

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 20, 2016 in which the ministry found that the appellant incurred an overpayment of \$376 for June and July 2016 because he had undeclared income of Employment Insurance (EI) and gifts in excess of his income assistance (IA) rate pursuant to section 10 and Schedules A and B of the Employment and Assistance Regulation (EAR). The ministry found that there are no exemptions or deductions for EI and recurring gifts under EAR Schedule B and that the appellant is liable to repay the government pursuant to section 27 of the *Employment and Assistance Act* (EAA).

PART D – Relevant Legislation

Employment and Assistance Act - EAA, sections 11 and 27

Employment and Assistance Regulation - EAR - sections 1, 10, 28, and 33, and Schedules A and B

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following documents:

1. The appellant's Request for Reconsideration (RFR) dated September 5, 2016 in which he states that he forgot to declare an employment pay stub for \$176 earned in April 2016 and his mother is no longer giving him \$200 per month.
2. A letter to the appellant from a ministry investigator dated August 17, 2016 that stated the following:
 - The ministry completed a review of the appellant's assistance and determined that he received IA for which he was not eligible.
 - An overpayment of \$376 resulted from the appellant's failure to accurately declare income from EI and recurring gifts that he received in April and May 2016
 - The ministry obtained documents that show he received \$175 EI, \$450.04 employment income, and \$400 from recurring gifts. He declared \$364.14 for this period and the undeclared income resulted in an overpayment.
3. A ministry Overpayment Chart for June, July, and August 2016 showing a total overpayment of \$376 with the following breakdown:
 - \$176 overpayment for June 2016, based on \$175 EI and \$200 recurring gifts that were not declared. The appellant's actual income is recorded as \$739.16 from net earnings, EI, and recurring gifts received in April 2016; amount declared was \$364.16; his assistance amount is \$176 and he is eligible for zero.
 - \$200 overpayment for July 2016, based on a \$200 recurring gift that was not declared. The appellant's actual income is recorded as \$285.88 from net earnings and a gift received in May 2016; a \$200 exemption was applied to the net earnings; the amount declared was zero; his assistance amount is \$610 and he is eligible for \$410.
4. An earnings verification statement from a payroll service company dated August 11, 2016 showing the appellant's gross and net pay from April to July 2016 and the year to date total up to August 6, 2016. The company indicates that the statement only represents payments that were processed through the company and makes no representation regarding income paid directly by the employer or through another payroll service company.
5. The appellant's bank statements showing his account history for the period March 7 to May 24, 2016. The March 7 and May 24, 2016 statements show deposits of \$200 on March 28, April 27, May 27, and June 27, 2016. The April 18, 2016 statement shows an EI deposit of \$175 on April 21, 2016.
6. A ministry Overpayment Notification dated August 17, 2016 that states the appellant received \$376 of assistance for which he was not eligible and the overpayment is a debt to the government of British Columbia that he is liable to repay under the EAA through deductions from his IA.
7. Information from the ministry's reconsideration decision indicating the appellant is a sole employable recipient with no dependents and his IA rate is \$610 per month (\$235 for support and the maximum of \$375 for actual shelter costs). The ministry indicates that the appellant's employer provided a breakdown of the appellant's earnings based on payments in April, May, June and July

2016; the appellant reported that the \$200 deposits shown on his bank statements from March to June 2016 are gifts from his mother; and that the bank statements also show the EI deposit in April 2016. The reconsideration decision states that the appellant received \$176 IA for June 2016; his assistance rate is \$610; he declared \$634 earnings and \$434 was deducted. For July 2016 he received \$610 and there was a \$167.40 late declaration for May that was corrected upon contact. The ministry indicates that no assistance was paid in August 2016; the \$394.47 earnings the appellant declared did not match the pay stub amounts, and his file has been referred back to the ministry for further review of August 2016. A new review for August benefits will be completed under a separate review.

Additional submissions

The appellant did not attend the hearing. Upon confirming that he had been notified of the hearing date and time, the panel proceeded in his absence under section 86(b) of the EAR. In his appeal submission the appellant states his argument, indicating that the money is needed for his bus pass to attend medical appointments and get to and from work and he also uses the funds to pay for groceries.

The ministry explained that the appellant had been working at the time the overpayment was incurred but he did not have consistent, full-time employment and was receiving income from different sources at different times which can be difficult for the ministry to track and create a lack of understanding on the appellant's part on what must be declared for different time periods. The ministry explained that the appellant is entitled to a \$200 exemption for wages if he was receiving IA for the month of June and that the gifts of \$200 he received are only exempt for that first month and are not exempt on a recurring basis for employable persons.

In response to a question from the panel regarding clarification on the amounts recorded on the Overpayment Chart, the ministry acknowledged that some of the amounts recorded on the chart for June 2016 are incorrect and are as follows:

- The appellant's assistance rate (under assistance amount) for the month of June is \$610, not \$176 as indicated on the chart;
- Two payments from the appellant's employer (in April 2016) were missed on the chart. According to the earnings verification from the employer, the appellant's employment income in April was \$634.31. Subtracting the exemption of \$200 for earnings, his earnings for April are \$434.31. His unearned income for April is \$375 and the total income received is \$809.34, which is more than his assistance rate of \$610.

In response to further questions, the ministry explained that if an investigator is involved, that person inputs the amounts into the Overpayment Chart and the system calculates the overpayment. In the normal course, the investigator does not submit the chart until it has been reviewed by a supervisor, and in this instance an override needed to be done on the appellant's chart because the IA rate should be recorded as \$610, not \$176.

The ministry confirmed that a decision regarding the appellant's August 2016 entitlement is pending review and no decision on his August entitlement was made at the September 20, 2016 reconsideration. The ministry also acknowledged that some of the legislation print-outs in the appeal record have incorrect section numbers and the monthly reporting requirement for recipients to report their income and any change of circumstances by the 5th day of each calendar month, is set out in section 11 of the EAA and section 33 of the EAR.

The panel finds that while the ministry's oral testimony includes corrections to the amounts on the Overpayment Chart, the ministry's information substantiates the reconsideration record by confirming the receipt of income from various sources including employment, EI and gifts, and the testimony adds more detail about the ministry's review process for determining an overpayment. The panel admits the testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant incurred an overpayment for June and July 2016 because he had undeclared income of EI and gifts in excess of his income assistance rate pursuant to section 10 and Schedules A and B of the EAR. The panel will determine whether the ministry reasonably found that there are no exemptions or deductions for EI and recurring gifts under EAR Schedule B and that the appellant is liable to repay the government pursuant to section 27 of the EAA.

The relevant sections of the legislation are as follows:

Employment and Assistance Act

Reporting obligations

11 (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time frame specified by the regulation, must

- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

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].

Employment and Assistance Regulation

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,

"**gift**" does not include

- (a) money or other value received, by will or as the result of an intestacy, from the estate of a deceased person, or
- (b) money or other value received from a trust;

[]

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

(g) employment insurance

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation;

Limits on Income

10 (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.

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,

(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.

Schedule A - Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the

--

family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit to which section 15 (2) of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

Schedule B - Net Income Calculation

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:

(xlvii) gifts, other than recurring gifts;

Deductions from earned income

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

(ii) employment insurance,

Exemption - earned income

3 (6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:

(a) \$200, if the family unit is not described in paragraph (b), (c) or (d).

4 Small business exemption

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

Exemptions — unearned income

7 (1) The following unearned income is exempt:

No exemptions listed for gifts or employment insurance

8 Minister's discretion to exempt education related unearned income

Analysis

The ministry's position is that an overpayment for June and July 2016 occurred because the appellant failed to accurately declare his income from EI and recurring gifts. The ministry states that documents show that the appellant received \$175 from EI, \$450.04 from employment income, and \$400 from gifts during the time period at issue; however, he declared \$364.14 for the same period. The ministry submits that under the legislation, the appellant is liable to repay IA that he was not eligible to receive during the period for which the overpayment is provided. The ministry notes that IA may be provided to a family unit, for a calendar month, in an amount that is not more than the amount determined under Schedule A of the EAR, minus the family unit's net income determined under Schedule B. The ministry further notes that recipients are required to report income by the 5th of the following month affecting the next month's assistance. For example, income that the appellant receives in May is reported by June 5 and affects the July assistance entitlement.

Regarding the appellant's IA entitlement for June 2016, the ministry submits that the appellant received \$809.31 in April 2016: \$634.31 earned income (from employment) of which \$200 is exempt, and \$375 unearned income (EI and a gift from his mother) that is not exempt under EAR Schedule B. The ministry argues that the \$200 payment from the appellant's mother is a recurring gift because he started receiving this payment in March 2016 and it has continued on a monthly basis; therefore it is not exempt pursuant to section 1(a) of EAR Schedule B. The ministry submits that the appellant's net income of \$809.31 exceeds his assistance rate of \$610 and he is therefore ineligible for the \$176 IA that he received for June 2016.

Regarding the appellant's July 2016 entitlement, the ministry submits that his net income, received in May 2016 is \$200 (a recurring gift from his mother). The ministry notes that the earned income (from employment) that the appellant received in May (\$85.88) is exempt as it is within his \$200 earnings exemption. The ministry argues that the \$200 gift from his mother is not exempt as it is now the third month in a row that he has received a recurring gift of \$200. The ministry submits that as the appellant received the full \$610 for July IA and the \$200 gift is not exempt, he has an overpayment of \$200 for July 2016.

At the hearing, the ministry conceded that amounts were entered incorrectly in the Overpayment Chart and if the assistance rate on the chart was correctly recorded as \$610 for June 2016, the appellant would not have an overpayment for June based on the other amounts recorded in the chart. He does not dispute the ministry's finding that he has an overpayment for June and July 2016. He acknowledges that his mother was giving him \$200 per month but argues in his RFR that she is no longer providing these payments as she does not want to see him penalized for receiving that money. He submits that he requires the money for other expenses and will budget \$200 per month from his IA for his bus pass and groceries. Regarding the EI payment, the appellant acknowledges that he received it but submits that he forgot to declare the pay stub.

Panel's decision

The appellant does not dispute that he received earned and unearned income in April and May 2016. The panel finds that the ministry reasonably determined that this employment income meets the definition of earned income under EAR subsection 1(1)(a) and that his EI and the \$200 gifts from his mother meet the definition of unearned income under EAR section 1. These sections specifically state that earned income means money received in exchange for work and unearned income includes both EI and monetary gifts.

Section 10(2) of the EAR states that a family unit is not eligible for IA where their net income as determined under Schedule B exceeds the income assistance rate determined under Schedule A. Section 1 of Schedule B sets out the net income calculation. As noted by the ministry, net income includes all of the recipient's earned and unearned income, minus any applicable deductions and exemptions under Schedule B.

The ministry acknowledges that the appellant is entitled to a \$200 exemption for earned income from employment as set out in subsection 3(6)(a) of EAR Schedule B. The appellant does not argue that exemptions should be applied to his unearned income; rather, he forgot to declare his EI and he needed the money from his mother for his other expenses. The panel finds that the ministry reasonably determined that EI is not exempt from the calculation of net income. The only deduction

[]

allowed for EI is income tax at source under subsection 6(a) of EAR Schedule B. Further, none of the exemptions for unearned income set out in subsection 7(1) of Schedule B apply to EI.

The panel also finds that the ministry was reasonable in characterizing the \$200 payments from the appellant's mother as a recurring gift that is not exempt pursuant to subsection 1(a) (xlvii) of EAR Schedule B. The ministry reasonably based this finding on the evidence (bank statements) that show recurring \$200 deposits from March until June 2016. Moreover, none of the deductions and none of the exemptions for unearned income in sections 6 and 7 and 8 of EAR Schedule B apply to gifts.

As explained by the ministry, section 11 of the EAA and section 33 of the EAR set out reporting requirements whereby income received in a particular month must be reported by the 5th day of the following month. The evidence is that the appellant did not report his EI (because he forgot), or the \$200 gifts from his mother (because he needed the money for his bus pass and other expenses). The gifts from his mother were revealed when the ministry investigator reviewed the appellant's entitlement and obtained his bank statements. The panel notes that there are no exemptions in the legislation for honest oversights in declaring income or for financial need.

As noted at the hearing, there are discrepancies between the amounts recorded on the Overpayment Chart and the amounts cited in the investigator's letter of August 17, 2016. While the panel finds and the ministry acknowledges that the ministry incorrectly entered data on the Overpayment Chart for June 2016, the earnings verification from the appellant's employer confirms the amount of employment income earned over the period and the panel notes that the minister's decision about the amount a person is liable to repay is not appealable as set out in subsection 27(2) of the EAA.

As there are no discrepancies in the data on the Overpayment Chart relating to the July 2016 assistance month and the appellant does not dispute that he received \$200 as a recurring gift from his mother for that month but reported only his employment earnings, the panel finds that the ministry reasonably determined that the appellant has an overpayment of assistance and is liable to repay IA that he was not eligible for pursuant to subsection 27(1) of the EAA.

Conclusion

The panel finds that the ministry's reconsideration decision finding that the appellant has an overpayment of IA and is liable to repay the government, is reasonably supported by the evidence. The panel confirms the ministry's decision pursuant to subsections 24(1)(a) and 24(2)(a) of the EAA and the appellant is not successful in his appeal.