

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “ministry”) Reconsideration Decision of August 23<sup>rd</sup>, 2017 in which the ministry determined that the appellant received unearned income of \$610.00 in May 2013, pursuant to Section 1 & 10 of the Employment and Assistance Regulation and was required to repay the amount.

**PART D – RELEVANT LEGISLATION**

EAR *Employment and Assistance Regulation, Section 1 & 10*

## **PART E – SUMMARY OF FACTS**

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

- 1) **May 31<sup>st</sup>, 2013** – the ministry notes that the appellant advised them she had cashed a cheque into her bank account from her friend's tenant. This cheque bounced and the appellant became indebted to the bank as a result. She stated she advised the Ministry the following month as to what had transpired.
- 2) **July 27<sup>th</sup>, 2015** – Upon being contacted by a ministry investigator the appellant advised the investigator that she had cashed another income assistance cheque made payable to another person in May 2013.
- 3) **On April 25<sup>th</sup>, 2017** – the ministry investigator noted that the appellant was informed that as a result of a criminal investigation, it was determined that the appellant had received a total of \$610.00 for which she was ineligible to receive. The ministry notes indicated that there was paperwork that had to be presented to the appellant in relation to this overpayment of assistance.
- 4) **June 19<sup>th</sup>, 2017** – the ministry provided the appellant with an overpayment chart which had indicated the appellant received \$610.00 for July 2013 assistance for which she was ineligible to receive. The appellant was advised of her Right to Reconsideration.
- 5) **June 22<sup>nd</sup>, 2017** – the ministry noted that the repayment structure was changed from \$100 per month to \$20.00 per month.
- 6) **July 18<sup>th</sup>, 2017** – the appellant submitted her Request for Reconsideration.

### **Additional Information**

The ministry representative did not attend the hearing. After waiting for ten minutes and checking to ensure the ministry had been notified of the hearing, the panel proceeded in the absence of the ministry, pursuant to Section, 86(b) of the Employment and Assistance Regulation.

At the hearing, the appellant provided two sets of documents as evidence for the panel to consider its admissibility. The first; a September 27, 2017 letter from the BC Ombudsperson relating to an investigation into the total \$610.00 amount being withheld from the appellant's income assistance cheque. The letter from the Ombudsperson indicated (para. 2, 4 & 5) that the issue had been addressed by the ministry and that the amount had been reduced from \$100.00 per month, to \$20.00 per month, to the current amount which was \$10.00 per month. The panel admitted paragraph (2, 4 & 5) of the two-page letter pursuant to Section 22(4) of the Employment and Assistance Act as it was determined to be in support of what was before the reconsideration officer at the time the decision was made. Secondly, the appellant provided an April 7<sup>th</sup>, 2018 letter written by the appellant's friend's mother, who attests to the fact that the cheque the appellant cashed for her son was not used for personal use. Again, the panel determined that the letter was admissible, as the information was in support of the information that was before the reconsideration officer at the time the decision was made.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of August 23<sup>rd</sup>, 2017 in which the ministry determined that the appellant received unearned income of \$610.00 in May 2013, pursuant to Section 1 & 10 of the Employment and Assistance Regulation and was required to repay the amount.

The relevant sections of the legislation are as follows:

### **Employment and Assistance Regulation, Section 1**

#### **Unearned Income**

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the [Real Estate Development Marketing Act](#);
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the [Employment and Assistance for Persons with Disabilities Act](#) or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the [Criminal Injury Compensation Act](#) or awards of benefits under the [Crime Victim Assistance Act](#), other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the [Immigration and Refugee Protection Act](#) (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (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;

"**unfunded program of studies**" means a program of studies for which a student enrolled in it is not eligible for funding provided to students under the [Canada Student Financial Assistance Act](#).

### **Employment and Assistance Regulation, Section 10(2)**

(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.

### **Panel Decision**

Section (1) of the Employment and Assistance Regulation defines "unearned income" as any income that is not earned income. The ministry argues the list of unearned income is not an exhaustive list and the intent of section 1 EAR is that another person's financial assistance cheque is to be considered "unearned income" if it was not cashed by the person whom it was meant for (the person whose name is on the cheque).

While the appellant did not dispute she cashed the cheque, in her Notice of Appeal dated August 30<sup>th</sup>, 2017 the appellant stated that she did not use any of the funds for personal use, and that she was only doing her friend a favour.

At the hearing, the appellant indicated that the ministry had a requirement to request information relating to the excess income, in the form of bank statements and or to provide notice in advance that the funds would be need to be repaid before implementing the immediate repayment structure. The legal advocate of the appellant reiterated that the appellant should have been afforded the opportunity to provide evidence that the funds were not used for personal use, and that it was unreasonable that the ministry had made an immediate decision to withhold funds from the appellant based on her own admission. Further, the legal advocate submits that the ministry was unreasonable to expect that the appellant would have been able to establish letters of support from the period of time (even if she had of been afforded the opportunity).

While the appellant did provide at the hearing, an April 9<sup>th</sup>, 2018 letter from the friend's mother – (five years after the initial deposit incident) who attests to the fact that the funds were not used for personal use, the panel found that the letter was not sufficient evidence that the funds had not been personally used. Based on the appellant's own admission that the funds had been deposited, and in the absence of sufficient evidence which would support the appellant's claim that she did not use the funds for personal use, the panel the ministry was reasonable to treat the deposited funds as unearned income.

Section 10(2) of the Employment and Assistance Regulation, stipulates that 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. The panel finds the ministry's decision that the appellant was not eligible for income assistance for July 2013 because the net income of \$886.42 she received in May 2013 exceeded the \$610.00 amount of income assistance determined for the family unit size under Schedule A of the EAR was a reasonable application of the legislation in the circumstances of the appellant.

The panel determines the ministry's decision that the appellant received "unearned income" and was not eligible for income assistance for July as per section 10(2) of the EAR because the appellant's income exceeded the amount of income assistance as determined by her family size under Schedule A was a reasonable application of the legislation in the circumstances of the appellant.

Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act. The appellant is therefore not successful in her appeal.