



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated July 31, 2015, which found that the appellant had failed to report "unearned income", requiring repayment of the income assistance for which the appellant was not eligible pursuant to section 27 of the Employment and Assistance Act.

PART D – Relevant Legislation

The relevant legislation is section 27 of the Employment and Assistance Act (EAA) and sections 1, 28 and 33 of the Employment and Assistance Regulation (EAR) and sections 1, 6 and 7 of Schedule C to the EAR.

PART E – Summary of Facts

The appellant did not attend the hearing. The Tribunal confirmed that the appellant was properly notified of the time and place of the hearing and proceeded with the hearing in accordance with section 86(b) of the EAR.

The appellant was in receipt of income assistance as the sole recipient from October 2014 to June 2015. Based on an earlier failure to report income, a deduction of \$20 was made to the recipients support allowance each month. In December 2014 a sanction of \$25 was applied to the appellant's file due to a third failure to report maintenance income.

On April 21, 2015 the Family Maintenance Enforcement Program advised the ministry that the appellant had received family maintenance payments of \$100 in January 2015 and \$69.21 in February 2015. The appellant had not declared this income.

On April 28, 2015 the ministry advised the appellant that the failure to report the family maintenance income had resulted in the receipt of income assistance for which the appellant was not eligible and would be required to repay.

PART F – Reasons for Panel Decision

The decision under appeal is the ministry's reconsideration decision dated July 31, 2015, which found that the appellant had failed to report "unearned income" in the form of two family maintenance payments of 100.00 in January 2015 and 69.21 in February 2015, requiring repayment of the income assistance for which she was not eligible.

The relevant legislation is section 27 of the EAA and sections 1, 28 and 33 of the EAR and section 1 of Schedule C to the EAR.

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*].

Definitions

1 (1) In this regulation:

...

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

...

(p) maintenance under a court order, a separation agreement or other agreement;

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, (BC Reg. 334/2007)
 - (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;
 - (iv) the employment and educational circumstances of recipients in the family unit;
 - (v) changes in family unit membership or the marital status of a recipient.
 - (vi) any warrants as described in section 15.2 (1) of the Act. (B.C. Reg. 85/2012)

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,

...

(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.

At the hearing the ministry re-iterated its position in the reconsideration decision. According to the legislation, family maintenance payments are considered "unearned income", must be reported by recipients and are to be conducted dollar for dollar from a recipient's support allowance. The appellant failed to report family maintenance payments in January and February of 2015. Those payments are therefore repayable to the ministry at a rate to be determined by the ministry, which in this case was \$20 per month.

In her request for reconsideration the appellant states:

I am understand that a \$20 a month is to be taken off my cheque. Thing is checks issued late May/June. I only received \$282 for rent. No support was issued. And I do recall that it was repaid or deducted already earlier this year.

In her reasons for appeal the appellant states:

Disagree with decision to take all assistance away over the course of the two month period leaving me no financial support.

At the hearing the ministry representative stated that it was her opinion that there was some confusion on the part of the appellant in that in her statements she appears to be confusing the deductions under appeal in this case and deductions previously imposed. The ministry representative stated that the ministry had not reduced rent allowance or withheld support payments in any one month, but had made deductions based on the appellant's inaccurate/incomplete reporting of income. Unfortunately, as the appellant did not attend the hearing, the panel could not inquire of her whether this was the case.

The panel finds the following:

Under section 1 of the EAR family maintenance payments are considered unearned income. Under section 28 of the EAR unearned income is deducted from a recipients support payments dollar for dollar. Under section 27 of the EAA a recipient is required to repay support payments they were not eligible to receive.

In this case, the appellant received family maintenance payments of \$100 in January 2015 and \$69.21 January 2015 which she did not report as unearned income to the ministry. Upon learning of the family maintenance payments in April 2015, the ministry began deducting \$20 per month from the appellant's support payments in order to repay the income assistance she received but was not eligible for in January and February.

There is no evidence or argument to suggest that the ministry made a mistake or was not authorized to make the deductions that it did. There does appear to be some confusion on the part of the

appellant as to what amounts are being deducted for which instances of inaccurate/incomplete reporting. But in this case there is no argument made that the appellant did not receive the family maintenance payments or that the ministry was unreasonable in considering those payments to be unearned income and deducting them from the appellant's monthly support payments.

The panel concludes that the ministry's determination that the family maintenance payments were unearned income and the appellant is required to repay the income assistance she received for which she was not eligible was a reasonable interpretation of the legislation in the circumstances and confirms the ministry's decision.