

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated December 12, 2014 in which the Ministry confirmed that the Appellant received income assistance (IA) for which she was not eligible in the August 2013 to May 2014 assistance months because she had earned and unearned income under Schedule B of the Employment and Assistance Regulation (EAR). The Ministry found that the Appellant didn't declare all of the amounts she received and has an overpayment she is required to repay pursuant to section 27 of the *Employment and Assistance Act* (EAA). In its decision, the Ministry stated that based on the information available to the Ministry at the time of the reconsideration it was unable to determine the amount of the overpayment and may request further verification to determine the Appellant's eligibility for assistance.

PART D – Relevant Legislation

*Employment and Assistance Act* (EAA) section 27  
Employment and Assistance Regulation (EAR) section 1, and sections 1, 2, 3, 6 and 7 of Schedule B

**PART E – Summary of Facts**

The evidence before the Ministry at the reconsideration consisted of the Appellant's Request for Reconsideration dated November 4, 2014 with the following documents attached:

**1. The Appellant's banking information:**

**a)** Eight receipts from a bank (Bank A) showing the following transactions and containing the following hand written notations:

**i)** July 12, 2013: "Sept. for July", cash cheque \$212.00 with the notation "E1", deposit \$62.00.

**ii)** August 2, 2013: "Oct. for Aug.", cash cheque \$34.32, deposit \$201.32.

**iii)** September 5, 2013: cash cheque \$434.63, deposit \$203.00 with the notation "of deposit: 31<sup>st</sup> for Oct. 2013".

**iv)** October 3, 2013: "Dec. for Oct.", cash cheque \$639.32 with the notation "IA 639.32 removed"; deposit \$120.71, and a notation at the bottom of the receipt "\$1,120.16 removed".

**v)** October 23, 2013: "Dec. for Oct.", deposit \$200.00 with the notation "deposit cash".

**vi)** (Date illegible): "Dec. for Jan.", cash cheque \$802.31, deposit \$92.57 with the notation "client cash cheque \$802.31, deposit \$92.57, income \$802.31".

**vii)** December 31, 2013: "Feb. for Dec.", deposit \$50.04 with the notation "cash"; cheque \$229.09 with a notation at the bottom of the receipt "Dec. 18 cheque issue".

**viii)** December 4, 2013: cash cheque (illegible) with a notation at the top of the receipt "994.15".

**b)** A receipt from a bank (Bank B) indicating a \$350.00 deposit on January 9, 2014.

**c)** An undated hand written note that stated: "These transactions were made in the (Bank B) account. Her (Bank A) account was closed January 4, 2014. \$190.98 child tax, \$200.00 child tax, \$190.98 child tax".

**d)** A *Chequing Account Statement* from Bank B for the period November 27, 2013 to February 27, 2014 indicating the following deposits and containing the following hand written notations:

- December 9, 2013: \$50.00
- January 6, 2014: \$897.17
- January 9, 2014: \$350.00
- January 24, 2014: \$190.98 with the notation "child tax"
- January 27, 2014: \$200.00 with the notation "child tax"
- February 20, 2014: \$190.98 with the notation "child tax"

**e)** *Account Statement* from Bank B for the following periods:

**i)** December 1 – December 31, 2013 showing a deposit of \$50.00 on December 9, 2013 with the hand written notation "loan removed".

**ii)** January 1 – January 31, 2014 showing the following deposits and hand written notations:

- January 6, 2014: \$897.17 with the notation "pay (employer's name) - income"
- January 9, 2014: \$350.00
- January 24, 2014: \$190.98
- January 27, 2014: \$200.00

iii) February 1 – 28, 2014 showing the following deposits:

- February 14, 2014: \$0.15
- February 20, 2014: \$190.98

iv) March 1 – 31, 2014 showing the following deposits:

- March 7, 2014: \$889.32 with the notation "March IA"
- March 21, 2014: \$5.98
- March 26, 2014: \$689.32 with the notation "Feb. IA"

f) A Ministry Bank Profile form signed by a representative of Bank A on April 23, 2014 with the notations "low fig." under the heading *Value*; and "Account Closed Jan.4/14". A two-page Transaction List is attached showing the following deposits and containing the following hand written notations:

- June 19, 2013: \$15.00
- June 21, 2013: \$4.52
- June 25, 2013: \$212.00 with the notations "EI" and "file open June 25"
- July 5, 2013: \$385.58 with the notation "IA"
- July 12, 2013: \$627.00 with the notation "UP 217"
- August 2, 2013: \$201.32 with the notation "UP 734.32"
- August 28, 2013: \$200.00 with the notations "pay to (illegible)" and "IA"
- September 5, 2013: \$203.00 with the notation "434.63 UP income remove"
- October 3, 2013: \$120.70 with the notation "IA (39.32 add)"
- October 23, 2013: \$405.16 with the notation "IA"
- October 23, 2013: \$200.00 with the notation "c.tax"
- November 2, 2013: \$92.57 with the notations "PUI 802.31" and "802.31 removed income"
- November 20, 2013: \$590.18 with the notation "IA"
- December 3, 2014: \$21.00
- December 4, 2013: \$694.15 with the notation (employer's name)
- December 31, 2013: \$50.04 with the notations "cash" and "see attachment client's"
- December 31, 2013: \$50.00 with the notations "229.04" and "see attachment client's"

2. The Appellant's tax information:

- A 2013 T5007 *Statement of Benefits* indicating \$8,889.17 under Social Assistance payments.
- A 2013 Universal Child Tax Benefit (UCCB) benefit statement indicating \$2,500.00 total benefit paid.
- A 2013 T4 *Statement of Remuneration Paid*, showing employment income of \$3,687.08.
- A 2013 *Tax Return Summary* showing a total income of \$17,938.25 from the following sources: Employment income, UCCB, EI, and Social Assistance payments.
- A UCCB notice indicating a monthly entitlement of \$200.00 per month for the period July 2012 - June 2013.
- A Child Tax Benefit (CTB) notice indicating a monthly entitlement of \$198.74 for the period July 2013 - June 2014.

3. Six pay statements from the Appellant's employer with hand written notations:

a) Net pay of \$339.14 for pay period September 30, 2013 with the notation "No proof of deposit Sept. 30 for Nov. 2013".

- b)** Net pay of \$35.21 for pay period July 31, 2013 with the notations “entered Aug. 5, 2013” and “No proof of deposit July 31 for Sept. 2013”.
- c)** Net pay of \$434.63 for pay period August 31, 2013 with the notations “enter Sept. 5, 201 x 2” and “No proof of deposit Aug. 31<sup>st</sup> for Oct. 2013”.
- d)** Net pay of \$802.31 for pay period October 31, 2013 with the notation “No proof of deposit? Oct. 31 for Dec. 2013”.
- e)** Net pay of \$994.15 for pay period November 30, 2013 with the notations “for Feb. 2014 deposited” and “see bank statement received Dec. 4 deposited for Feb. 2014”.
- f)** Net pay of \$897.17 for pay period December 31, 2013 with the notation “Deposit Jan. 6, 2014 for March 2014, see bank statement”.

**4.** Two Ministry overpayment charts for assistance months August 2013 – May 2014. One chart shows date printed: October 29, 2014. The other chart was printed on November 20, 2014 (the November OPC). At the hearing, the Ministry explained that the relevant chart is the one from November 20, 2014 showing the following amounts:

- a)** Employment Insurance:
- \$212 received on June 25, 2013
  - Declared income \$0.00
- b)** Employment insurance:
- \$212 received on July 23, 2013
  - Declared income \$0.00
- c)** Net earnings
- \$734.32 received on August 2, 2013
  - Declared income \$0.00
- d)** Net earnings
- \$35.21 received on August 5, 2013
  - Declared income \$35.88
- e)** Net earnings
- \$434.63 received on September 5, 2013
  - Declared income \$434.16
- f)** Net earnings
- \$339.14 received on October 4, 2013
  - Declared income \$339.14
- g)** Net earnings
- \$802.31 received on November 2, 2013
  - Declared income \$994.15
- h)** Net earnings
- \$2.00 received on December 3, 2013
  - Declared income \$0.00
- i)** Net earnings
- \$994.15 received on December 4, 2013
  - Declared income \$897.17
- j)** Other unearned
- \$50.00 received on December 31, 2013
  - Declared income \$0.00

**k) Other unearned**

- \$50.04 received on December 31, 2013
- Declared income \$0.00

**l) Net earnings**

- \$279.04 received on December 31, 2013
- Declared income \$0.00

**m) Net earnings**

- \$897.17 received on January 6, 2014
- Declared income \$0.00

**n) Other unearned**

- \$350.00 received on January 9, 2014
- Declared income \$0.00

**o) Other unearned**

- \$190.98 received on February 20, 2014
- Declared income \$0.00

**p) Other unearned**

- \$5.98 received on February 20, 2014
- Declared income \$0.00

**5. Two pages of notes from a Ministry office dated November 19, 2014. The following deposits and type of income were calculated and summarized:**

- September for July: \$62.00 unearned
- October for August: \$201.32 unearned
- October for November: \$203.00 unearned
- December for October: \$120.71 unearned
- December for January: \$92.57 unearned
- February for December: \$2.00 unearned
- December 31<sup>st</sup>: \$50.04 unearned, "on overpayment chart you have December 13<sup>th</sup>, should be 31<sup>st</sup>"
- January 6: \$897.17 "In joint account with (her landlord), she was already in (location name) when he deposited it."

**6. Five Ministry monthly report forms signed by the Appellant on the following dates and containing the declaration "that all of the information provided on this form to the Ministry of Social Development is true and complete":**

**a) August 8, 2013:** The Appellant check marked that she is still in need of assistance and that her employment has changed with the comment "Got evening job." She reported employment income of \$35.21 and National Child Benefit Supplement (NCBS) of \$400.00. The Ministry indicated a "total cheque" in the amount of \$734.32.

On all of the following monthly reports the Appellant check marked that she is still in need of assistance and had no changes in her employment:

**b) October 4, 2013:** She reported employment income of \$434.63, and CTB and NCBS of \$400.00.

**c) October 24, 2013:** She reported employment income of \$339.14 and NCBS of \$400.00.

- d)** November 20, 2013: She reported employment income of \$802.31, CTB of \$200.00 and Basic Family Bonus of \$200.00.
- e)** December 18, 2013: She reported employment income of \$994.15, CTB of \$200.00 and BC Basic Family Bonus of \$200.00.

**7.** A receipt from a transportation company dated November 20, 2013 indicating round trip fare paid: \$110.00, and an undated hand written note to the Ministry from the Appellant in which she stated: "I did not work at (employer's name) in 2014 yet it says I did in January and February"; and "The bus ticket just is proof I wasn't in (location name) on the date the \$50.00 was put into my account as I needed a loan from (landlord's name)."

**8.** Two notes from the Appellant's landlord addressed "To Whom it may concern":

- a)** August 6, 2014: The landlord stated that he deposited \$50.00 into the Appellant's bank account on December 9, 2013 as a loan which the Appellant paid back.
- b)** June 19, 2013: He is charging the Appellant \$660.00 per month for rent.

*Appellant's additional information* (submitted after the reconsideration decision)

**1.** A Notice of Appeal dated December 29, 2014 in which the Appellant stated that \$50.00 was a loan from (landlord's name), and the \$350.00 that was deposited into her account at Bank B was the damage deposit from (residential address) and she is "paying it back already" and has been waiting for her old landlord to provide a cheque. At the hearing, the Ministry noted that it had removed the \$50.00 and \$350.00 deposits from its overpayment calculation.

**2.** A Ministry *Confirmation of Earnings* form for the Appellant dated April 14, 2014 completed by the Appellant's employer and indicating that:

- The Appellant was employed part-time from July 23, 2013 – January 4, 2014.
- The employer did not expect to employ the Appellant during the next 12 months due to voluntary termination, "employee moved".
- The Appellant's net earnings were \$35.21 for July 31, 2013; \$434.63 for August 31; \$339.14 for September 30; \$802.31 for October 31; \$994.15 for November 30; and \$897.17 for December 31. A note at the bottom states: "Includes 12 hours from January 2014."

**3.** Pay statements for pay periods November 30, 2013 and December 31, 2014 and the Appellant's Monthly Report form signed on December 18, 2013. The panel noted that these documents are duplicates of documents in the appeal record, and accepted them accordingly.

The panel finds that the additional information in the Notice of Appeal and the *Confirmation of Earnings* substantiates the amounts the Ministry, at the reconsideration, determined the Appellant had received. Further, the information in the Notice of Appeal identifies the source of two of the deposits and the information in the *Confirmation of Earnings* provides details regarding the dates the Appellant was employed. The panel admits all of the information under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

4. Oral testimony at the hearing in which the Appellant stated she had been fighting the overpayment for some time and it was originally \$6,000.00 but the Ministry reduced it to \$1,000.00. She did not claim her Employment Insurance (EI) (two payments of \$212.00) because the Ministry workers told her not to claim EI as the system would catch it. She stated that she claimed the rest of her earnings including \$994.15 that the Ministry said she did not claim. She stated that she did not receive the \$897.00 cheque for December 2013 until January 2014. She quit her job, went off of IA, and moved to a different area but returned after two weeks and reapplied for assistance. She stated that she told the Ministry she did not need the assistance and that she “claimed late” and did not receive further IA until she reapplied. In response to questions from the panel the Appellant stated that she did not receive her December pay (\$897.17) until January 6, 2014 and her last day of work was January 4, 2014. In response to further questions, she stated that she received a cheque from the Ministry and cashed it (she did not state the amount), and she did not return any cheques to the Ministry.

The panel finds that the Appellant’s oral statements corroborate the Ministry’s information that the Appellant has an overpayment for EI. In addition, they represent the Appellant’s understanding of the time period in which she reported her earnings and received IA. As these matters were dealt with at the reconsideration, the panel admits the Appellant’s statements under section 22(4)(b) of the EAA as submissions in support of the information and records that were before the Ministry at the time the decision being appealed was made.

#### *Ministry’s oral testimony*

At the hearing, the Ministry reviewed its reconsideration decision in which it reported an overpayment of \$3,225.62. However, it stated that it had revised the overpayment for the purpose of the appeal hearing, as the Appellant submitted further documentation after the reconsideration decision and before the hearing. The new overpayment amount is \$1,026.78 based on the following clarifications regarding the bank deposits:

- Two EI deposits (\$212.00 each) remain in the overpayment.
- The Ministry removed \$35.21 (net earnings received on August 5, 2013) from the overpayment because the Appellant declared \$35.88 to the Ministry which is close to the amount she received.
- \$0.47 remains in the overpayment because the Appellant received \$434.63 on September 5, 2013 (net earnings) but she declared \$434.16.
- The Ministry subtracted \$191.84 when calculating the revised overpayment because the Appellant declared more net earnings than she actually received (she received \$802.31 on November 2, 2013 but reported \$994.15).
- \$96.98 remains in the overpayment because the Appellant received \$994.15 (net earnings deposited on December 4, 2013) but she reported \$897.17.
- \$697.17 is included in the overpayment because the Appellant received \$897.17 (net earnings deposited on January 6, 2014) but she reported \$0.00 and was entitled to a \$200.00 exemption for employment income.
- All other deposits (included in the overpayment of \$3,225.62) were removed on the basis of administrative fairness or because they were found to be exempt.

In its oral testimony, the Ministry also noted the following:

- There were no gaps in the Appellant’s IA. When the Appellant quit her job and moved, the



- Ministry kept her file open. They wait one month before closing a client's file and the Ministry computer generated an assistance cheque for the Appellant every month.
- The Appellant did not return any IA cheques to the Ministry.
- The Ministry looks at the date the deposit is actually received to determine the amount of IA entitlement.

In its reconsideration decision, the Ministry noted that the Appellant received IA from June 25, 2013 - August 2014 as a single parent with two dependent children. Her file was closed on October 16, 2014.

The panel makes the following findings of fact:

1. The Appellant's file remained open and she received IA for every month from August 2013 to May 2014.
2. The Appellant did not return any IA cheques to the Ministry.
3. The Appellant did not report all of her net earnings to the Ministry for the dates the deposits were received and she reported some of her net earnings incorrectly.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision that the Appellant received IA for which she was not eligible between August 2013 and May 2014 because she did not declare all of her earned and unearned income under EAR Schedule B, and the Ministry's determination that the Appellant has an overpayment that she is required to repay pursuant to EAA section 27 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant section of the EAA is as follows:

### **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].

The relevant sections of the EAR are as follows:

### **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

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(g) employment insurance;

### ***SCHEDULE B Net Income Calculation***

#### **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,

(a) the following are exempt from income:

(iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;

(v) the basic child tax benefit;

(xxx) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act*(Canada).  
(B.C. Reg. 250/2006)

(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.

### **Deductions from earned income**

**2** The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

(i) income tax,

(ii) employment insurance,

(iii) medical insurance,

(iv) Canada Pension Plan,

(v) superannuation,

(vi) company pension plan, and

(vii) union dues;

### **Exemption – earned income**

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

(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;

### **Deductions from unearned income**

**6** The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

### **Exemptions – unearned income**

**7** (0.1) In this section:

(1) The following unearned income is exempt: (B.C. Reg. 83/2012)

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] of this regulation, if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

(i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation, or

(iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A - B) \times C$ , where  
A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;  
B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of the Act; or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act*(Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*. (B.C. Reg. 57/2003)

(f) a tax refund. (B.C. Reg. 197/2012)

#### *Appellant's position*

In her Notice of Appeal, the Appellant submitted that \$50.00 and \$350.00 deposits in her account at Bank B were a loan from (her landlord) and a damage deposit, respectively. At the hearing, she stated that she does not dispute an overpayment of \$224.00 for EI because she did not claim the two EI deposits of \$212.00 each. However, she claimed everything else that she was entitled to and does not understand why she still owes anything. She argued that she told the Ministry that she did not need IA after January 4, 2014 (her last day worked) because she had quit her job and was moving. She stated that she did not receive further IA until she moved back to her previous location and reapplied for assistance. In addition, she did not receive her December pay until January 6, 2014 and did not get any pay in December. The Appellant's advocate added that they are confused about how the Ministry determined which amounts were claimed and unclaimed and the Appellant claimed everything but the months were wrong. The Appellant acknowledged, however, that she cashed all the cheques that she received from the Ministry.

#### *Ministry's position*

The Ministry argued that the Appellant has an overpayment because she received IA that she was not eligible for due to earned and unearned income. Her bank statements show the dates and

amounts of deposits and the Ministry relied on this information to determine whether she claimed all of her net earnings in the correct amounts as of the dates they were deposited. When the Appellant declared too much in January (she received \$802.31 on November 2, 2014 but reported \$994.15 on her monthly report that was due by December 5, 2013), the Ministry subtracted the difference (\$191.84) from the overpayment. Conversely, when the Appellant declared an amount that was less than the amount she received, or did not report the deposit on the monthly report form by the 5th day of the month following her receipt of the deposit, the Ministry factored the difference between the received amount and the amount declared to determine she had an overpayment.

The Ministry argued that any inaccuracies are the responsibility of the client. When the client signs the monthly report form they are declaring that the amounts reported are true and complete. Further, the Appellant did not have any break in her IA because her file remained opened after she quit her job in early January and temporarily moved away. The Ministry submitted that she still received IA for this period and the net earnings she received on January 6, 2014 (\$897.17 less a \$200.00 exemption) should have been reported by February 5th and affected the Appellant's IA entitlement for March 2014.

#### *Panel's decision*

The panel has the authority to determine whether the Ministry's reconsideration decision was reasonable based on the evidence or whether it was a reasonable application of the legislation. The panel is not authorized to make a new decision or to change the legislation. In its reconsideration decision of December 12, 2014 the Ministry confirmed that the Appellant received IA for which she was not eligible in the August 2013 to May 2014 assistance months. As a result, she has an overpayment that she is required to repay. Section 27(1) of the EAA sets out the requirement to repay IA where it is provided to a family unit that is not eligible for it. In accordance with this section, a family unit is liable to repay IA for the period for which the overpayment was provided.

The Appellant's bank statements and the Ministry overpayment charts show that the Appellant was in receipt of IA for the period August 2013 to May 2014. Her receipts from Bank A and *Account Statements* from Bank B contain notations indicating "IA". They do not indicate who made the notations but the dates correspond with IA payments on the overpayment charts. The Appellant stated that she went off of IA following her brief move in January 2014 and did not receive further IA until she reapplied for it; however, her *Account Statement* from Bank B for March 7, 2014 indicates that she received \$889.32 "March IA". A deposit on March 26, 2014 indicates \$689.32 "Feb. IA". In the November overpayment chart, there is an "Assistance Amt." and an "Eligible" amount recorded for each of the months from August 2013 to May 2014.

Regarding her net earnings deposits, the Ministry found that she had an overpayment for three deposits which remain in its revised calculation of the total overpayment:

a) \$434.63 on September 5, 2014

The receipt from Bank A dated September 5, 2013 shows that the Appellant cashed a cheque for \$434.63. The Ministry's November OPC shows that the Appellant reported \$434.16. The *Confirmation of Earnings* shows that she received net earnings of \$434.63 for the August 31, 2013 pay period. Her monthly report form signed on October 4, 2014 indicates that she reported

\$434.63 so it is unclear why the Ministry recorded a declared amount of \$434.16 resulting in a discrepancy of \$0.47 that remains in the revised overpayment amount.

b) \$ 994.15 on December 4, 2014

The receipt from Bank A dated December 4, 2013 contains a notation indicating the Appellant cashed a cheque for \$994.15. The Ministry's November OPC shows that she reported \$897.17. The *Confirmation of Earnings* shows that she received net earnings of \$994.15 for the November 30, 2013 pay period.

c) \$ 897.17 on January 6, 2014

The *Chequing Account Statement* from Bank B for the period November 27, 2013 to February 27, 2014 shows a deposit of \$897.17 on January 6, 2014. The Ministry's November OPC shows that she declared \$0.00. The *Confirmation of Earnings* shows that the Appellant received net earnings of \$897.17 for the December 31, 2014 pay period.

The panel notes that the Appellant's monthly report forms that correspond with the dates for these latter two deposits are not included with the materials submitted for the reconsideration or appeal. Therefore, whether there are any discrepancies between the amounts the Ministry said were declared and the amounts reported on the monthly forms cannot be determined in this appeal.

The following is an analysis of each of the Ministry's specific determinations in the reconsideration decision and the panel's decision regarding each one.

**a) *The Child Tax Benefit and Universal Child Care Benefit are exempt under section 1 of Schedule B of the EAR and should not be deducted from the Appellant's IA.***

Section 1 of Schedule B of the EAR explicitly exempts the CTB and UCCB from the calculation of a family unit's net income. Clause (v) exempts the "basic child tax benefit" and clause (xxxi) exempts "a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada)." The Appellant's bank statements and tax benefit notices show that she received CTB and UCCB every month (\$190.98/month CTB and 400.00/month UCCB) and she reported these deposits on her monthly report forms. The Ministry noted that the CTB and UCCB deposits are not included in the overpayment, and the panel finds that that the Ministry was reasonable in exempting them in adherence with section 1 of Schedule B.

**b) *A bank deposit for \$50.04 received on December 31, 2014 should not be included in the calculation of the Appellant's IA.***

The Ministry found that \$50.04 was the amount the Appellant deposited after cashing a cheque for \$279.04. Therefore, it is not a separate amount but an amount that was included within the \$279.04 that she received. The Ministry stated at the hearing that it removed the deposit of \$50.04 from the overpayment. The panel finds that the Ministry reasonably determined that the deposit of \$50.04 cannot be clearly identified as earned or unearned income pursuant to EAR section 1.

**c)** *Bank deposits for \$50.00 received on December 31, 2013 and \$350.00 received on January 9, 2014 could not be verified by the Ministry as to their source or whether they are earned or unearned income or an asset.*

In its reconsideration decision, the Ministry noted that EAR section 1 specifically lists the income sources that constitute “earned income” and “unearned income” under the regulation. It stated that the Appellant’s bank account statement and chequing account receipt do not show the source(s) for these deposits and the source of these amounts must be verified in order to determine whether the deposits are earned or unearned income or an asset. At the hearing, the Ministry stated that it removed these amounts from the overpayment. The panel finds that the Ministry reasonably determined that the deposits for \$50.00 and \$350.00 are neither earned nor unearned income under EAR section 1. The panel notes that the Appellant indicated their source (a loan and a damage deposit, respectively) in her Notice of Appeal.

**d)** *Regarding three payments the Appellant received from her employer (from August 2013 to January 2014), the Appellant did not declare one of them, and two were inaccurately declared. The payments meet the definition of earned income under section 1 of the EAR and must be included in the calculation of IA under EAR Schedule B. A \$200.00 exemption, permitted under section 3 of Schedule B, applies to the Appellant’s earned income.*

Subsection 1(1)(a) of the EAR states that “earned income” means “any money or value received in exchange for work”. Subsection 1(c) of EAR Schedule B requires all earned income (except permitted deductions and exemptions set out in the Schedule) to be included in calculating a family unit’s net income when determining the amount of IA the family unit is eligible for. Therefore, all of the Appellant’s net earnings must be declared and accurately reported. As discussed previously, according to the November OPC and the Ministry’s oral testimony, the Appellant did not accurately declare net earnings of \$434.63 and \$994.15, and she did not report net earnings of \$897.17 (less a \$200 exemption under subsection 3(6)(a)(i) of EAR Schedule B).

The documentation indicated that \$897.17 was received on January 6, 2014 and the Ministry stated that it should have been declared by February 5, 2014 for the March 2014 assistance month. Other than the amount reported as “declared” on the November OPC (\$0.00) there is no other evidence regarding when or whether \$897.17 was reported. The Appellant stated that she claimed all of her earnings. The Ministry’s documentation indicates otherwise. The panel finds that the Ministry reasonably determined that the Appellant did not declare all of the earned income she received. The panel further finds that in accordance with subsection 1(c) of EAR Schedule B, it was reasonable for the Ministry to include the undeclared amounts when calculating the Appellant’s IA entitlement.

**e)** *The amount of \$734.32 entered in the Ministry’s overpayment chart as net earnings received on August 2, 2013, is actually IA that was issued by the Ministry and it should not be included in the calculation of the Appellant’s monthly entitlement.*

The Ministry noted that the deposit of \$734.32 does not meet the definition of earned or unearned income. It reported at the hearing that it had removed this amount from the Appellant’s overpayment. The panel notes that IA is not included in the EAR definitions of earned and unearned income in section 1. The panel finds that the Ministry reasonably determined that IA does not meet the definition of earned or unearned income and should not be included in the calculation of the Appellant’s IA entitlement.



**f)** *The source of certain amounts (\$2.00 and \$279.04) entered in the overpayment chart as net earnings received on December 3 and 31, 2013 could not be ascertained.*

At the hearing, the Ministry stated that it removed these amounts from the overpayment on the basis of administrative fairness. The panel notes that these amounts are not indicated on the bank statements provided for the reconsideration or appeal and finds that the Ministry was reasonable in not assessing them as earned nor unearned income as defined in EAR section 1.

**g)** *Employment Insurance received by the Appellant on June 25 and July 12, 2013 is unearned income under section 1 of the EAR and must be included in the calculation of the Appellant's IA.*

Section 1 of the EAR defines unearned income as "any income that is not earned income" and specifies EI benefits in subsection 1(g): "money or value received from employment insurance." The Appellant acknowledged that she received EI payments of \$224.00 that she did not declare and she agreed to have them included in the overpayment. The panel notes that none of the deductions and exemptions listed in sections 1, 6, and 7 of EAR Schedule B include EI benefits. Although section 6 permits an exemption for income tax deducted from EI, the Ministry overpayment charts indicate that the Appellant's EI deposits were the net amount. Thus, in accordance with subsection 1(d) of EAR Schedule B, the panel finds that it was reasonable for the Ministry to include \$224.00 EI when calculating the Appellant's IA entitlement.

**h)** *Under section 27 of the Employment and Assistance Act (EAA), the Appellant is liable to repay the government the amount or value of an overpayment for IA that was provided to her when she was not eligible for it. The Ministry stated that based on the available information, it was unable to determine the amount of the Appellant's overpayment as of the date of the reconsideration.*

As previously stated, EAA section 27(1) requires a client to repay IA where it is provided to a family unit that is not eligible for it. As noted earlier, the evidence indicates that the Appellant did not report her net earnings accurately and completely but she nonetheless accepted IA for the entire period, August 2013 to May 2014, and did not return any cheques to the Ministry. The panel finds that the Ministry reasonably determined that the Appellant received IA for which she was not eligible in the period August 2013 to May 2014 and is liable to repay it pursuant to EAA section 27(1).

Regarding the overpayment, the Ministry provided a revised amount at the hearing and stated in the reconsideration decision that it could ask the Appellant for further verification to determine her eligibility for IA. The panel notes that section 27(2) of the EAA sets out that the minister's decision about the amount a person is liable to repay is not appealable.

### *Conclusion*

The panel finds that the Ministry's reconsideration decision which found that the Appellant received income assistance for which she was not eligible because she did not declare all earned and unearned income under EAR Schedule B, and she has an overpayment that she is required to repay pursuant to EAA section 27, was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel confirms the reconsideration decision.