

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated August 23, 2018, which determined that the appellant had to repay \$710 for income assistance that he received in May 2018 for which he was not eligible.

In particular, the ministry found that as the appellant was enrolled as a full time student in a funded program of studies starting April 9, 2018 without prior approval from the ministry he was not eligible for May 2018 income assistance pursuant to section 16 of the EAR. The reconsideration decision also found that, pursuant to section 27 of the EAA, the appellant must repay the overpayment to the ministry.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) sections 11, 27 and 28

Employment and Assistance Regulation (EAR) sections 1, 16 and 33

PART E – SUMMARY OF FACTS

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

- Monthly Reports dated March 21 and April 25, 2018 in which the appellant indicates that he was not attending or enrolled in school training
- Student Financial Assistance System inquiry dated May 17, 2018 indicating that the appellant received a student loan for a post-secondary educational course starting April 9, 2018 and ending March 22, 2019
- Ministry information indicating that during a telephone interview with an investigative officer on May 17, 2018 the appellant confirmed that he was attending full time school and that he was not sure how to advise the ministry of his transition to being a student. The information indicates that the appellant advised the ministry that he received the first student loan instalment on April 11, 2018
- Letter from the ministry to the appellant dated May 24, 2018 indicating that the ministry believes an overpayment may have occurred and that the appellant may have received assistance of \$710 for which he was not eligible
- Letter from the ministry to the appellant dated May 31, 2018 indicating that the ministry determined that an overpayment occurred as the appellant received income assistance for which he was not eligible. The ministry states that the overpayment occurred as the appellant failed to notify the ministry that he was attending full time post-secondary educational courses from April 9, 2018 to March 22, 2019 and that while he was in full-time attendance at school, he was not eligible for assistance. The ministry states that an overpayment of \$710 was recorded on the appellant's file
- Overpayment chart May 2018
- Request for Reconsideration (RFR) form dated August 10, 2018 with attached letter in which the appellant states that the student loan money he received covered the school/boarding and nothing else and that the income assistance he received in May was necessary to cover his rent and bills that did not end just because he started school. The appellant states that he has now run out of money completely and had to drop out of school, lost everything he had, and should not have to pay any money back

Additional Information

In his Notice of Appeal dated August 31, 2018 (NOA) the appellant refers to another copy of the RFR.

Prior to the hearing the ministry provided an email indicating that the ministry's submission would be the reconsideration decision. The ministry did not object to the information provided with the RFR.

Admissibility of New Information

As the information provided with the NOA was a duplicate copy of the information provided in the RFR it was accepted as argument.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on this appeal is whether the ministry's decision to require the appellant to repay the income assistance received in May 2018 of \$710 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that the appellant was not eligible for income assistance pursuant to section 16 of the EAR as he was enrolled as a full time student in a funded program of studies without prior approval from the ministry and that he was required to repay the overpayment amount pursuant to section 27 of the EAA?

Relevant Legislation

EAA

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*].

EAR

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;

Effect of family unit including full-time student

16 (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student

(a) in a funded program of studies, or

(b) in an unfunded program of studies without the prior approval of the minister.

(1.1) Subsection (1) (a) does not apply to a family unit that includes a recipient who is enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2) during the period described in subsection (2).

(1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person

(a) is a sole recipient of income assistance who

(i) has a dependent child, or

(ii) provides care to a supported child,

(b) is required to enroll in the program of studies as a condition of an employment plan and

(c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist.

(2) The period referred to in subsection (1)

(a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and

(b) is not longer than one year.

[am. B.C. Regs. 284/2003; 145/2015, Sch. 1, s. 4.]

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;

(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.

(2) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

[am. B.C. Regs. 334/2007; 400/2007, s. 5; 48/2010, Sch. 1, s. 1 (b); 85/2012, Sch. 1, s. 4; 151/2018, App. 1, s. 7.]

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant was not eligible for income assistance in May 2018 as he was attending full time post-secondary educational courses that started April 9, 2018 and were scheduled to continue until March 22, 2019. The ministry's position is that the appellant was not eligible for income assistance while in full-time attendance at school as he was enrolled as a full time student in a funded program of studies without prior approval from the ministry.

The reconsideration decision states that in accordance with section 16(1) of the EAR, the period of ineligibility for income assistance extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams are held. As the appellant's classes began April 9, 2018 he was ineligible for assistance beginning May 1, 2018. The ministry's position is that the appellant received income assistance of \$710 for May 2018, which he was ineligible to receive. The reconsideration decision states that pursuant to section 27 of the EAA, the appellant is required to repay the ministry \$710.

The appellant's position is that he should not be required to repay the income assistance he received for May 2018 as he only found out at the last minute that he got the student loan and everything for school was planned at the last minute. The appellant states that the student loan funding covered his school/boarding and nothing else. The appellant states that, although he went to another city to attend school, he still had the same lease and bills to pay and they did not end just because he started school. The appellant's position is that he has now run out of money completely and had to drop out of school. The appellant states that his previous landlord is coming after him for apartment payments that are past due, the ministry is requesting repayment for the May 2018 income assistance he received, and the government will be requesting repayment for the student loan funding. The appellant states that since he lost everything he has had to stay with someone in another province.

The panel finds that according to section 11 of the EAA, a recipient must submit a form and notify the ministry of any change in circumstances or information that may affect his eligibility. Section 33 of the EAR states that a recipient must submit a report on the 5th of each month and the information required includes changes in employment or educational circumstances. Although the ministry's information indicates that the appellant advised the ministry that he was not sure how to advise the ministry of his transition to school, the Monthly Report submitted by the appellant dated April 25, 2018 indicates that the appellant reported that he was not attending/enrolled in school training. However, the Student Financial Assistance System Award Inquiry dated May 17, 2018 indicates that the appellant was provided student loan funding for an educational course starting April 9, 2018 and ending March 22, 2019 and the ministry information indicates that the appellant advised the investigative officer on May 17, 2018 that he was attending full time studies and received his first student loan instalment on April 11, 2018.

While the appellant states that he only found out last minute that he got the student loan and planned everything last minute regarding school, the information indicates that he had started full time school and had received the first student loan instalment before he completed and submitted the Monthly Report on April 25, 2018.

There is no dispute that the appellant was a full time student at the time he received the May 2018 income assistance and that he also received student loan funding prior to receipt of the May 2018 income assistance. The panel appreciates that the transition from income assistance to full time studies may have been difficult, particularly as the appellant was moving to another city and still had rent to pay in the city in which he was residing at the beginning of April 2018. However, the legislation is clear and unequivocal. Section 16 of the EAR states that a family unit is not eligible for income assistance if a recipient is enrolled as a full time student in a funded program of studies without prior approval from the ministry and the period of ineligibility extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held.

As the appellant began classes on April 9, 2018, did not advise the ministry that he was attending full time studies in a funded program of studies without prior approval from the ministry, the panel finds that the ministry was reasonable in determining that the appellant was not eligible for income assistance for the month of May 2018 in the amount of \$710.

Section 27 of the EAA states that if a recipient receives income assistance to which he is not entitled, he is liable to repay to the ministry the amount of the overpayment. The panel finds that the ministry was reasonable in determining that the appellant must repay the overpayment. The panel finds that there is no legislative authority for the ministry to allow the appellant to keep the income assistance received for May 2018.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision, which found that the appellant must repay the income assistance he received, for which he was not eligible was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's reconsideration decision. 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) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/10/16

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/10/16

PRINT NAME

Bill Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/10/16