The panel finds that the ministry reasonably determined that the appellant received income assistance in July, September and October of 2011 for which he was not eligible and therefore the ministry's decision that this overpayment must be repaid to the government as set out in section 27(1) EAA is reasonable.

Section 27(2) EAA states the decision about the amount a person is liable to repay is not appealable.

The panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.