PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation ("the ministry") reconsideration decision of January 25, 2016 in which the ministry determined that the appellant had received overpayments of income assistance ("IA") in the months of November 2010, September 2013, March 2014 and January, February, November and December 2015 for which she was not eligible and which she was liable to repay pursuant to Employment and Assistance Regulation (EAR) Section 27(1) for the following reasons:

1. she inaccurately reported or failed to report non-exempt earned income (employment earnings),
2. she failed to report unearned income (family maintenance payments); and
3. on two occasions she had quit her employment without just cause, thereby incurring reduction sanctions prescribed in EAR Section 29(1).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 13(1)(ii),(2) and Section 27(1)

Employment and Assistance Regulation (EAR) , Sections 1, 28, 29, 33(1)

EAR Schedule B, Sections 1, 2, 3(1),(3),(6), 6

PART E – Summary of Facts

The appellant is a recipient of income assistance with one dependent child, born in 2011.

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

- Request for Reconsideration received by the ministry January 13, 2016;
- Record of Employment (ROE) issued to the appellant by Employer A for employment period June 27-July 9, 2013, stating that the ROE had been issued because the appellant had quit her job;
- Record of Employment (ROE) issued to the appellant by Employer B for employment period September 25-October 06, 2015, stating that the ROE had been issued because the appellant had quit her job;
- Record of Employment (ROE) issued to the appellant by Employer B for employment period August 12-September 8, 2010, stating that the ROE had been issued because the appellant had quit her job;
- Confirmation of Earnings (COE) issued by Employer C stating that the appellant had received wages of $1,477.06 in January 2014;
- Canada Revenue Agency payroll deductions calculations for biweekly wages paid in July and August 2013;
- BC Family Maintenance Enforcement Program transaction history indicating a maintenance payment of $2,311.04 deposited into the appellant's bank account on November 18, 2015 and a maintenance payment of $998.86 deposited on December 5, 2015;
- November 6, 2015 letter from the ministry to the appellant informing her that the ministry was reviewing her file and asking her to submit relevant employment, banking and income tax information for the years 2009-2015;
- November 20, 2015 letter from the ministry to the appellant advising her that her next IA payment would be held until the requested information was submitted;
- December 11, 2015 letter from the ministry to the appellant advising her that following a file review of the period January 2008 to December 2015 the ministry believed that the appellant has been overpaid a total of $3,258.75 due to undeclared family maintenance income, employment income, and sanction for quitting employment without just cause;
- December 30, 2015 letter from the ministry to the appellant advising her that the ministry had determined that the appellant has received IA of $3,258.75 for which she was not eligible, and which now constituted a debt that the appellant was liable to repay.

At the hearing the appellant submitted a Policy and Procedures Manual from her child's daycare, which states that a sick child should not be sent to the daycare. The appellant also provided a submission which addressed each of the "Charts" numbered 2 – 6 in the reconsideration decision and spoke to each Chart as she went through the document. The appellant's written and oral information provided at the hearing was primarily argument, but also contained some relevant additional information, including:

- Chart 2 – she did not receive a pay stub from her employer until she picked it up from the manager's office, which meant that she was often unable to report her earnings on the dates required by the ministry.
- Chart 3 - the appellant received the November 19, 2014 family maintenance payment after submitting her "stub" to the ministry. A ministry worker told her not to worry about it because

she had already submitted her stub. She received help from ministry workers and reported her November 18, 2014 maintenance income ($2311.04) on her December 2014 stub and her December 5, 2014 maintenance income ($998.86) on her January 2015 stub.

- Chart 4 – the appellant was compelled to be absent from work and unable to complete the employee training program because her sick child was prohibited from attending daycare. The appellant called the ministry to inform them of the change in her employment status, but no one at the ministry recorded her call on her file.
- Chart 5 – the appellant did not realize that she would receive a paycheque in the first two weeks of January 2014. She brought her COE into the ministry office as proof of employment and told the ministry that her salary was $2,000/monthly plus a sales bonus. The ministry scanned her pay stubs, but there is no record of that in her ministry file. She has been unable to obtain bank records to confirm the ministry's calculations.
- Chart 6 – in 2010 the appellant was experiencing an at-risk pregnancy and had to attend at her hospital's emergency department for pregnancy-related problems. She then had to move to another city for support from her family as recommended by her specialist. She was not on IA in September 2010.

The ministry did not object to the admission of the day care policy manual or the additional oral and written information that was contained in the appellant's typewritten submission. On review, the panel is satisfied that none of this information raises new subject matter that was not before the ministry at the time of reconsideration. The panel therefore finds that the oral and documentary information submitted by the appellant at the hearing are admissible under EAA Section 22(4)(b) as testimony in support of the information before the ministry at reconsideration.

The ministry relied on the reconsideration decision and submitted a computer-generated printout of income reported to the ministry by the appellant during the period September 17, 2013 – January 14, 2015:

-	October 10, 2013	Income	100.00
-	November 14, 2013	Income	175.94
-	February 18, 2014	Income	800.00
-	January 14, 2015	Tax benefit	210.00
-		Income	100.00

The appellant objected to the accuracy of the income record, but did not object to its admissibility. On review, the panel is satisfied that this document corroborates the financial information before the ministry at reconsideration and is admissible under EAA Section 22(4)(b) as evidence in support of the information before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision of January 25 in which the ministry determined that the appellant had received overpayments of income assistance ("IA") in the months of November 2010, September 2013, March 2014 and January, February, November and December 2015 for which she was not eligible and which she was liable to repay pursuant to Employment and Assistance Regulation (EAR) Section 27(1) for the following reasons:

1. she inaccurately reported or failed to report non-exempt earned income (employment earnings),
2. she failed to report unearned income (family maintenance payments); and
3. on two occasions she had quit her employment without just cause, thereby incurring reduction sanctions prescribed in EAR Section 29(1).

The relevant legislation is as follows:

EAA:
Consequences of not meeting employment-related obligations

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

(a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has

(ii) voluntarily left employment without just cause,

2) For the purposes of subsection (1),

(a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

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.

EAPWDR:

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:

(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.

Consequences of failing to meet employment-related obligations

29 (1) For the purposes of section 13 (2) (a) *[consequences of not meeting employment-related obligations]* of the Act,

(a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by $100 for each of 2 calendar months starting from the later of the following dates:

(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;

(ii) the date the default occurred.

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

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) The amount of earned income calculated under subsection (2) is exempt for a family unit if

(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 reconsideration decision determines that the appellant received three categories of overpayments:

1. she inaccurately reported or failed to report non-exempt earned income (employment earnings – Charts 2 and 5),
2. she failed to report unearned income (family maintenance payments – Chart 3); and
3. on two occasions she quit her employment without just cause, thereby incurring reduction sanctions prescribed in EAR Section 29(1) – Charts 4 and 6).

The arguments of the appellant and of the ministry and the panel decision will be addressed according to each category of overpayment determination.

1. Non-exempt earned income from employment (Charts 2 and 5)

Chart 2:

The appellant argues that her pay was sometimes deposited on the ministry's reporting day, and that she did not receive notice of her payment amount until she picked up her pay stub from her manager's office.

The ministry argues that the appellant received employment earnings of $418.35 in July 2013 which the appellant did not declare, resulting in an overpayment of $218.35 ($418.35 minus $200 earnings exemption).

Panel Decision

The appellant's ROE for July 2013 shows that the appellant received net employment earnings of $418.35. There is no evidence that the appellant declared these earnings, which are defined as "earned income" in Section 1 of the EAR and, once allowable deductions are applied, form part of a recipient's net income in Schedule B. EAR Section 28 states that the amount of assistance an IA recipient is eligible to receive is calculated by subtracting that person's Schedule B income from the Schedule A assistance rate. The panel finds that the ministry reasonably determined that in July 2013 the appellant received an overpayment of IA.

Chart 5:

The appellant argues that did not realize that she would receive a paycheque in the first two weeks of January 2014. She brought her COE into the ministry office as proof of employment and told the ministry that her salary was $2,000/monthly plus a sales bonus. The ministry scanned her pay stubs, but there is no record of that in her ministry file.

The ministry argues that the appellant did not declare employment earnings of $677.06 she received on January 15, 2014 which, when combined with the $800 in employment earnings which she did declare on January 30, 2014, resulted in an overpayment of IA of $345.58 that would have been deducted from her March 2014 assistance cheque.

Panel Decision

The appellant's COE for January 2014 shows that she received employment earnings of $1,477.06, of which she declared $800.00. Taking into account her $200 earned income exemption ($800 - $200=$600) the ministry paid IA of $345.58 to the appellant in March 2014, which was calculated by subtracting her $600 Schedule B earned income of in January 2014 from her $945.58 Schedule A assistance rate. When the undeclared earned income of $677.06 was added to the declared net income of $600, the appellant's Schedule B income exceeded her Schedule A assistance rate. The panel therefore finds that the ministry reasonably concluded that the appellant received an IA overpayment because her Schedule B income exceeded her Schedule A assistance rate for the month of March 2014.

2. Non-exempt unearned income from family maintenance payments received (Chart 3)

The appellant argues that she received her $2,311.04 family maintenance payment on November 19, 2014 after submitting her "stub" to the ministry. A ministry worker told her not to worry about it

because she had already submitted her stub. She received help from ministry workers and reported her November 18, 2014 maintenance income on her December 2014 stub and her December 5, 2014 maintenance income ($998.86) on her January 2015 stub.

The ministry argues that the appellant did not declare either the November 2014 ($2,311.04) or the December 2014 ($998.86) maintenance payments, which are defined as "unearned income" in EAR Section 1(p), and which should have been included in the appellant's Schedule B net income calculation for the months of November and December 2014 and applied to her January 2015 and February 2015 IA. Because the appellant's Schedule B income exceeded her Schedule A assistance rates for January 2015 ($945.58) and February 2015 ($925.58) an overpayment of $1,871.16 resulted.

Panel Decision

The appellant claims that she reported both the November 2014 and December 2014 maintenance payments to the ministry. The ministry has no record of these income reports. Taking into account the ministry's policy of recording the processing of information received from its clients, the income summary tendered by the ministry during the appeal hearing, and the legislative enactments by which the ministry is bound the panel prefers the ministry's evidence to that of the appellant.

As stated in Part 1[above], EAR Section 28 states that the amount of assistance an IA recipient is eligible to receive is calculated by subtracting that person's Schedule B income from her Schedule A assistance rate. Child support payments under court order are considered "unearned income" under EAR Section 1(p) and must be included in calculating Schedule B income.

The panel therefore finds that the ministry reasonably determined that the appellant's November 2014 Schedule B income of and December 2014 Schedule B income of exceeded her January 2015 and February 2015 assistance rates of $945.58 and $925.58 respectively, resulting in an overpayment of IA for which the appellant was not eligible and which the appellant is liable to repay.

3. Quitting employment without just cause (Charts 4 and 6)

Chart 4:

The appellant does not dispute the dates of employment or hours worked as described on her October 13, 2015 ROE, but argues that she did not "quit" the job, as stated on the ROE. Rather, she was compelled to be absent from work and unable to complete the employee training program because her sick child was prohibited from attending daycare. The appellant also argues that she called the ministry to inform them of the change in her employment status, but no one at the ministry recorded her call on her file.

The ministry argues that the ROE indicates that the appellant quit her job on October 6, 2015 without just cause, and she is therefore subject to a sanction of $100 per month for a period of 2 months (totaling $200) as set out in EAR Section 13(1)(a)(ii) and EAR Section 29(1). These sanctions should have been deducted from her November and December 2015 IA but the appellant failed to report that she had quit her job in October 2015. Consequently the appellant received a $200 overpayment of IA.

Panel Decision

The ROE states that the appellant quit her job, and appellant did not submit any medical evidence to support her position that her employment was terminated because she had to miss work to care for

her sick child. The panel therefore finds that the ministry reasonably determined that the appellant quit her job without just cause and without providing evidence of mitigating circumstances, and as a result is subject to a sanction for a two-month period, as determined by EAR Section 13(1)(a)(ii) and EAR Section 29(1).

Chart 6:

The appellant argues that when she left her employment on October 6, 2010 she was not a recipient of IA, so she should not be subject to a sanction. She also argues that she was experiencing an at-risk pregnancy and had to attend at her hospital's emergency department for pregnancy-related problems. She then had to move to another city for support from her family as recommended by her specialist.

The ministry argues that the appellant's ROE shows that she quit her job on September 9, 2010, and did not provide evidence to explain or justify her resignation. The ministry adds that the appellant applied for IA on October 7, 2010 and pursuant to EAR Section 29 the prescribed period of ineligibility is two months from the later of the date of application and the date of default. In the appellant's circumstances the later date was her application date of October 7th. In November 2010 an IA payment of $623.66 was issued to the appellant for which she was ineligible because an eligibility sanction should have been applied to her file for quitting her employment without just cause. Because she did not yet have a dependent child at the time she left her employment she was subject to the sanction set out in EAA Section 13(2)(b), which rendered her ineligible for IA for a period of two calendar months.

Panel Decision

Prior to reconsideration the appellant did not provide evidence to support her position that she had to leave her job because of pregnancy-related health issues. She also did not provide evidence in support of her medical issues when she tendered her additional evidence at the commencement of her appeal hearing. In the absence of corroborative medical evidence the panel finds that the ministry reasonably concluded that the appellant quit her job without just cause and without mitigating circumstances, which pursuant to EAR Section 29 and EAA Section 13(2)(b) made her ineligible for IA for a period of two months commencing October 7, 2010. In November 2010 she received IA for which she was ineligible, which constituted an overpayment to the appellant.

Conclusion:

In conclusion, the panel finds that the ministry's determination that the appellant received overpayments of IA for which she was not eligible as set out in Charts 2 - 6:

- Chart 2: (unreported earned income)
- Chart 5: (unreported earned income)
- Chart 3: (unreported unearned income – maintenance payment)
- Chart 4: (left employment without just cause – with dependent)
- Chart 6: (left employment without just cause – no dependents)

for which she was not eligible and which she is liable to repay pursuant to EAA Section 27(1) was a reasonable application of the applicable legislation, and confirms the decision.