

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 16 October 2013 that held that the appellant received an overpayment of income assistance from October 2011 through July 2013 due to assets in excess of the prescribed limits. The ministry held that the balances in the appellant's Tax Free Savings Account (TFSA) exceeded the appellant's allowable \$2500 asset limit up to September 2012 and the \$4000 asset limit effective October 2012. As a result the appellant was ineligible for income assistance from October 2011 through July 2013. The ministry determined that, pursuant to section 27 of the *Employment and Assistance Act* and the ministry's policy respecting overpayment due to undeclared asset, the appellant must repay the maximum value of the asset during that period, specifically \$6017.13.

PART D – Relevant Legislation

Employment and Assistance Act, sections 11 and 27.
Employment and Assistance Regulation, section 1 and 11.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. From the ministry's files, as set out in the appellant's Request for Reconsideration:
 - The appellant is a single recipient of income assistance with one dependent child:
 - She applied for assistance in September 2011. At that time she disclosed that she had a TFSA with the balance of \$1029.82, within the then asset limit of \$2500.
 - On 13 October 2011, \$1998.21 was deposited into the appellant's bank account. On the same date \$1700 was transferred to her TFSA. The appellant had disclosed to an investigative officer that these funds were partially from her sister regarding an ICBC settlement her sister had received. The ministry would consider these funds as unearned income to be reported as income in the month received. As of 30 November 2011, the TFSA balance was \$2738.06.
 - On 18 January 2012 \$2200 was deposited into the TFSA. A letter submitted by the appellant confirms these funds were from her father from her grandmother's estate and were to be used for her son's education. This deposit was considered by the ministry as unearned income, to be reported in the month received.
 - Additional deposits to the TSFA were made on 01 June 2012 for \$504.80, 20 July 2012 for \$250 and 28 September 2012 for \$250. These funds were from the sale of household goods and a Child Tax Benefit (CBT) and are exempt and were not considered as income.
 - The appellant's TFSA balance on 31 July 2013 was \$6017.12
2. Financial statements:
 - Bank account statements for July and August 2011
 - Bank account statement for September 2011, showing an end-of-month closing balance of \$1,053.02 after a Province of BC deposit of \$945.58 on 21 September.
 - Bank account statement for October 2011, showing a deposit of \$1998.21 on 13 October and a withdrawal of \$1700.00 the same date.
 - A Service Canada cheque statement showing information processed as of 21 June 2011: Canada child tax benefit -- \$619.66 and National child benefit supplement -- \$1046.50; attached cheque amount -- \$1666.16. The monthly total of the two benefits was \$281.24.
 - TFSA transaction history reports for the period 21 April 2011 (initial deposit of \$1000) until 15 July 2013, including the deposits noted in para 1. above, and withdrawals of \$500 on 02 March 2013, \$526.36 on 22 April 2013, and \$1000 on 15 July 2013. A ministry note on the report indicates the July 31 closing balance of \$4015.21.
 - TFSA cash withdrawal request dated 13 August 2013, for \$1000.
 - A ministry over-payment chart prepared 11 September 2013, showing total assistance paid since November 2011 amounting to \$20952.72, with eligible amounts of \$00.00 monthly.
3. A letter from the appellant's father stating that he gave his daughter \$2200 to be used for her son's education fund on behalf of his mother's estate this money was given to the appellant in December 2011 to be deposited into a fund for her son's education as per her grandmother's wishes in her last will and testament.

- [REDACTED]
4. The appellant's Request for Reconsideration dated 30 September 2013. The appellant writes that when she applied for income assistance she was told by one of the ministry workers that if she wanted to keep her TFSA, she needed to have a note written by her stating that her son would be the sole beneficiary of the account. This she did. She attaches a note on her bank's TFSA file dated 14 September 2011 which states: "this tax-free savings account has been set up intended that [name of son] be the sole beneficiary. I have an appointment at the bank to do so this afternoon." She goes on to write that she was never told of an asset limit on the account and believed that she could put money into the account without penalty. Otherwise she would have invested differently. As of 05 September 2013, she has set up a RESP for her son.

The appellant also refers to the \$2200 that came from her grandmother's estate, referring to the letter from her father. She also states that she received a lump sum of \$1666.16 that was a Child tax benefit, which was a back payment because she did not register her son with a birth certificate until about six months after he was born with and while it was issued to her in July, when she was not yet on assistance she did not receive the cheque until October when she went back to another province visit her parents. She writes that she deposited \$1998.21, which she states was exempt from taxation because it was a child tax benefit for the January to September 2011 period, \$1700 of which she deposited into her TFSA.

In her Notice of Appeal dated 31 October 2013, the appellant gives as Reasons that she was misinformed when she started up her TSFA and there is an error in calculating the overpayment.

At the hearing the appellant reviewed the history of her TFSA, referring to documents in the Appeal Record. In her presentation and in answer to questions she provided the following information:

- She set up the TFSA in April 2011 with \$1000 with money earned from her work at that time.
- When she applied for income assistance in September 2011, she disclosed the existence of the TFSA. She stated that at that time a ministry worker advised her to make her son the beneficiary of the TFSA. This she proceeded to do. She was given to understand that this would exempt the TFSA from any problems with her receiving income assistance, though she did not realize that there was an asset limit and the amount of that limit.
- As she did not register her son with the birth certificate until about six months after he was born, it took some time for her to get her child tax benefit entitlements. The cheques were sent to her parents' home in another province. When she visited there in October 2011 the cheques were waiting for her and she deposited \$1700 of those funds into her TFSA. She acknowledged that she did not disclose this income or the transfer into the TFSA on her monthly report, believing that it was tax-free income that did not have to be disclosed to the ministry.
- The \$2200 cheque from her grandmother's estate was given to the appellant at Christmas 2011 when she went home to visit her parents. She was told that this was a gift from her late grandmother to be used for her son's education. She stated that she deposited this money into the TFSA. She was not aware at this point that there was any issue with her TFSA and regarded it as a safe and appropriate way for her to put money away for her son. She acknowledged that she did not disclose this amount or the transfer into the TFSA on her monthly report. She stated that at some point she had been told by an advocate that there was provision for a one-time-only exemption for a gift

The ministry stood by its position at reconsideration, emphasizing that the reconsideration decision addressed only assets in excess of prescribed limits and the resulting overpayments, not failure to report.

The panel finds that the new information provided by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration, clarifying the chronology and circumstances surrounding the TFSA. The panel therefore admits the appellant'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's decision that the appellant must repay an overpayment of income assistance is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry determined that the appellant received an overpayment of income assistance from October 2011 through July 2013 and, pursuant to section 27 of the *Employment and Assistance Act* and the ministry's policy respecting overpayment due to undeclared asset, must repay the maximum value of the asset during that period, specifically \$6017

The relevant legislation is set out in the *EAA*:

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*].

And from the *EAR*:

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;

Asset limits

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

[a list of eligible classes of assets, including the following:]

- (e) a Canada child tax benefit;
- (ff) funds held in a registered education savings plan;
- (hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (ss) a tax refund;
- (tt) a BC basic family bonus.

[funds in a tax free savings account are not included in the list, nor is the National child benefit supplement]

(2) A family unit is not eligible for income assistance if any of the following apply:

- (a) subject to paragraph (c), a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$2 000 [*\$1500 before October 2012*];
- (b) subject to paragraph (c), an applicant or a recipient has one or more dependants and the family unit has assets with a total value of more than \$4 000 [*\$2500 before October 2012*];

Note: Section 11 in effect before October 2012 differentiated between applicants and recipients and provided for limits on the total value of assets and on the value of cash assets]

Ministry policy:

Overpayment due to undeclared asset

When calculating an overpayment due to an undeclared asset which is in excess of the allowable asset limit, the amount of the overpayment is the lesser of:

- the maximum value of the asset during the overpayment period, or
- the amount of assistance received during the overpayment period

The overpayment period is the time period in which the asset exceeded the allowable asset level.

The position of the ministry is that, after reviewing the TFSA statements and the ministry's calculation of the balances each month, it finds that the appellant's TSFA balances exceeded the ministry's allowable \$2500 asset limit amount up to September 2012 and the \$4000 asset limit amount effective October 2012. As a result the appellant was ineligible for income assistance from October 2011 through July 2013, resulting in an overpayment which the appellant is liable to repay. Under the ministry's overpayment due to undeclared asset policy, the amount repayable is \$6017.13.

The appellant's position is that she was misled about, or at least not informed of, the asset limit provisions relating to how income assistance works. Since the funds involved are intended to benefit her son, she felt she was acting responsibly by investing the funds in TFSA and naming him as the beneficiary. She acknowledges that she did not disclose receipt of these funds, believing they were not considered income.

Panel findings

The evidence, undisputed by the appellant, is that when she applied for income assistance in

September 2011, she owned a TFSA valued at \$1000 plus interest. While in receipt of income assistance, in October 2011 she deposited Government of Canada cheques of almost \$2000, representing back and current Canada Child tax benefit and National child benefit supplement entitlements, and deposited \$1700 of that into her TFSA. This brought her TFSA to \$2700 plus interest, or an amount in excess of the \$2500 asset limit applicable at that time to a recipient of income assistance with a dependant. In December of 2011 she received an inheritance from her grandmother of \$2200, which she deposited into her TFSA, bringing the total to \$4900 plus interest. This amount exceeds the asset limit of \$4500 that came into effect in October 2012. With interest and subsequent deposits, the value of her TFSA reached \$6017.13 in July 2013.

The panel notes the following:

- Section 11(2)(b) of the EAR makes clear that the asset limit applies to the family unit, in this case the appellant and her son.
- A TFSA is a "cash asset," as it is readily payable in cash on demand to the account holder. A TFSA beneficiary does not own or control the TFSA. A beneficiary such as the appellant's son is named on the TFSA for him to receive the proceeds of the TFSA upon the account holder's death.
- A TFSA is not an exempt class of asset under section 11(1) of the EAR.
- A Canada child tax benefit is an exempt class of asset under section 11(1)(e) of the EAR. The 20 July 2011 Government of Canada cheque for \$1666.16 included an amount of \$619.64 of current (July 2011) and retroactive Canada child tax benefit. (The balance was an amount for current and retroactive National child benefit supplement, not an exempt class of asset. This supplement is the federal portion of the family bonus. Prior to October 2012 backdated family bonus payments were considered unearned income.) The October 2011 bank deposit of \$1998.21, out of which the \$1700 was deposited into the TFSA, included this amount and subsequent child benefit amounts up to September 2011. However, the legislation reads "a Canada child tax benefit" (emphasis added), which the panel takes to mean a month's entitlement, not an accumulation of such payments, or retroactive payments, in an account.

Based on the foregoing, the panel finds that the ministry's decision that the appellant must repay an overpayment of income assistance from October 2011 through July 2013 is reasonably supported by the evidence. The panel therefore confirms that part of the ministry's decision.

Pursuant to section 27(2) of the *EAA*, the panel has no jurisdiction over the amount that the appellant is liable to repay. The panel will therefore not make a determination in this respect.