

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 13, 2016 which found that the portion of the backdated family bonus payment the appellant received, for which the family unit was previously provided with a supplement of \$929.55, must be deducted as unearned income from the appellant's assistance for the month of July 2016, pursuant to Section 24 of the Employment and Assistance Regulation (EAR).

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR), Sections 1, 28, 61 and Schedules A and B

## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Request for Reconsideration dated June 28, 2016.

In her Request for Reconsideration, the appellant wrote that:

- She did not know that the ministry was giving her extra money, until her child tax benefits came in.
- If she knew that, she would not have taken the extra money. The ministry did not explain it to her.
- She is a single parent with a young child and she is struggling to make ends meet. She cannot pay her rent of \$950. She owes a lot of money paid out to family and friends from borrowing and trying to survive.
- This is child tax, not family maintenance.
- She would appreciate \$20 being taken off her cheque every month until her debt is paid, like a damage deposit.

### ***Additional Information submitted after reconsideration***

In her Notice of Appeal dated August 2, 2016, the appellant expressed her disagreement with the ministry reconsideration decision and added that:

- She thought she had discussed the issue with the ministry and agreed that she would pay back \$20 off her cheque monthly.
- She lives pay day to pay day to buy food, formula, diapers and clothes. It is a hard struggle for a single parent.

The ministry relied on its reconsideration decision as the ministry's submission on the appeal. The facts included:

- The appellant is a recipient of income assistance as a single parent of one dependent child. Her monthly assistance is \$945.58, including \$375.58 support plus \$570 for shelter.
- The appellant received a total of \$929.55 as a supplement for her delayed family bonus, over the months of December 2015 through May 2016.
- In June 2016, the family bonus was processed and the appellant received \$1,139.50 in backdated family bonus.

### ***Admissibility of Additional Information***

The ministry did not raise an objection in its submission to the admission of the additional information provided by the appellant in her Notice of Appeal. The panel considered the information provided by the appellant as corroborating the previous information from the appellant regarding her circumstances and understanding. Therefore, the panel admitted all the information, as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the portion of the backdated family bonus payment the appellant previously received from the ministry must be deducted as unearned income from the appellant's assistance, pursuant to Section 28 of the EAR, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

**Section 28** of the EAR provides that:

### **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.

Schedule A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

**Section 1 of Schedule B** of the EAR provides as follows:

### **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:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit; . . . .

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,

(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.

**Section 10 of Schedule B** of the EAR provides as follows:

### **Backdated family bonus treated as unearned income**

10 (0.1) In this section:

"backdated family bonus payment" , in relation to a child benefits cheque, means the portion of the cheque, if any, attributable to the family bonus for one or more calendar months preceding the calendar month in which the cheque is issued;

[ ]

"supplement" means a supplement referred to in section 61 [supplement for delayed, suspended or cancelled family bonus] of this regulation.

- (1) If a person in the applicant's or recipient's family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the lesser of the following amounts must be treated as unearned income:
    - (a) the portion of the backdated family bonus payment that is attributable to those calendar months for which the family unit was provided with a supplement;
    - (b) the sum of the supplements that are attributable to those calendar months for which the family unit received the backdated family bonus payment.
  - (2) For the purposes of subsection (1), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from a family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.
  - (3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus
    - (a) to replace a lost or stolen cheque for which an amount was advanced under section 60 [advance for lost or stolen family bonus cheque] of this regulation, or
    - (b) to replace a cheque for which no amount was advanced under section 60 [advance for lost or stolen family bonus cheque] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued.
- (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s.1 (q).]

**Section 61** of the EAR provides that:

**Supplement for delayed, suspended or cancelled family bonus**

- 59 (1) In this section, "maximum national child benefit supplement", in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if
- (a) the family unit were entitled to receive the national child benefit supplement for the calendar month, and
  - (b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero.
- (2) The minister may provide a supplement to or for a family unit that is eligible for income assistance or hardship assistance if
- (a) payment of the family bonus for a calendar month to a person in the family unit is delayed, suspended or cancelled under the Income Tax Act (Canada) or the Income Tax Act (British Columbia) for any reason other than that
    - (i) the person refuses to apply for the family bonus,
    - (ii) the person refuses to provide information necessary to determine eligibility for the family bonus, or
    - (iii) the person refuses to accept the family bonus, and
  - (b) the minister considers that the supplement is immediately needed for basic needs of food, clothing or shelter.
- (3) The amount that may be provided for a calendar month as a supplement under subsection (2) is equal to
- (a) the maximum national child benefit supplement, minus
  - (b) the family bonus, if any, received by the family unit for the preceding calendar month.

### *Ministry's position*

The ministry's position is that the portion of the backdated family bonus payment the appellant received, for which the family unit was previously provided with a supplement of \$929.55, must be deducted as unearned income from the appellant's assistance for the month of July 2016, pursuant to Section 28 of the EAR. The ministry stated that when calculating the net income of a family unit for the purposes of Section 28 of the EAR, a family bonus is exempt except the portion treated as "unearned income" under Section 10(1) of Schedule B of the EAR. The ministry stated that the appellant received a total of \$929.55 from the ministry as a supplement for her delayed family bonus, over the months of December 2015 through May 2016, and in June 2016 she received the backdated family bonus payment. The ministry stated that any portion of the backdated payment received that is attributable to a calendar month in which the ministry provided a supplement (advance) must be treated as unearned income and deducted from assistance, pursuant to sections 28 of the EAR.

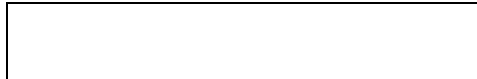
### *Appellant's position*

The appellant acknowledged that she was in receipt of an advance for family bonus over the months of December 2015 through May 2016 but she argued that she did not know that the ministry was giving her extra money, that the ministry did not explain it to her. The appellant argued that if she knew at the time, she would not have taken the extra money. The appellant wrote that she is a single parent with a young child and she is struggling to make ends meet, and she owes a lot of money paid out to family and friends from borrowing and trying to survive. In her Notice of Appeal, the appellant wrote that she thought the ministry and agreed that she would pay back \$20 off her cheque monthly.

### *Panel's decision*

The appellant acknowledged that she was in receipt of a supplement from the ministry for family bonus that had been delayed and that the delayed family bonus was eventually paid to her in a lump sum in June 2016. Under Section 1 of Schedule B of the EAR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 10 of Schedule B, if a person in the family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement from the ministry, then the *lesser* of two amounts must be treated as unearned income. The appellant did not dispute the amount that was considered as unearned income, but argued that she was not aware at the time that the supplement provided for delayed family bonus was like an advance and had to be repaid and, if it had to be repaid, she understood that she had reached an agreement with the ministry that it would be paid by deduction from her cheque at the rate of \$20 per month. The appellant did not provide any further information on the appeal of the terms of an alleged agreement with the ministry, for example a letter or email confirming the arrangement.

The panel finds that the ministry reasonably determined that the appellant received a backdated family bonus payment and all or part of the payment was attributable to the calendar month for which the family unit was also provided with a supplement from the ministry. Therefore, the amount determined under Section 10 of Schedule B as the lesser of the two amounts must be treated as unearned income and, given the directory language of Section 10, the ministry does not have the discretion to do otherwise. The panel finds that the ministry reasonably concluded that the net amount of the appellant's income under Schedule B (or \$929.55) must be deducted from the amount of assistance determined under Schedule A for the appellant's family unit (\$945.58) and that, therefore, the appellant's income assistance is reduced by this amount for the month of July 2016, pursuant to Section 28 of the EAR.



*Conclusion*

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the appellant's circumstances. The panel confirms the decision and the appellant's appeal, therefore, is not successful.