

### 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 12 May 2015 that determined that the appellant received \$599.17 in income assistance for March 2015 for which she was not eligible and pursuant to section 27 of the *Employment and Assistance Act* is liable to repay that amount.

### PART D – Relevant Legislation

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

Employment and Assistance Regulation (EAR), section 28 and Schedules A and B.

## PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files:

- The appellant has been a recipient of disability assistance with 2 dependent children since 01 April 2015. Before that date she was a recipient of income assistance as a person with multiple barriers to employment (PPMB).
- Her actual shelter costs, including utilities, as shown on her Shelter Information form effective 04 February 2015, is \$375. Her monthly income assistance rate, before applicable exemptions and deductions, was \$798.58 (\$423.58 support + \$375.00 shelter). She was provided this amount for March 2015.
- On 02 April, a ministry worker reviewed the appellant's file and noted pay slips for 02 January 2015 and for 16 January 2015, but that the pay slip for 30 January 2015 had not been submitted nor monies declared. The appellant was advised to submit the missing pay slip. On 08 April 2015 the appellant attended the ministry office and submitted her banking documents for review. The appellant advised that she was of the understanding that she would not receive per final pay in January until 02 February 2015, however the payroll department processed it the earlier without her knowledge.

2. The appellant's pay slips showing net pay of \$411.69 on 02 January, \$329.08 on 16 January and \$358.49 on 30 January 2015, for a total of \$1099.17 received in January 2015.

3. Bank statement showing payroll deposits to the appellant's account in the same amounts as the pay slips for the same dates.

4. Weekly store schedules/employee hours from the appellant's employer, showing daily hours worked by the appellant for each week in December 2014 and January 2015.

5. The appellant's Request for Reconsideration, dated 05 May 2015, in which the appellant writes:

"I respect the decision, but I wish my case to be reconsidered according to the reschedules that I worked from Dec 7/14 to Jan 29/15. This will tell how many hours I worked each month...."

The appellant's Notice of Appeal is dated 21 May 2015. See Part F, Reasons for Panel Decision, below for her submission.

In an e-mail dated 12 June 2015, the ministry states that its submission in this appeal will be the reconsideration summary.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision, which determined that the appellant received \$599.17 in income assistance for March 2015 for which she was not eligible and pursuant to section 27 of the *Employment and Assistance Act* is liable to repay that amount, 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*].

The position of the ministry, as set out in the reconsideration decision, is that section 27 of the *EAA* states that if income assistance or a supplement is provided to or for the appellant and she is not eligible for it, she is liable to repay to the government the amount or value of the overpayment. A review of the appellant's file shows that she was issued \$798.58 support and shelter for the March 2015 assistance month. However she was eligible for \$199.41 (\$798.58 the assistance - \$599.17 net income). Therefore the ministry determined that the appellant received \$599.17 (\$798.58 received - \$199.41 eligible amount) for which she was not eligible and is liable to repay the government that amount under section 27 of the *EAA*.

The appellant explains her position in her Notice of Appeal:

“Thank you for your new decision package that I received yesterday. I respect the decision that you have made. I am waiting for the order on how I could pay back the money that I owe. However, I am hoping for an exemption because of my personal situation. I am a person with disability and am also taking care of two granddaughters who were exposed to drugs when their mother was pregnant with them. They always need extra care, such as nutritious food, creams and comfortable clothes because of their health issues and severe eczema. The extra things that I have to provide to my granddaughters are often costly. I fear that by paying the money that I owe may affect my ability to provide the best care for my granddaughters. Because of this, I am asking for an exemption in paying back the money.”

### Panel Decision

The evidence is that the appellant received earned income in January 2015 of \$1099.17. and was provided income assistance for March 2015 of \$798.58, the sum of the applicable support (\$423.58) and shelter amounts (\$375 actual) set out in Schedule A of the EAR. In administering the income assistance program, the ministry takes into account income earned in one month in calculating the amount issued late in the next month for the assistance for the subsequent month. Under section 28

and Schedule B of the EAR, the amount of earned income that the appellant received in January 2015, less any applicable deductions or exemptions must be deducted from the applicable monthly support and shelter amounts set out in Schedule A of the EAR to determine her eligible assistance for March 2015. In March 2015, the appellant was qualified as PPMB and therefore was permitted a \$500 monthly earned income exemption, leaving her with \$599.17 to be deducted. As this net income was not deducted from the March 2015 income assistance provided her, the panel finds that the ministry was reasonable in determining that the appellant was provided income assistance for which she was not eligible.

Section 27(1) of the *EAA* is clear that if income assistance 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 an ineligible amount is provided are liable to repay to the government that amount. The panel therefore finds the ministry reasonably determined that the appellant must repay the amount that she was ineligible to receive.

Section 27(2) of the *EAA* states that the minister's decision about the amount a person is liable to repay under subsection (1) is not appealable to the Tribunal. Accordingly, the panel will not make a determination as to the actual amount to be repaid.

On appeal, the appellant requested an exemption from repaying the amount owing due to her circumstances. This matter was not before the ministry at reconsideration and therefore the ministry did not make a determination regarding such an exemption. Under section 17(3) of the *EAA*, the panel's jurisdiction is strictly limited to the outcome of the reconsideration decision under appeal. As the outcome of the reconsideration decision did not address an exemption from repaying the amount owing, the panel cannot make a determination in this respect. The panel notes, however, that under section 27 of the *EAA* the minister does not have the discretion to make an such an exemption.

For the above reasons, the panel finds that the ministry's decision, which held that for March 2015 the appellant was provided income assistance for which she was not eligible and is liable to repay that amount, is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.