

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of November 12, 2014 wherein the ministry determined that the appellant received income assistance for which he was not eligible and is required to repay the amount to the ministry as per Employment and Assistance Act (EAA) section 27 because he received non exempt earned income in June 2014 which was not deducted from his august 2014 income assistance.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Sections 1, 4, 11, 27, and 28
Employment and Assistance Regulation (EAR), Sections 1, 28, and 33
Employment and Assistance Regulation (EAR), Schedule B sections 1, 2, 3, and 4

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An overpayment chart dated August 2014 in the name of the appellant. The chart shows the appellant reported earned income in the month of \$404.88. He was granted a \$200 earned income exemption leaving an earned income for August of \$204.88. His assistance amount he was paid for the month was \$535.00, however, he was eligible for \$330.12 resulting in an overpayment of \$204.88.
- Copies of seven paystubs for the appellant. The net pay for pay periods is as follows. Pay period ending:
 - May 30, \$207.21
 - June 13, \$197.87
 - June 27, \$388.66
 - July 11, \$398.21
 - July 25, \$398.21
 - August 8, \$398.21
 - August 22, \$398.21
- An undated letter to the appellant from the ministry stating the appellant failed to declare his June 2014 income resulting in a \$204.88 overpayment. The letter reads that an appointment has been made for the appellant to speak with the ministry but it also reads that an appointment is unnecessary. The letter states the overpayment must be repaid by assessing a deduction from future assistance payments in a minimum \$10 monthly deduction.
- A letter dated November 3, 2014 from the appellant to the ministry. The appellant writes that he did report his June income when he submitted his paystubs for July. He adds that he may not be eligible for the \$204.88 and must repay it, however; he requests that he not be assessed any sanctions or penalties and that his repayment be at \$10 per month. The appellant also writes that the letter he received from the ministry was confusing.

At the hearing the appellant told the panel that in May 2014 he found employment with the help of a provincial employment contractor. At the end of the month he filled out the earnings declaration form attached to his monthly assistance cheque to disclose his employment earnings and placed the form in the night drop-box at the ministry office. On August 5, 2014 at the ministry's request, he provided paystubs for his June and July earnings. He told the panel that when he didn't receive his September assistance cheque at the end of August the ministry told him that his file was under review. He received no assistance cheque for October at the end of September. When he went to the ministry office in the middle of October he was told his file was closed on October 9, 2014 because his income was in excess of the assistance rates. The appellant also stated that he believed the provincial employment contractor was to notify the Ministry of his employment and earnings. He later found that they had not done this.

The appellant told the panel that during his October visit to the ministry office he was told that after his assistance and income was calculated for his June and July earnings it was determined he had received a \$4.00 overpayment but since the amount was small he wouldn't be required to repay the \$4.00 and the ministry would waive any sanctions or penalties. In the following days he received a letter from the ministry informing him that he received an overpayment of \$204.88 and must repay the amount.

The appellant told the panel that he feels his file has been mishandled and the ministry has made

mistakes. He acknowledges he received an overpayment of \$204.88 and, due to the mishandling of his file he feels the balance should be waived and the ministry should provide him a written apology.

The ministry told the panel that when the appellant provided his earnings declaration form at the end of each month he was supposed to attach his paystubs. When the ministry processed his declaration form and discovered the paystubs were missing, the appellant was asked to provide the stubs on August 5. Once all of his employment details were received by the ministry it was determined that he received an overpayment for the month of June of \$204.88. The ministry calculated that his earnings were in excess of the assistance rates for September so he received no assistance cheque at the end of August. The ministry explained that there were no errors made but the delay in discovering the overpayment was caused by the appellant not submitting his paystubs along with the earnings declaration form. The ministry determined the appellant was not intending on misleading the ministry by omitting the paystubs and that it was an "innocent mistake" and therefore the ministry would not assess any sanctions or penalties.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant received income assistance for which he was not eligible and is required to repay the amount to the ministry as per Employment and Assistance Act (EAA) section 27 because he received non exempt earned income in June 2014 which was not deducted from his august 2014 income assistance.

The relevant legislation is as follows:

EMPLOYMENT AND ASSISTANCE ACT

- Interpretation
- 1 (1) In this Act:
"family unit" means an applicant or a recipient and his or her dependants;
- Income assistance and supplements
- 4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.
- 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.
- Liability for and recovery of debts under Act
- 28 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
- (b) deducted in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

EMPLOYMENT AND ASSISTANCE REGULATION

- Definitions
- 1 (1) In this regulation:
"earned income" means
- (a) any money or value received in exchange for work or the provision of a service,
- 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.
- Monthly reporting requirement
- 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, B.C. Reg. 95/2012:
- (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;

Schedule B

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,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Exemption — earned income

3 (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

(2) If an application for income assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance under the *Employment and Assistance for Persons with Disabilities Act* for the calendar month immediately preceding that first calendar month.

(3) Unless otherwise provided under subsection (4) or (5), the amount of earned income calculated under subsection (6)

(a) is exempt for a family unit that qualifies under this section.

(4) The amount of earned income calculated under subsection (6) (b) is exempt for the family unit if

(a) the family unit includes a sole recipient who

(i) has a dependent child, or

(ii) has in his or her care a foster child, and

(b) the child has a physical or mental condition that, in the minister's opinion, precludes the sole recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week.

(5) The amount of earned income calculated under subsection (6) (c) is exempt for the family unit if any person in the family unit is a person who has persistent multiple barriers to employment.

(6) The exempt amount for a family unit that qualifies under this section is calculated as follows:

(a) in the case of a family unit to which subsection (3) applies, the exempt amount is calculated as the lesser of

(i) \$200, and

(ii) the family unit's total earned income in the calendar month of calculation;

The argument of the appellant is that he received an overpayment of \$204.88 but, because the ministry made errors in the handling of his file, the overpayment should be forgiven and he should receive an apology. He also wants any penalties or sanctions to be waived.

The argument of the ministry is that the appellant received an overpayment of \$204.88 that he must repay. The ministry argues that the appellant's file was handled according to ministry processes and the appellant not providing all the employment information as required caused a delay in discovering and calculating the overpayment.

Both parties agree that the appellant received \$204.88 for which he was not eligible and the panel finds the ministry reasonably determined that the appellant received earned income in June and that \$200 was exempt under EAR Schedule B 3(6)(i). The ministry has agreed to waive all penalties and sanctions in this case. The issue that the panel must decide is if the ministry's order to repay the income assistance for which the appellant was not eligible is reasonable.

The panel considered the appellant's argument that he made reasonable efforts to inform the ministry of his employment earnings and the ministry mishandled his file. The panel considered the appellant's testimony that he submitted his earnings declaration form without his paystubs because he didn't know he was supposed to attach the stubs to the form. Once the ministry processed this form they would have required the details of when he earned the income so that they could calculate his earning exemptions based on the legislation. These stubs were requested by the ministry and provided by the appellant. The panel notes that EAR Section 27 requires the recipient of income assistance for which he was ineligible for to repay the assistance to the ministry. The panel was not provided evidence that the ministry acted unreasonably in the appellant's case. The panel finds the ministry was reasonable to determine the appellant must repay the amount of \$204.88.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.