

## 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 26 February 2014 that found that the appellant had received \$235 in income assistance for February 2014 for which she was not eligible and pursuant to section 27 of the *Employment and Assistance Act* she is required to repay this amount to the government. The ministry had found that the appellant was not eligible for assistance pursuant to section 16 of the *Employment and Assistance Regulation*. The ministry had determined that the appellant was enrolled as a full-time student in an unfunded program of studies at a university without prior approval from the ministry and therefore was not eligible for February income assistance.

## PART D – Relevant Legislation

*Employment and Assistance Act* (EAA), section 27

*Employment and Assistance Regulation* (EAA), sections 1 and 16

*Canada Student Financial Assistance Regulations* (CSFAR), section 2

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. A Student Schedule/Bill from the appellant's university for Winter 2014, showing enrollment in 3 courses. Course numbers are in the range 001 to 099.
2. An (undated) university Adult Course Planner completed by the appellant, showing current (Winter term – 3 courses) and planned course enrollment, leading first to a Dogwood Diploma first and secondly to a social work certificate or degree.
3. From the ministry's files, as set out in the appellant's Request for Reconsideration and in the reconsideration decision:
  - 03 February 2014 – the appellant attended the ministry office. She requested assistance with funding for courses at a university. The worker requested all documents relating to what type of school she was attending and how this was funded in order to determine her continued eligibility for assistance
  - 07 February 2014 – the appellant submitted confirmation to the ministry that she was attending an ABESAF (Adult Basic Education Student Assistance Program) unfunded upgrading program. She stated that she was no longer attending the EPBC (Employment Program of BC) program and that EPBC was not willing to support her educational goals so she had applied for the upgrading on her own. She advised that EPBC had told her that they would be closing her file.
  - 11 February 2014 – the ministry supervisor reviewed her file. She was advised that as a result of being enrolled as a full-time student in an unfunded program of studies without the ministry's prior approval, she was ineligible for assistance from the first day of the month following her school start date. Therefore since she began her upgrading on 06 January 2014, she was ineligible for assistance effective 01 February 2014. As a result, she had an overpayment of \$235 for the support she had received for February 2014.
4. The appellant's Request for Reconsideration, dated 13 February 2014. Under reasons, the appellant writes that she will be focusing on finding a full-time job. The reason she is disturbed by the decision is because she had a case manager recommended by the ministry who never worked with her if there was something she could have done – for example, a program to follow to gain credits to a GED, as she had told the case manager two months prior to her starting school. The case manager could have at least told her the consequences. She wants to become a social worker. The semester is over at the beginning of March. She asks to at least let her finish that and for the ministry to continue to support her [final line unreadable].

In her Notice of Appeal, dated 05 March 2014, the appellant writes that she had told numerous workers about her circumstances and going to school. She asks why they have continued to help her if they knew the circumstances. She is in a desperate situation. She shall and can find a job but needs time. This is a stressful matter for her.

At the hearing, the appellant stated that her university did not consider her a full-time student, but if it is determined that she was, she would accept that and repay the amount owing.

The ministry stood by its position at reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision, that the appellant had received \$235 in income assistance for February 2014 for which she was not eligible and pursuant to section 27 of the EAA she is required to repay this amount to the government, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the EAA:

### 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:

"**full-time student**" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

### Effect of family unit including full-time student

- 16** (1) A family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student
- (a) in a funded program of studies, or
  - (b) in an unfunded program of studies without the prior approval of the minister.
- (2) The period referred to in subsection (1)
- (a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and
  - (b) is not longer than one year

And from the *Canada Student Financial Assistance Regulations* (CSFAR):

**2.** (1) In the Act and these Regulations,

"course"

"course" means formal instruction or training that constitutes, or is determined by a designated educational institution to be equivalent to, an essential element of a program of studies at a post-secondary school level at that institution, but does not include any formal instruction or practical training required for acceptance in a professional corporation or for the practice of any trade or profession unless that formal instruction or practical training is necessary to obtain a degree, certificate or diploma from that designated educational institution;

"full-time student"

“full-time student” means a person

- (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute
  - (i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
  - (ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,
- (b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and
- (c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be.  
[These references relate to eligibility for obtaining a direct loan, continuing to be or again becoming a full-time student and obtaining a Canada student grant.]

The position of the ministry, as set out in the reconsideration decision, is that the appellant is enrolled as a full-time student in an unfunded program of studies at a university without prior approval from the ministry beginning on 06 January 2014. Pursuant to section 16 of the EAR, she was ineligible for assistance effective 01 February 2014. As a result she received \$235 in income assistance for February 2014 and was not eligible for. Pursuant to section 27 of the EAA she is required to repay the \$235 to the government.

The appellant's position is that her university does not consider her a full-time student but, if it is determined that she was a full-time student, she will accept that and repay the amount owing.

#### *Panel findings*

In a decision dated 28 March 2014, the Tribunal determined that, as the appellant was not enrolled in post-secondary school level studies, and as section 16 of the EAR applies only to a “full-time student” under the meaning of the CSFAR – that is, a student in a program of studies at a post-secondary school level – the ministry’s decision that the appellant was not eligible for income assistance pursuant to section 16 of the EAR was not a reasonable application of the legislation in the circumstances of the appellant. The Tribunal therefore rescinded the ministry’s decision.

As the Tribunal found that the appellant was not ineligible for income assistance under section 16 of the EAR, the panel finds that the ministry’s decision that there was an overpayment in that respect pursuant to section 27 of the EAA is not a reasonable application of the legislation in the circumstances of the appellant. Therefore the panel rescinds the ministry decision.