

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated August 30, 2018 which determined that the Appellant received Income Assistance (IA) for which he was not eligible and that he must repay a specified amount to the Ministry.

In particular, the Ministry determined that the Appellant had received non-exempt unearned income in the form of a recurring gift of money in the amount of \$7,681.36 which should have been reported and deducted from the IA amount provided to the family unit for certain specified months between December 2016 and December 2017 inclusive.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Sections 1, 11, 27 and 28

Employment and Assistance Regulation (EAR), Sections 1, 10(2), 28 and 33, Schedule A, Sections 1(1), 2(1) and 4(2), and Schedule B, Sections 1 and 8

PART E – SUMMARY OF FACTS

The Appellant is a recipient of IA with a dependent spouse and one dependent child.

The information before the Ministry at reconsideration was as follows:

- Request for Reconsideration dated August 1, 2018 in which the Appellant states that all of the statements he had submitted are true and that he is “*very surprised that nobody trust(s) me*”;
- Original Ministry letter dated June 26, 2018 notifying the Appellant of the overpayment;
- Undated hand-written letter (Letter #1) addressed to the Ministry and prepared by the Appellant referencing an earlier telephone conversation between the Appellant and the Ministry stating that the Appellant’s father sent money to the Appellant for the Appellant’s son’s education and “*for our expenditure because of our low income*”, and that the Appellant also received loans from friends because the family unit could not survive without his father’s money and the friends’ loans. In this letter the Appellant also offers to provide a letter signed by his father confirming that his father is providing financial support to the family unit;
- Hand-written letter dated July 11, 2018 addressed to the Ministry and prepared by the Appellant referencing an earlier letter from the Appellant to the Ministry, indicating that the funds were provided by the Appellant’s father for the Appellant’s son’s education and that a review of the bank statements clearly shows that the money was transferred to the Appellant’s son’s student account “*on that day or the next day*”;
- Undated overpayment chart (Chart) for IA months between October 2016 and December 2017 and prepared by the Ministry showing the Ministry’s calculation of the date and value of each unearned income amount received by the Appellant;
- Hand-written letter dated August 4, 2018 and prepared by the Appellant referencing the Chart and asking for an additional two weeks to review it and to submit additional evidence;
- Appellant bank statements (Bank Statements) showing account activity on the Appellant’s chequing account for the months of August 2016 through December 2017 inclusive;
- Handwritten notes prepared by the Appellant listing dates between July 18, 2016 and October 2, 2017 with corresponding deposit and withdrawal amounts on each date which match the dates and amounts for the above-noted Bank Statements on those dates that are covered by the Bank Statements, and a description of the source of the deposit or withdrawal for each entry (e.g. “Loan by Friend” or “Loan Paid”);
- Undated, colour-keyed overpayment worksheet showing dates, deposit amounts, bank account, source of deposit, stated purpose, deposit type and notes regarding each payment; and,
- Ministry monthly reports (Monthly Reports) for the months of November 2016 through January 2017 inclusive, May 2017 through July 2017 inclusive, and September 2017 through November 2017 inclusive.

Additional Information Submitted after the Reconsideration Decision

In the Notice of Appeal (NOA) submitted by the Appellant on September 10, 2018 the Appellant stated that he had explained to the Ministry that the unearned income was money provided by the Appellant’s father towards the Appellant’s son’s education, and that the payments were processed through the Appellant’s bank account. He also stated that he could provide a letter from his father to prove that this was the case.

At the hearing, the Appellant explained that he and his spouse had two children living at home: a 22 year old adult son who was attending a post-secondary educational institution and a 16 year old dependent child. The Appellant, his spouse and the dependent child formed the 3 person family unit for the purpose of IA eligibility. He stated that the tuition for his adult son’s education was approximately \$9,000 per semester and that there were 2 semesters in a school year, for an annual tuition cost of approximately \$18,000, and that he has arrangements with the school to vary the payment amounts. He

explained that he did not have the financial means to assist with his son's educational costs, so the Appellant's father has provided a contribution of between \$500 and \$1000 once or twice every month since 2014, approximately 75% of which went to the Appellant's son's education costs and 25% towards the family unit's living costs. The family unit's additional income was from IA and loans from friends.

The Appellant explained that in his previous country of residence it was the custom that family members make financial contributions, if they had the means, toward the living costs of family members, and that those contributions are made through the head of the household – in this case through the Appellant. The Appellant said that he did not report his father's contributions or the loans from friends on his Monthly Reports because he didn't consider them to be income. He stated that the Ministry thought the Appellant's family unit had enough income because of his father's contribution and that he no longer required IA. The Appellant said that he and his wife had found work several months ago and had advised the Ministry of this. As a result they were no longer receiving IA, but when they had been receiving IA, his father's contributions were a necessary source of funds to help them meet their expenses and that he didn't understand why the Ministry didn't recognize that his family could not survive without it.

At the hearing the Ministry relied on its Reconsideration Decision and confirmed that the Appellant's family unit had been receiving IA since 2016 and that his file was closed in July 2018. The Ministry also explained that a recipient must complete a monthly report in the form of a cheque stub questionnaire every month, listing any changes that occurred in the previous month, including identifying all earned and unearned income received by members of the family unit. The Ministry stated that the legislation requires that all income be taken into account in determining the amount of IA for which a family unit is eligible, that the legislation contains definitions of both "earned income" and "unearned income", and that the Ministry had determined that most of the Appellant's father's contributions met the definition of unearned income in the form of a recurring gift.

Referring to the payment chart contained in the Reconsideration Decision, the Ministry also went over each payment made by the Appellant's father between September 2016 and October 2017 and explained how it determined whether or not each payment was a recurring gift: the first payment in the list was not considered a recurring payment because the Appellant had not received a contribution from his father in the previous month, whereas the next several payments were considered to be recurring because approximately the same amount was sent at the beginning of each subsequent month, and two of the later payments were not considered recurring because there was a two month gap between the Appellant's father's contributions on two occasions.

The Ministry explained that it had calculated a higher amount for repayment in its original decision because it had included a large number of gifts or loans from friends in its initial overpayment calculation, but that on reconsideration it had concluded that there was not enough information about the source of the funds to determine whether or not the payments were recurring gifts. The Ministry also explained that it did not consider any of the payments from friends to be loans because the terms of repayment had not been specified or documented.

Admissibility of Additional Information

Section 22(4) of the EAA states that a panel may admit as evidence only information and records that were before the minister when the decision under appeal was being made and oral and written testimony in support of the information and records that were before the minister when the decision under appeal was being made. If the evidence is in support of the information and records that were before the minister at the time of reconsideration decision, and if the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted.

The Panel determined that the information contained in the NOA was information that was before the Ministry when the decision under appeal was being made. The Panel further determined that the Appellant's estimate that approximately 75% of the recurring money from his father went toward the Appellant's son's education with the remaining 25% was applied to the family unit's living costs was oral testimony in support of the information and records that were before the Ministry when the decision under appeal was being made, as the Appellant had stated in Letter #1 that the Appellant's father had sent money to the Appellant for both the Appellant's son's education and for household expenses.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's decision, which found that the Appellant received IA for which he was not eligible and that he must repay a specified amount to the Ministry, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant Sections of the EAA are as follows:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants; ...

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2); ...

"family unit" means an applicant or a recipient and his or her dependants; ...

"recipient" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants; ...

Reporting obligations

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

- (2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

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
- (a) recovered in a court that has jurisdiction, or
 - (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.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the income assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

The relevant Sections of the EAR are as follows:

Definitions

- 1** (1) In this regulation: ...

"full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

"funded program of studies" means a program of studies for which funding provided to students under the *Canada Student Financial Assistance Act* may be provided to a student enrolled in it; ...

"part-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada); ...

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

- (x) gifts of money ...

"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*.

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, B.C. Reg. 87/2018:
 - (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; ...

Schedule A

Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 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	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
12	Two applicants/recipients and one or more dependent children	Both applicants/recipients are under 65 years of age	\$501.06

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	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
3	3 persons	\$660

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; ...

Minister's discretion to exempt education related unearned income

8 (1) In this section: ...

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student financial assistance;

- (c) student grants, bursaries and scholarships;
 - (d) disbursements from a registered education savings plan.
- (3) An exemption under subsection (2) may be authorized in respect of a student who is
- (a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,
 - (b) an applicant or a recipient enrolled
 - (i) as a part-time student in an unfunded program of studies, or
 - (ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
 - (c) a person in a category listed in section 29 (4) [*consequences of failing to meet employment-related obligations*] of this regulation enrolled as a part-time student in a funded program of studies.
- (4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:
- (a) a training allowance;
 - (b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the *Canada Student Financial Assistance Act*;
 - (c) disbursements from a registered education savings plan.
- (5) An exemption under subsection (4) may be authorized in respect of a student who is
- (a) a recipient enrolled as a part-time student in a funded program of studies, or
 - (b) described in section 16 (1.1) [*effect of family unit including full-time student*] of this regulation.

* * * *

Position of the Parties

The Appellant's position is that the contributions from his father should not be considered income and that the additional funds that his family unit had received in IA before he and his spouse found work in July 2018 were necessary to allow them to meet their financial commitments, in particular the high cost of the Appellant's son's education. The Ministry's position is that the legislation requires that all income be taken into account in determining the amount of IA to which a family unit is eligible, and that it had determined that most of the Appellant's father's contributions met the definition of unearned income in the form of a recurring gift. As the Appellant had not reported this unearned income, it would have to be repaid.

Panel Decision

Section 10(2) of the EAR says that a family unit is not eligible for IA if the net income of the family unit determined equals or exceeds the amount of IA for the family unit. Section 28 of the EAR provides a formula for calculating IA by using the Schedules to the EAR. In brief, IA is the sum of allowances provided by Schedule A, which are based on the composition and age of the family unit, minus the family

unit's net income, which is calculated in accordance with Schedule B. The Panel finds that the Ministry reasonably determined that the Appellant's family unit was entitled to IA in the amount of \$1,061.06 prior to October 1, 2017 and \$1,161.06 thereafter, prior to deducting any net income, as the Appellant's family unit was composed of two applicants and one dependent child. (The change in amount was due to a legislative change to the EAR.)

Section 1(1) of the EAR says that net income comprises both earned and unearned income, and "unearned income" includes any income that is not earned income, incorporating any money or value received from gifts of money. Schedule B of the EAR provides deduction and exemption rules for the calculation of net income, and states, in part, that when calculating the net income of a family unit for the purposes of determining the amount of IA, gifts, other than recurring gifts, are exempt. The legislation does not define "recurring". The Collins English Dictionary provides the definition of "recurring" in the accounting context to mean an event "happening at *regularly occurring* intervals" (emphasis added). The Panel finds that the Ministry reasonably determined that some of payments made by the Appellant's father were "recurring gifts" while others were not, and that those payments made in a month immediately following a month or months in which payments were not made were not recurring because they were not occurring at regular intervals. The Panel further finds that the Ministry also reasonably determined that the contributions deemed to be "recurring gifts" were not exempt from unearned income, and were therefore reasonably deducted from the amount of IA that the family unit was otherwise eligible to receive, pursuant to EAR Sections 10(2) and EAR Section 28.

With respect to the "loans from friends", the Panel finds that the Ministry reasonably determined that these "loans" were gifts rather than loans because there was no evidence of repayment terms, and that it could not be determined if they were recurring gifts because there was no information about the specific source of each "gift". Therefore the Panel finds that the Ministry reasonably determined that these "gifts" or "loans" from friends were exempt from the calculation of unearned income.

The Panel notes that EAR Schedule B Section 8 gives the Ministry discretion to exempt education related unearned income from a recipient's income, and defines "education costs", in relation to a student and a program of studies, to include the costs of tuition, student fees, books, equipment, supplies and transportation and related costs, that, in the opinion of the Ministry, are reasonably required for the student to participate in the program of studies. However, the Panel further notes that this provision only applies with respect to unearned income in the form of a training allowance, student financial assistance (defined to mean assistance provided under the British Columbia Student Assistance Program, the *Canada Student Financial Assistance Act*, or a similar program provided by another province or jurisdiction), student grants, bursaries and scholarships and disbursements from a registered education savings plan. Despite this provision being included by the Ministry in the list of relevant legislation in its Reconsideration Decision (but not otherwise referred to in the Ministry's Reconsideration Decision), the Panel finds that EAR Schedule B Section 8 does not apply because no portion of the Appellant's father's gifts was in the form of a training allowance, student financial assistance as defined, a student grant, bursary or scholarship, or a disbursement from a registered education savings plan, as required by that section of the EAR.

Section 27 of the EAA states that if IA is received by a person who is not eligible for it, that person must repay the amount of the overpayment. The Panel finds that the Ministry reasonably determined that the Appellant received IA for which he was not eligible.

Conclusion

The Panel finds that the Ministry's decision that the Appellant must repay \$7,681.36 to the Ministry because he received IA for which he was not eligible was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore the Ministry's decision is confirmed. The Appellant is not successful in his 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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/09/28

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/28

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/28