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PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 20 May 2015 determined that under s. 27(1) of the Employment and Assistance Act (EAA) the appellant was liable to repay income assistance he was not eligible to receive for the months of January, February, March and April 2015 because his net income determined under Schedule B of the Employment and Assistance Regulation (EAR) exceeded his assistance rate determined under Schedule A of the EAR.

PART D – Relevant Legislation

EAA, section 27.
EAR, sections 1, 10, 28 and 33.
EAR, Schedule A, section 28(a)
EAR, Schedule B, sections 28(a) and 6.

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PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a single, employable person who received full income assistance benefits of $610 per month.
- On 22 January 2015, the ministry determined that the appellant's eligibility would be audited and on 6 February 2015 sent a letter to him to that effect.
- On 4 March 2015, the appellant provided a number of documents, including:
    - A 2-page deposit account statement for the period 1 to 28 February 2015 showing a deposit RIF of over $1,600 on 5 February 2015.
    - A 1-page letter dated 4 March 2015 from the appellant's financial advisor indicating that the appellant could not withdraw and funds from his LIF plan until 1 January 2016.
- In a letter dated 23 March 2015, the ministry requested additional documents from the appellant:
    - Statements for all bank accounts from his financial institution for the year 2014;
    - Details of dental work performed.

  The letter indicated that the next assistance payment would be held until that information was provided.
- On 28 March 2015, after having reviewed the appellant's documents, a ministry worker contacted him to enquire about a deposit in his bank account of over $1,600 from a Retirement Income Fund (RIF) dated 5 February 2015. The appellant informed the ministry worker that he used the funds for dental work that was required. The ministry worker requested additional information such as dental receipts and further banking documents.
- On 13 April 2015, the appellant attended the ministry office and provided further documents such as eyewear and dental receipts as well as bank statements from 20 November to 31 December 2014.
- On 21 April 2015, the appellant confirmed a series of withdrawals from his RIF all over $1,000 on 27 November 2014, 2 December 2014, 2 January 2015 and 4 February 2015 and deposited in his bank account.
- A 1-page letter dated 21 April 2015 from the appellant's financial institution's financial advisor confirmed the appellant withdrew the maximum amount allowed from his LIF for 2015 in an amount of over $6,000 and that he could not access any more funds during this year.
- A 1-page transaction history dated 21 April 2015 from the appellant's financial institution showed that the appellant withdrew from his RIF the maximum amounts allowed for 2014 in November and December (just over $6,000) and for 2015 in January and February (just over $5,500).
- A document dated 16 April 2015 from the Canada Revenue Agency indicated that appellant owed a balance of over $6,000 in taxes.
- On 22 April 2015, a ministry worker contacted the appellant and confirmed that he had received full benefits for January to April 2015 (4 months) for a total of $2,440 and that he had not declared the monies received from his RIF thus having to repay the ministry the income assistance funds he received for those months.
- In his request for reconsideration dated 6 May 2015 the appellant indicated that he needed assistance because the Employment Insurance (EI) took away over 1000 hours he had earned and he did not qualify anymore for EI. He stated the ministry advised him that they would not cover the dental work he needed and had to use his RIF to pay for it, as well as other debts he owed. He added that he had "fines from UI and medical forms attached" and that without assistance he would be on the street.

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In his Notice of Appeal dated 2 June 2015, the appellant indicated that it was not his fault if the government did not let him use his pension, that his Care card did not work as a result of a clerical error and that he then owed money for medical, UI and taxes.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision determining that the appellant was liable to repay income assistance he was not eligible to receive for the months of January, February, March and April 2015 because his net income determined under Schedule B of the EAR exceeded his assistance rate determined under Schedule A of the EAR was a reasonable application of the legislation or reasonably supported by the evidence.

Section 1(1)(e) of the EAR states that:
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:…
(e) superannuation benefits;

The ministry argued that the RIF benefits were unearned income since, under the regulation the meaning of superannuation is a retirement pension and that those funds must be treated as unearned income. The appellant did not dispute that. Schedule B of the EAR sets out exemptions and deductions in calculating monthly income. The appellant did not dispute that those exemptions and deductions do not apply to his RIF unearned income.

Based on the legislation, the ministry argued that since the appellant received unearned income in November and December 2014 as well as January and February 2015, he had to report those amounts by the fifth of the following months under s. 33 of the EAR that states:
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,…

The ministry indicated that it would affect the income assistance payments of the month following the mandatory report, here, January to April 2015.

S. 10 of the EAR imposes limits on income:
10 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

According to the ministry, Schedule A of the EAR provides that the appellant was then eligible as a single recipient under 65 years of age with no dependant child to a maximum monthly assistance of $235 for support and $375 for shelter for a total of $610 per month that he received for the 4 months of January to April 2015 for a total of $2,440. The appellant did not dispute this.

S. 27(1) of the EAA states:
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.

Thus, the ministry argued, the appellant must repay the income assistance payment he received for those 4 months, for a total of $2,440 and that subsection 2 states that the amount of repayment is not appealable:
(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 appellant argued that he should not have to repay those 4 months of assistance because he had to use those funds taken from his RIF to have dental work done that he needed and because the ministry did not give him an answer about coverage in due time. As well, he argued that he had to use that money to pay other debts that he owed, in particular because over 1,000 hours were taken off from his eligibility to EI, which made him ineligible for EI and was under an obligation to pay part of his debts. Finally he stated he was not responsible for this repayment because it was the government's fault if he could not have his pension and because his Care card did not work as a result of a clerical error, indicating that he still owed money for medical services, UI and taxes.

Panel decision:

Unearned income:
The panel notes that "superannuation benefits" are unearned income according to s. 1 (1)(e) of the EAR and that the Canadian Oxford Dictionary defines superannuation as a "pension paid to a retired person", which a RIF is. The panel also notes that other benefits listed as unearned income are very similar to superannuation benefits, for instance the Canada Pension Plan (subsection 1(f)) and the federal Old Age Security (subsection 1(u)). Thus, the panel finds the ministry reasonably determined the RIF benefits that were deposited in the appellant's bank account were unearned income.

Repayment:
The evidence shows that for each of the months of November and December 2014 and of January and February 2015 the appellant withdrew from his RIF over $1,000 (for a total for those 4 months of over $11,000 which, according to the evidence was the maximum amount he could take from his RIF for each year 2014 and 2015) that he deposited in his bank account and spent. The panel notes that the appellant did not report those benefits as part of his monthly reporting requirement that was due by the 5th of the following month under s. 33 (1)(a) of the EAR. According to Schedule A of the EAR, the appellant qualified for a maximum assistance of $610 per month while for each of those 4 months at issue, his benefits taken from a RIF significantly exceeded that amount.

The panel finds the appellant's argument that he used this money for dental work (he provided dental receipts for less than $2,000 while the total benefits exceeded $11,000) and to pay his debts (no evidence to that effect was provided but the CRA documents showed that he still owed over $6,000 in taxes as of 16 April 2015) is without merit since those benefits did nonetheless constitute unearned income and as such needed to be reported to the ministry.

Given the evidence, the panel finds the ministry reasonably applied s. 10 (2) of the EAR and determined that the net income of the appellant's family unit for each of the months of November and December 2014 as well as January and February 2015 exceeded the amount of income assistance the appellant was eligible for under Schedule A. Consequently, the panel finds the ministry

reasonably determined s. 27 (1) of the EAA applied and that the appellant was liable to repay to the government the amount of those overpayments he received for the months of January to April 2015 for a total of $2,440. This amount is not appealable to the tribunal according to s. 27 (2) of the EAA and therefore, the panel makes no determination as to the amount to be repaid.

For all those reasons, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.