

PART C – DECISION UNDER APPEAL

The decision under appeal is the April 13, 2018 Ministry of Social Development and Poverty Reduction Reconsideration Decision that held that in accordance with section 27 of the Employment and Assistance Act (EAA) the appellant is required to repay assistance she received for July 2016, September 2017 and October 2017 for which she was not eligible in accordance with section 28 of the Employment and Assistance Regulation (EAR).

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) sections 27, 28.
Employment and Assistance Regulation (EAR) sections 10, 28, 33.
Schedule A.
Schedule B.

PART E – SUMMARY OF FACTS

The appellant is a sole employable recipient.

Her file re-opened in April, 2016 and closed on September 8, 2016. The appellant was issued assistance from April 2016 to July 2016.

Her file re-opened again on June 22, 2017, and has remained open since this date. She was issued assistance beginning July 2017.

On November 30, 2017 the ministry began a review of her current eligibility and audit of her past eligibility for assistance.

In a letter dated March 13, 2018 the ministry wrote that an overpayment of \$ 1030.63 has been recorded on the appellant's file.

At reconsideration the ministry wrote that

- In May 2016 the appellant had failed to declare income of \$ 679.63 (a deposit of \$ 148.24 on May 6 and a deposit of \$ 531.24 on May 20);
- in July 2017 the appellant declared \$ 620 on her paystub instead of \$620.75 as shown on a July 28, 2017 deposit;
- in August 2017 the appellant failed to declare a total of \$ 861.15: Her paystubs show that she was paid \$ 196.42 on August 11; in addition, a minus of \$ 500 for advance is noted on August 11, 2017; and she was paid \$164.74 on August 25. The ministry noted that in accordance with section 9(1) [the ministry must have meant should be 10(1)] the \$500 advance must be included in her income.

The ministry provided a chart that shows the following entries and amounts:

July 2016 assistance:

May 2016 employment earnings:	\$ 679.48.
Net income (net pay minus earnings exemption):	\$ 679.48 - \$ 200 = \$ 479.48
Eligibility amount:	\$235 support +\$375 shelter = \$ 610 - \$479.48 = \$130.52.
Assistance issued:	\$ 610
Overpayment amount:	\$ 610 - \$130.52 = \$479.48

September 2017 assistance:

July 2017 employment earnings:	\$ 620.75
Net income (net pay minus earnings exemption)	\$ 620.75 - \$ 200 = \$ 420.75
Eligibility amount:	\$ 235 support+\$ 375 shelter = \$ 610 - \$ 420.75 = \$ 189.25
Assistance issued:	\$ 190
Overpayment amount:	\$190 - 189.25 = .75 cent

October 2017 assistance:

August 2017 employment earnings (including an advance of \$ 500):	\$ 861.15
Net income (net pay minus earnings exemption):	\$ 861.15 - \$ 400 = \$ 461.15
Eligibility amount :	\$ 335 support +\$ 375 shelter = \$ 710 - \$ 461.15 = \$ 248.85
Assistance issued:	\$ 710
Overpayment amount:	\$ 710 - \$ 248.85 = \$ 461.15

The appellant did not dispute these amounts.

In her March 28, 2018 request for reconsideration submission the appellant stated that she was working until August 25, 2016 when she "went on sick leave and filed for medical EI". She added that "Employment insurance was behind on accepting my claim and I did receive a "hardship" cheque I was collecting medical EI until May 2017. Returned to [work] April 18/2017 to July 20, 17 went off again for my disability by mid July I only had \$ 251 for upcoming rent etc." She wrote that she is very confused with the calculation and requests, "I wish for an extensive review and a breakdown of each entry and how you figure I have done anything wrong."

In her Notice of Appeal received on April 19, 2018 the appellant writes: "The amount was originally owing was \$1030.63, now it has decreased to \$9??, not sure exact. This indicates to me that workers provided me with moneys stating I was entitled to them, this is not anything to do with my inaccuracy." "I was working and not in receipt of assistance." "I have had to go through this once already and if anything you're creating poverty rather than reduce it."

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's determination that in accordance with section 27 of the EAA the appellant is required to repay the ministry assistance she received for July 2016, September 2017 and October 2017 for which she was not eligible in accordance with section 28 of the EAR is a reasonable application of the legislation in the appellant's circumstances or is reasonably supported by the evidence.

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*].

Liability for and recovery of debts under Act

28 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

...

(b) deducted, in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

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.

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, 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;
- (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.

Appellant's Position:

The appellant argues that she should not have to repay any assistance because she did not make any mistakes reporting her income. The ministry's calculations are confusing - first she was told she owed \$ 1030.63 and later she was told she owed \$ 941.38.

Ministry position:

For all recipients of income assistance, income received during the previous month is reported by the 5th of the current month and affects the following month's assistance. (for example, May 2016 income was to be reported by June 5th, 2016 and affected July 2016 assistance.

For a family unit to be eligible for assistance, a recipient must submit a form and notify any change in circumstances or information that may affect the eligibility of the family unit and signed by the recipient. Section 33 of the EAR states that the report must be submitted on the 5th of each month and the information required is changes in the family unit's income received and the source of the income. Section 28 of the EAR explains that the person's income (calculated under Schedule B of the Regulation) must be deducted from their income assistance (calculated under Schedule A of the EAR). Section 10(1) of the EAR states "income" includes amounts garnished, attached, seized, deducted for set off from the income of a recipient. Section 10(2) of the EAR states a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching the family unit. Under section 27 of the EAA, if income assistance is received by a person who is not eligible for it, that person must repay the government the amount or value of the overpayment provided for that period. Under section 28 of the EAA the amount that a person is liable to repay may be deducted from any subsequent income assistance.

Upon review of the appellant's bank statements the ministry found that the appellant received deposits from her employer for \$ 148.24 on May 6, 2016, and \$ 531.24 on May 20, 2016 and thus received a total of \$ 679.48 that she had failed to declare. In addition, the appellant had incorrectly declared income of \$ 620.75 as \$ 620 - she failed to declare .75 cents.

According to her paystubs the appellant received a total of \$ 861.15 net pay in August. Her August 11, 2017 paystub shows earnings of \$ 196.41 and a minus \$ 500 for an advance. This advance must be included in her net income amount according to section 10(1) [the ministry actually wrote 9(1)] of the EAR. On August 25, 2017 she was paid \$ 164.75.

As the appellant received income assistance of \$ 479.58 in July 2016, .75 cents in September 2017 and \$ 461.15 in October 2017 totalling \$ 941.38 for which she was not eligible as a result of failing to declare her earnings accurately she is required to pay this amount back to the ministry in accordance with section 27 of the EAA.

Panel Decision

Section 28 of the EAR provides that income assistance 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, minus the family's net income under Schedule B.

The panel finds that the ministry's determination that in July 2016, September 2017 and October 2017 the appellant received assistance in excess of the amounts she was eligible for as set out in section 28 of the EAR is reasonably supported by the evidence:

In July 2016 the appellant was eligible under Schedule A to receive assistance in the amount of \$ 610 (\$ 235 for support + \$ 375 shelter). The family's net income under Schedule B was \$ 479.48 (\$ 679.48 minus \$ 200 earnings exemption). When the appellant received assistance of \$ 610 in July 2016 she received funds in excess of \$ 130.52 (\$ 610 minus \$ 479.48).

In September 2017 the appellant was eligible under Schedule A to receive assistance in the amount of \$ 610 (\$ 235 for support + \$ 375 shelter). The family's net income under section B was \$ 420.75 (\$ 620.75 minus \$ 200 earnings exemptions). When the appellant received assistance of \$ 190 in September 2017 she received funds in excess of \$ 189.25 (\$ 610 minus \$ 420.75).

In October 2017 the appellant was eligible under Schedule A to receive assistance in the amount of \$ 710 (\$ 335 for support + \$ 375 shelter). The family's net income under section B was \$ 461.15 (\$ 861.15 minus \$ 400 earnings exemptions). When the appellant received assistance of \$ 710 in October 2017 she received funds in excess of \$ 248.85 (\$ 710 minus \$ 461.15)

Because assistance in July 2016, September 2017 and October 2017 was provided in excess of the amount allowed under section 28 of the EAR, the ministry reasonably determined that the appellant is liable to repay assistance she was not eligible for in accordance with section 27 of the EAA.

The panel notes that it has no authority to make a decision respecting "the amount a person is liable to repay" as set out in section 27(2) of the EEA.

While the appellant finds it confusing that she was told at 2 separate occasions she owed 2 different amounts, the panel notes that its jurisdiction is limited to reviewing the reconsideration decision; the panel has no jurisdiction over previous decisions.

Conclusion:

After considering all the evidence and the applicable legislation the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore the panel confirms the decision and the appellant is not successful on appeal.

PART G—ORDER

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:*Employment and Assistance Act*Section 24(1)(a) and Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b) **PART H—SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/05/29

PRINT NAME

Joan Cotie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/05/29

PRINT NAME

Charles Schellinck

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/05/29