

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 27, 2014, which held that the appellant was ineligible for Income Assistance (IA) from September 2011 to December 2011 as a result of being detained in a lawful place of confinement pursuant to section 15(a) of the Employment and Assistance Regulation (EAR), and consequently, he must repay the IA that was paid out to him pursuant to section 27 of the Employment and Assistance Act (EAA) for this period.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) – section 11 and 27.

Employment and Assistance Regulation (EAR) – section 15(a).

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consists of:

1. 1-page letter from the appellant, signed and dated October 6, 2014, which states that he is sorry for the over payment of his child, the bank has stated that someone cashed his cheques, it is not his signature [on the cashed cheques] as he was incarcerated at the time, his account was closed while there was still monies owing, and the bank has no footage of the fraud;
2. 7-page bank account history dated from June 1, 2011 to October 6, 2014;
3. Request for Reconsideration, signed and dated October 10, 2014, which states "It was not me who signed these cheques while in jail;
4. 10 cashed cheque stubs:
 - Date August 22, 2011 with no signature on the back;
 - Date July 27, 2011 with no signature on the back;
 - Date November 24, 2010 with a signature on the back that appears to match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014;
 - Date December 15, 2010 with no signature on the back;
 - Date January [?], 2011 with a signature on the back that does not appear match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014;
 - Date October 5, 2011 with a signature on the back that does not appear match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014. This cheque is in duplicate copies;
 - Date October 28, 2011 with a signature on the back that does not appear match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014;
 - Date November 23, 2011 with a signature on the back that does not appear match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014;
 - Date December 21, 2011 with a signature on the back that does not appear match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014;
 - Date January 25, 2012 with a signature on the back that does not appear match that which is on the Request for Reconsideration and 1-page letter dated October 6, 2014.

On the Notice of Appeal, signed and dated November 12, 2014, the appellant states that he was in jail and did not take out any monies or give permission for anyone to do so. He had fraud committed on his bank account and never signed any stubs to receive cheques from the ministry.

Prior to the hearing, the appellant submitted the following:

1. Release of Information form, signed and dated November 20, 2014;
2. 12-page package which included:
 - 1-page letter dated December 10, 2014 from his advocate requesting all submitted and signed SD81 monthly stubs for the period of September 2011 to February 2012;
 - 2 blank pages;
 - 9 pages of Trust Account Statement from the Ministry of Justice dated from April 7, 2009 to October 17, 2013, which shows the credits and deposits into the appellant's prison bank account.

At the hearing, through his advocate, the appellant stated the ministry has errors in two ways. First, the ministry has misapplied the overpayment legislation. Second, he is concerned that the ministry has breached disclosure law by not providing him with the monthly reporting cards, which were

signed and submitted between August 2011 and December 2011, as they are legal documents. He also stated the following:

- He was in prison from the period of August 2011 to December 2011 and the ministry can verify this as it received a report in March 2012;
- The ministry is not seeking repayment for the cheques issued for January and February 2012 because they were cashed at institutions other than his bank. This shows that the ministry acknowledges that some form of fraud took place therefore the entire period in question should be exempt from repayment;
- The ministry also acknowledges that for the period in question, the cheques had a signature of someone other than him but has not considered 3rd party fraud;
- His bank account was declared dormant and closed in August 2012 and he was in prison from August 2011 to January 2013;
- If he was instructing someone to cash his cheques, why then stop only 1/3 into his sentence;
- When asked about the pin number to his bank card, the appellant stated he did not share this information with anyone else;
- When asked, the appellant verified that his signature is on the cheque dated November 24, 2010 and that he does not recognize the signature(s) on the other cheques;
- When asked, the appellant stated that he did receive money while in prison from outside sources and that this practice is allowed;
- Will the responsibility always fall on the appellant, especially since the ministry should have clued in to something not right in October 2011?; and
- Identity theft is not uncommon anymore, it is easy to get someone's pin number these days and is not simply explained by the notion that the he must have given his pin number out. He has contacted the police and has a file number but no report.

At the hearing the ministry relied on its Reconsideration Decision and added:

- Monthly reporting cards are only consulted if there is suspicion or doubt;
- Doubt did not arise because the cheques were deposited in the same bank account as they had been in the past;
- The bank has security measures to prevent fraud;
- Any changes to the appellant's circumstance must be reported by the appellant, even if that is from prison;
- In October 2011, his cheque was held back because a reporting card was not received. Then the reporting card and a Person with Persistent Multiple Barriers application were submitted and the cheque was released, therefore someone must have been actively pursuing the funds; and
- When asked the ministry representative did not have with him the reporting cards for the period in question that were signed and submitted to the ministry.

Admissibility of New Information

The ministry did not object to the admission of the new information. The panel found that the Ministry of Justice bank account provided information regarding how much money the appellant received while in prison. The panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which held that the appellant was ineligible for Income Assistance (IA) from September 2011 to December 2011 as a result of being detained in a lawful place of confinement pursuant to section 15(a) of the Employment and Assistance Regulation (EAR), and consequently, he must repay the IA that was paid out to him pursuant to section 27 of the Employment and Assistance Act (EAA) for this period, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

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.

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
- (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.

EAR

Effect of being in prison or other lawful place of confinement

- 15** A person is not eligible for income assistance or supplements while the person
- (a) is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp.

The Ministry's Position

The ministry's position is that the appellant received funds that he was not eligible to receive because he was incarcerated at the time and that these funds were deposited into his bank account. The ministry argues that because the IA cheques were deposited into his account, he was in receipt of the funds when not eligible and therefore is required to repay the funds. The ministry argues that there are security measures attached to a bank account including personal information and a security code which would have to be shared to allow someone to be able to deposit his personal cheques into his personal bank account while he was incarcerated. Since the January and February 2012 cheques were not deposited into his personal account, the ministry has insufficient evidence to confirm that he received this income assistance.

The Appellant's Position

The appellant's position is that someone deposited his IA cheques without his knowledge and permission while he was incarcerated, and that he should not be held accountable for these funds. He argues that the ministry misapplied the overpayment legislation and did not disclose to him the monthly reporting cards they received while he was incarcerated. He also argues that the ministry states that not enough evidence exists to claim that he received IA in January and February 2012 and that is proof that 3rd party fraud took place. The ministry should have known that fraud was taking place because the signatures on the monthly reporting cards and cashed cheques were not his and should have stopped issuing the cheques. Finally, the appellant argues that the ministry has a legal obligation to disclose the reporting cards that were submitted while he was incarcerated.

The Panel's Decision

The appellant argues that the ministry failed to disclose to him the monthly reporting cards that were submitted for August 2011 to December 2011 while he was incarcerated. The panel notes that the appellant made a formal request for this information, through his advocate, in the letter dated December 10, 2014, and that the ministry did not provide the reporting cards up to the date of the hearing or at the hearing. The panel notes that the appellant had an option to adjourn the hearing until he had received all of the information he desired to support his position but chose to proceed. The panel notes that whether or not the ministry is obligated to provide to the appellant with information that was requested is not a matter within the jurisdiction of the panel or an issue at appeal.

Section 15 of EAR states that a person is not eligible for IA while detained in a lawful place of confinement. The ministry argues that from August 2011 to December 2011 the appellant was in prison and therefore he was not eligible for IA. The appellant confirms this to be true. At the hearing, the ministry also stated that it is the appellant's responsibility to inform the ministry of any changes to his circumstances. The appellant offered no position on this. The panel considers the appellant's prison trust account, which shows that the appellant regularly made payments to his prison phone card and therefore had access to a phone to inform the ministry of his incarceration. The panel finds that, pursuant to section 11 of the EAA, it is the appellant's responsibility to report any changes to his circumstances and that, in the circumstances of the appellant, he had the means to do so. As a result, the panel finds that the ministry reasonably determined that the appellant was not eligible for IA for the period of August 2011 to December 2011 due to being detained in a lawful place of confinement pursuant to section 15 of the EAR.

Section 27 of the EAA states that if IA is provided to a recipient who is not eligible, the recipient is liable to repay the amount or value for the period in which the overpayment was received. The ministry argues that since the IA cheques were deposited into the appellant's bank account he was in receipt of the IA and the bank account has security measures to prevent access to the account unless specific personal information is provided. Also, ministry determined that the appellant is not responsible for repayment of IA cheques for January and February 2012 as these cheques were not deposited into his bank account and therefore it cannot be established that he was in receipt of these funds. The appellant argues that someone fraudulently used his bank account to cash his IA cheques when he was incarcerated and that he did not provide his personal information or give

permission to anyone to use his bank account. He states that identity theft took place and he should not be held responsible for it because he did not receive the money and his Ministry of Justice bank account shows that no deposits of substantial amounts were made from outside sources. However, the panel notes the appellant has not provided evidence that establishes that his identity was stolen or that due identity theft areas, other than his bank account as it pertains to his IA, were affected. He stated that he has a file number from a police report but he did not provide the actual police report or the details of the extent of the identity theft. The panel also considers the appellant's bank statements, which show that when the IA cheques were deposited, the funds were not withdrawn immediately or in a large sum. Rather, the statements show a pattern of consistent banking interactions. As a result, the panel finds that the ministry reasonably determined that the appellant was in receipt of the IA funds from August 2011 to December 2011 and is liable to repay those funds pursuant to section 27 of the EAA.

Conclusion

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant received IA during a period for which he was not eligible and is therefore liable to repay the amount he received. The panel confirms the ministry's decision.