

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of May 24, 2018 (the “Reconsideration Decision”), which held that the Appellant was required to repay \$10,598.28 to the Ministry on account of income assistance received in a period where she possessed assets in excess of the \$4,000.00 asset limit prescribed by section 11(2) of the *Employment and Assistance Regulation* (“EAR”) which were not exempt under section 11(1) of the EAR from inclusion in a calculation of the Appellant’s assets.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act* (“EAA”), sections 1, 2, 27, and 28  
EAR, section and 11

## PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of income assistance with two dependent children.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- a transaction history for the Appellant's basic banking account (the "Basic Account") from February 27, 2017 to April 28, 2017;
- page 2 of the Statement for the Appellant's Basic Account for the period from July 27, 2017 to August 26, 2017;
- a transaction history for the Appellant's premium savings account (the "Premium Account") from February 27, 2017 to April 28, 2017;
- a transaction history for the Appellant's tax free savings account (the "TFSA") from October 7, 2017 to April 9, 2018;
- the October, 2017 statement for the Premium Account;
- the September, 2017 statement for the Premium Account;
- the August, 2017 statement for the Premium Account;
- the July, 2017 statement for the Premium Account;
- the June, 2017 statement for the Premium Account;
- the May, 2017 statement for the Premium Account;
- an Overpayment Chart (the "Overpayment Chart"), prepared by the Ministry, which shows that:
  - the Appellant's financial assets in each of the months from June, 2017 to March, 2018 was in excess of \$4,000.00, starting at \$5,780.95 in June, 2017, reaching a high of \$10,263.60 in September, 2017, and declining to a low of \$4,000.65 in March, 2018; and
  - the Ministry paid \$10,598.28 in assistance to the Appellant from June, 2017 to March, 2018;
- a letter from the Ministry to the Appellant, dated April 25, 2018, advising the Appellant of the overpayment and explaining how the overpayment was calculated;
- the Appellant's Request for Reconsideration ("RFR"), dated May 7, 2018, in which the Appellant stated that:
  - she was not aware that the Loan would be included as an asset;
  - the Loan was not accessible to her because it had been obtained for dental procedures and should not be counted towards her asset limit;
  - she should receive benefits for the months of October 2017 through March 2018 when the value of her assets, exclusive of the Loan, were below \$4,000.00; and
  - as of April, 2018, she had repaid the Loan.

In her Notice of Appeal, filed May 29, 2018, the Appellant stated that:

- she had not been informed that a personal loan was considered an asset;
- she had borrowed \$4,000.00 (the "Loan") for the sole purpose of paying for various dental procedures that she required;
- after being informed that the loan was considered an asset by the Ministry, she returned it; and
- she would not have accepted the loan had she known that it was considered an asset.

The Appellant attached six documents to her Notice of Appeal, as follows:

- a disclosure statement (the "Disclosure Statement") from the financial institution from who she obtained the Loan, indicating that the Appellant had borrowed \$4,000.00 and had received \$770.57 which was paid to others on her behalf, including \$128.92 for an insurance premium. There are no restrictions set out in the Disclosure Statement as to potential uses for the Loan;
- five quotes (the "Quotes") for treatments recommended by the Appellant's dentist to repair several of the Appellant's teeth.

In her oral evidence at the hearing, the Appellant reiterated her position that the Loan was solely for the purpose of fixing her teeth and she had not been advised that it would be counted as an asset by the Ministry. When asked about the balances in her bank accounts prior to receiving the Loan, the Appellant advised that it represented monies received from her family. The Appellant confirmed that, upon learning that the Loan would be counted against her asset limit, she repaid it.

The Ministry did not object to the admissibility of the Disclosure Statement or the Quotes and the panel finds that they are written testimony in support of information that was before the Ministry at the time of the Reconsideration Decision and admits them pursuant to section 22(4) of the EAA. Likewise, the panel admits the oral evidence of the Appellant at the hearing as oral testimony in support of information that was before the Ministry at the time of the Reconsideration Decision.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably determined that the Appellant was required to repay \$10,598.28 on account of income assistance received in a period where she possessed assets in excess of the \$4,000.00 limit prescribed by section 11(2) of the EAR and which were not exempt under section 11(1) of the EAR from inclusion in a calculation of the Appellant's assets.

### *Relevant Legislation*

Section 1 of the EAR defines assets and cash assets as follows:

**"asset"** means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

**"cash assets"** in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
  - (i) a savings institution, or
  - (ii) a third partythat must pay it to the person or the dependant on demand,
- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Section 11(1) of the EAR describes the assets that are exempt from inclusion in the calculation of assets held by a family unit:

### **Asset limits**

**11** (1)The following assets are exempt for the purposes of subsections (2) and (2.1):

- (a) clothing and necessary household equipment;
- (b) subject to subsection (2.3), one motor vehicle generally used for day to day transportation needs if
  - (i) the equity in the motor vehicle does not exceed \$10 000,
  - (ii) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit,
  - (iii) the motor vehicle is used to transport a disabled dependent child, or
  - (iv) the motor vehicle is used to transport a disabled supported child, if the child is in the care of the applicant or recipient;

- (c) a family unit's place of residence;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
  - (i) applied to the amount owing on the family unit's current place of residence, or
  - (ii) used to pay rent for the family unit's current place of residence;
- (e) a Canada child tax benefit;
- (e.1) a Canada child benefit;
- (f) a goods and services tax credit under the *Income Tax Act* (Canada);
- (g) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for income assistance (part 2) form, and female stock held for stock replacement;
- (l) essential equipment and supplies for farming and commercial fishing;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;
- (n) prepaid funeral costs;
- (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
- (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (s) money that is
  - (i) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

- (ii) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (u) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 6 (e).]
- (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
- (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 7 of the Act,
  - (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
  - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
    - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
    - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and received and used for the purposes set out in the business plan;
- (y) assets exempted under
  - (i) section 12 (2) *[asset development accounts]*,
  - (ii) section 13 (2) *[assets held in trust for person receiving special care]*, or
  - (iii) section 13.1 (2) *[temporary exemption of assets for person applying for disability designation or receiving special care]*;
- (z) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 3.]
- (aa) payments granted by the government of British Columbia under section 8 *[agreement with child's kin and others]* of the *Child, Family and Community Service Act*;
- (bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (cc) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 3.]

(dd) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;

(ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

- (i) Autism Funding: Under Age 6 Program, or
- (ii) Autism Funding: Ages 6 — 18 Program;

(ff) funds held in a registered education savings plan;

(gg) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(ii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(jj) funds held in, or money withdrawn from, a registered disability savings plan;

(kk) a working income tax benefit provided under the *Income Tax Act* (Canada);

(ll) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]

(mm) the climate action dividend under section 13.02 of the *Income Tax Act*;

(nn) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(oo) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(pp) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(qq) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

- (rr) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (ss) a tax refund;
- (tt) a BC basic family bonus;
- (uu) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (vv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (ww) a BC early childhood tax benefit;
- (xx) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
- (yy) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;
- (zz) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
- (aaa) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;
- (bbb) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
- (ccc) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits.

Section 11(2)(b) sets out the asset limit for a family unit in the circumstances of the Appellant:

(2) A family unit is not eligible for income assistance if any of the following apply:

- (a) subject to paragraph (c), a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$2 000;



(b) subject to paragraph (c), an applicant or a recipient has one or more dependants and the family unit has assets with a total value of more than \$4 000;

Finally, section 27 sets out the consequences of an overpayment:

### **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*].

### *Appellant Position*

The Appellant's position is that she had not been told about the asset limit when she applied for assistance and that the purpose of the Loan was strictly to cover anticipated dental expenses and would not be used for any other purpose. The Appellant's position is that in the months where the Loan is the reason for her assets exceeding the \$4,000.00 limit set out in section 11(2)(b) of the EAR, no overpayment should be assessed against her. The Appellant's position is that the months where this was the case are from October, 2017 to March, 2018.

### *Ministry Position*

The Ministry position is that the Appellant was advised of the asset limit when she applied for assistance and that her asset limit was exceeded from June, 2017 through April, 2018, making her ineligible for income assistance during that time. The Ministry responded to the Appellant's submissions about having received the Loan by noting that it is the responsibility of a recipient to notify the Ministry of any change in his or her circumstances.

### *Panel Decision*

As a recipient of regular income assistance with one or more dependants, the Appellant is subject to an asset limit of \$4,000.00, pursuant to section 11(2)(b) of the EAR. The Appellant's bank statements indicated that she had cash assets, as defined by section 1 of the EAR, in the amount of \$5,780.95 in June, 2017. The value of her cash assets increased to \$10,263.60 after receiving the Loan in the amount of \$4,000.00.

The Appellant's assets already exceeded the \$4,000.00 in every month from June, 2017 through to the date that she received the Loan. In September, 2017, the month after the Loan was received, her assets again exceeded \$4,000.00, even if one were to deduct the Loan from her asset total. In the result, the panel finds that the Ministry was reasonable in its determination that the Appellant was ineligible for assistance for the months of June, 2017 through September, 2017 on the basis that the Appellant had been overpaid assistance by virtue of having held assets in excess of the \$4,000.00 limit prescribed in section 11(2)(b) of the EAR in the months of June, 2017 to September, 2017.

The Appellant argues that, starting in October, 2017, the value of her assets was less than \$4,000.00 each month if one deducts the Loan amount. Section 1 of the EAR defines a “cash asset” broadly as monies “standing to the credit of the person or the dependant with (i) a savings institution, or (ii) a third party that must pay it to the person or the dependant on demand.” Notwithstanding the commensurate obligation that the Appellant had to repay the Loan, the Loan amount transferred to the Appellant’s Basic Account on August 14, 2017 meets the definition of “cash asset” under section 1 of the EAR. Once the Loan amount was transferred to the Appellant, the savings institution with which she banked had to pay it to her on demand. Section 11(1) of the EAR contains an exhaustive list of no less than 55 types of assets that are exempt from inclusion for the purpose of determining whether a recipient has exceeded their asset limit under section 11(2). Cash loans are not among the list set out in section 11(1) of the EAR and, for that reason, the panel finds that the Ministry reasonably determined that the Appellant had been overpaid assistance by virtue of having held assets in excess of the \$4,000.00 limit prescribed in section 11(2)(b) of the EAR in the months of October, 2017 to March, 2018.

Section 27 of the EAR sets out that where there is an overpayment, a recipient is “liable to repay to the government the amount or value of the overpayment provided for that period.” As the panel finds that the Ministry reasonably determined that the Appellant’s assets holdings were in excess of the applicable limit for the months from June, 2017 to March, 2018, the panel finds that the Ministry also reasonably determined that an overpayment had occurred in those months.

In view of all of the foregoing, the panel confirms the Reconsideration Decision.

The Appellant is not successful in her 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)  or Section 24(1)(b) 

and

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

PRINT NAME

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/06/22

PRINT NAME

Chris McEwan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/22

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/22