



PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 16 October 2018, in which the ministry determined that the appellant failed to declare employment income received during the period January 2007 to September 2008 resulting in an overpayment of income assistance (IA) in the amount of \$16531.71 and is required to repay the amount of the overpayment pursuant to Employment and Assistance Act (EAA) Section 27.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) – section 11, 27, 28

Employment and Assistance Regulation (EAR) – section 1, 10, 28, 33, Schedule B 1-4, 9

PART E – SUMMARY OF FACTS

Evidence before the ministry at reconsideration consisted of the following:

1. Letter from the appellant's former employer dated 3 November 2009
2. Confirmation of Earnings Reports prepared by the appellant's former employer
3. Overpayment chart (2007Mar – 2008Dec)

4. Request for Reconsideration

The appellant submitted a Request for Reconsideration dated 30 April 2015. The appellant indicated that she wanted a reconsideration of the amount owing, as she did not make as much money as the ministry calculated her earnings to be and would have information regarding the amount she felt she owed in two weeks.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated 31 October 2018, the following reasons for appeal are provided: *The amount they are saying is incorrect. I would like to bring my info to you guys in person.*

Appeal Submissions

At the hearing, the appellant presented A Summary of Self-Employment Earnings for 2007/2008 that she states were prepared by her accountant. She states that this document is a summary of her actual earnings and associated deductions for the time period in question and that her accountant has not yet completed her tax returns for those years but is working on it.

The appellant submitted that her former employer had not submitted accurate amounts to the ministry and that these incorrect amounts were used in the calculation of her overpayment. The appellant submits that the deductions amount for 2007 is \$3095.16 and \$2119.66 for 2008. Further, the appellant argued that there should have been deductions in these amounts as allowable at source deductions were not made by her employer. The appellant argued that she has a disability and does not understand taxes but now has an accounting office that knows what to do.

The ministry relied on the reconsideration decision. At the hearing, the ministry representative provided some explanation and elaboration as to the history of the appellant's particular overpayment file, which included that the file had been referred to the investigation division to look into the overpayment. The ministry representative stated that the legislation only permitted at source deductions to be made and noted that had the appellant reported her income at the time it was earned, the ministry likely would have directed the appellant to a self-employment program that might have permitted non-source deductions to be made.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal consists of argument, which does not require an admissibility determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

With regard to the appellant's Summary of Self Employment Earnings, the panel notes that the ministry objected to the admission of any of this document on the basis that it is unclear how the document was

prepared and on what information it was prepared. The ministry argued that the document was not of assistance without support or explanation for how the amounts were arrived at. The panel finds, however, that the ministry's arguments regarding admissibility speak to the probative value or weight that should be accorded to the documents rather than legislated test for admissibility of evidence by the panel. The panel finds that the Summary of Self-Employment Earnings is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act* because it speaks to the appellant's income during the time period for which the overpayment was calculated and is therefore in support of evidence that was before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's reconsideration decision, which determined that the appellant failed to declare employment income received during the period January 2007 to September 2008 resulting in an overpayment of income assistance (IA) in the amount of \$16531.71 and is required to repay the amount of the overpayment to the ministry pursuant to Employment and Assistance Act (EAA) Section 27, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the EAA apply to this appeal:

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 following section of the EAR apply to this appeal:

Definitions

- 1** (1) In this regulation:

...

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

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. 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.]

Schedule B

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:
 - ...
 - (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,
 - (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
 - (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Deductions from earned income

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

- (i) income tax,
- (ii) employment insurance,
- (iii) medical insurance,
- (iv) Canada Pension Plan,
- (v) superannuation,
- (vi) company pension plan, and
- (vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Exemption — earned income

3 (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

(2) A family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance or income assistance in at least one of the 3 calendar months immediately preceding that first calendar month.

(3) to (5) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 16.]

(6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:

(a) \$400, if the family unit is not described in paragraph (b), (c) or (d);

(b) \$600, if the family unit

- (i) includes a recipient who
 - (A) has a dependent child, or
 - (B) provides care to a supported child, and
- (ii) is not described in paragraph (c) or (d);

(c) \$700, if

- (i) the family unit includes a recipient who
 - (A) has a dependent child, or
 - (B) provides care to a supported child,
- (ii) the child has a physical or mental condition that, in the minister's opinion, precludes the recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week, and
- (iii) the family unit is not described in paragraph (d);

(d) \$700, if the family unit includes a person who has persistent multiple barriers to employment.

(7) A transient is not entitled to an exemption under this section.

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;

- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is
- (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
- (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) and (ii) of paragraph (h) unless
- (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.
- (2) Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if
- (a) the recipient is participating in a self-employment program, and
 - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount accepted by the minister, if the renovations are part of a business plan accepted by the minister under section 77.2 of this regulation.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

The panel notes that the timing of events leading to this appeal is somewhat unusual. It appears, based on the documentary information provided by the ministry and the testimony of the ministry's

representative, that sometime in 2009 the ministry became aware that the appellant was in receipt of employment income. This triggered a review in which the ministry solicited information from the appellant's former employer in order to determine the appellant's income. It seems that this review concluded in 2011, as the overpayment amount of \$16531.71 was communicated in a letter to the appellant sent on 25 May 2011 to the appellant's last known address. It appears that the appellant did not receive this notification. The debt was added to the appellant's file on 29 June 2011. In April 2015 the ministry noted that the appellant had not received the overpayment notification. The appellant submitted a Request for Reconsideration on 30 April 2015 indicating that she would like to submit additional information; however, the ministry erroneously closed the reconsideration service request without completing the reconsideration. The appellant requested that the Reconsideration Request be reopened in October 2018, again indicating that she would like to submit additional information. The appellant did not submit any further information and the reconsideration decision was completed on 16 October 2018.

While not directly at issue in this appeal, the panel notes the ministry's delay in notifying the appellant about the overpayment is problematic. The panel finds that the appellant, through no fault of her own, was not notified of the debt added to her file for almost 4 years. Furthermore, when the appellant became aware of the overpayment debt and sought reconsideration of the debt amount, the ministry erred in closing the appellant's request rather than completing the reconsideration. The result of this delay is that the appeal is occurring more than 10 years after the time period for which the overpayment was calculated.

Despite the problematic issue of delay, the panel finds the ministry's reconsideration decision to be reasonably supported by the evidence.

The panel notes in considering this appeal that section 27(2) of the EAA states that a decision about the amount a person is liable to repay is not appealable. Thus, the panel finds that it is not within its jurisdiction to address the repayment amount calculated by the ministry. However, the panel finds that it may address the decision to add an overpayment to the appellant's file as well as the legislative reasons for calculating the overpayment by the ministry.

Regarding the ministry's decision to add an overpayment to the appellant's file, the panel finds that the appellant failed to report her employment income as required by the legislation. The panel notes that the appellant does not dispute that she was earning an income or that she failed to meet the reporting requirements set out at section 11 of the EAA and section 33 of the EAR. The panel further notes that the appellant's former employer has clearly indicated that she was receiving income during the relevant period and finds that this income clearly meets the definition of "earned income" in the EAR, which includes "any money or value received in exchange for work or the provision of a service". The panel notes that the legislation further specifies that the assistance amount for which a family is eligible is calculated using the eligibility amount (determined under Schedule A), minus the family unit's net income (determined under Schedule B). The panel finds that, because the appellant failed to meet the legislated reporting requirements, her income was not deducted appropriately and she received assistance for which she was not eligible. The panel further notes that the appellant does not dispute that there was an overpayment. Rather, the appellant's position is that the overpayment amount is incorrect because the information used to calculate the overpayment was incorrect. As such, the panel finds that the ministry's decision to add an overpayment to the appellant's file is reasonably supported by the evidence.

Regarding the manner of calculation, the panel finds that the appellant has failed to demonstrate that the information used by the ministry was incorrect or unreasonable. The panel notes that the Summary of Self-Employment Earnings provided by the appellant at the hearing is simply a month-by-month list of amounts for income and deductions. There is no description or explanation as to the origin of the income amounts and no breakdown of deductions. The appellant submits that the amounts were taken from

other documents that she prepared at her former employer's office while employed there. The documents from which the amounts were taken were not provided to the panel or the ministry. The appellant further submits that she believes that the deductions include CPP, EI and something else but she doesn't know for sure. When asked why the amounts on the Summary of Self-Employment Earnings did not match the amounts provided to the ministry by her former employer, the appellant stated that she doesn't know. The appellant further indicated that she has never provided the ministry with the income amounts she considers to be correct. The panel notes that the amounts provided by the appellant's former employer indicate that she earned close to \$30,000 during the period at issue, while the appellant's information is that she earned about two thirds of this amount and just over half of this amount after deductions. The panel finds this discrepancy somewhat alarming. Given the lack of detail in the documents and absence of explanation from the accountant who is stated to have prepared the documents regarding how the income amounts are derived and what deductions have been included, the panel finds that the Summary of Self-Employment Earnings is insufficient to demonstrate the ministry erred in its calculation of the overpayment amount. Accordingly, the panel gives this evidence very little weight.

The panel further notes that EAR Schedule B section 2, specifies that only amounts deducted from earned income at source are permitted. When asked at the hearing about the inability for self-employed persons, such as the appellant, to benefit from similar deductions not taken at source in the calculation of IA amounts, the ministry representative indicated that the legislation provides an opportunity for persons in the operation of a small business, under a self-employment program, to benefit from a number of deductions in the calculation of IA amounts. The ministry argued that because the appellant was not reporting her earned income, as she was required under the legislation, the ministry had no knowledge that she was self-employed and was unable to suggest or direct her to such a program.

The ministry further submitted that because the appellant did not report her income and had never provided any other information to the ministry that the ministry relied on the records provided by the employer in calculating the repayment amount. The ministry argued that the appellant has had numerous opportunities to provide information to the ministry and has not done so. The panel finds, despite some significant delays caused by the ministry, the appellant has had significant opportunity to provide information to the ministry and has failed to do so. The panel finds that, in the absence of other useful information, the ministry's manner of calculation using the records provided by the appellant's former employer is a reasonable application of the legislation in the circumstances.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant is liable for an overpayment in the about of \$16531.71, was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

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PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Jennifer Smith	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/02/07

PRINT NAME Emily Drown	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/07

PRINT NAME Carl Gorham	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/07