

APPEAL NUMBER
2020-00088

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 5, 2020, which determined that the appellant incurred a \$2,982.18 overpayment, which he is required to repay the ministry under section 27 of the *Employment and Assistance Act*.

Specifically, the ministry determined that the appellant was ineligible for assistance for the months of March and August 2019, as per sections 1, 10, 11, 28, 33 and schedules A and B of the Employment and Assistance Regulation, due to inheritance income received in January and June 2019.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) section 27

Employment and Assistance Regulation (EAR) sections 1, 10, 11, 28, 33, schedules A and B

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Reason for Request for Reconsideration (February 12, 2020)

- The appellant states he received money from “back home” on January 7 and June 26, 2019 while he was on social assistance; he declared this amount to his social worker.
- The money received in January 2019 was a legacy after his father’s death, and he spent this money to pay some expenses and advised his social worker where the money was spent.
- He received a second amount of money in June 2019, which he used to pay some of his business expenses and credit card. He advised his social worker where the money was spent.
- He opened a new business and advised the ministry that he didn’t need assistance anymore.
- His last payment was in November 2019.
- The appellant cannot understand why the ministry is now asking him to pay back the money.
- He is asking the ministry to waive the overpayment of \$2,982.
- He is in need of every single penny to raise his children and support his business because he just started it and has very low income at this time.
- He opened his business to be able to stand up on his feet and not take support from the ministry anymore.

Ministry records

- On March 27, 2019 the appellant submitted a letter to the ministry reporting he had received \$6,000 US on January 7, 2019 as an inheritance.
- He reported that he spent the money to pay a \$4,000 loan and the rest to buy a washer, dryer and some stuff for his family.
- On October 22, 2019 he submitted another letter reporting he had received the remainder of the inheritance - \$5,982.50 US on June 26, 2019 and \$2,000 on August 1, 2019.
- On January 28, 2020, the ministry completed a review and determined the appellant received \$2,982.18 in an overpayment of assistance for the months of March and August 2019 due to the income.
- January 2019 inheritance income: Decision: \$1,341.09 overpayment for March 2019
In respect to income, the ministry determined the \$6,000 US the appellant received in January 2019 was inheritance income, was not exempt, and was in excess of his March assistance of \$1,341.09. As such, he was ineligible for March assistance due to having net income in excess of his assistance rate. In respect to assets, the ministry has determined that the \$6,000 US received in January was in excess of the \$4,000 asset limit for his family unit for March 2019, therefore his family unit has assets in excess of the allowable limit.
- June 2019 inheritance income: Decision: \$1,641.09 overpayment for August 2019
In respect to income, the ministry has determined the appellant received \$5,982.50 US in June 2019 that was not exempt, and exceeded his August assistance of \$1,641.09. As such, his family was ineligible for August assistance. In respect to assets, the ministry determined the appellant’s asset limit for August 2019 would have been \$10,000 due to the regulation change in July 2019.

Monthly Reports

January 5, 2019

Under "Income Description", "all other income or money received", no amount was declared by the appellant.

February 15, 2019

Under "Income Description", "all other income or money received", no amount was declared by the appellant.

August 9, 2019

Under "Income Description", "all other income or money received", no amount was declared by the appellant.

September 12, 2019

Under "Income Description", "all other income or money received", no amount was declared by the appellant.

Overpayment Chart (January 28, 2020)

- Assistance Month: 2019 March – 2019 August

Assistance Month	Overpayment Reason	Assistance Amount	Eligible	Overpayment Amount
10 Mar	Income (unearned)	\$1,341.09	\$0.00	\$1,341.09
	Eligibility Amount Override: \$6,000 US Inheritance received January 7, 2019 over asset level			
19 Aug	Income (unearned)	\$1,641.09	\$0.00	\$1,641.09
	Eligibility Amount Override: \$5,962.60 US Inheritance received June 26, 2019 over asset level			

Notice of Appeal

The appellant states he's clear he has the right to cancel the overpayment.

Additional Information

Appellant

At the hearing the appellant stated that when he first received the money he called the ministry and explained that he received the money and where it was spent. In January 2019, he called the 1- 800 number about the inheritance money and was told by the ministry to obtain a notarized document and send it to them. The appellant understood that with the notarized document the ministry would review the file, but the ministry didn't indicate at the time what the decision would be. At that time the ministry didn't say there was an over limit on the account and no problem was indicated by the ministry, until this year.

The appellant stated that all notes from the last year regarding any money received were given to the

ministry. In 2019 there were three reviews completed on the file, but nothing was mentioned. The last review was done in October 2019. The appellant received a call from the ministry in August 2019 and provided all files to the ministry. In October 2019 the ministry asked the appellant to send back all documents as it had lost them. As well, the appellant received a note that said he was eligible and didn't receive a letter saying he was ineligible until February 2020.

On the Notice of Appeal the appellant stated, he's clear he has "the right to cancel the overpayment". The appellant expanded on this statement and added that because he was not hiding anything and because he told the ministry about the money he has the right to cancel the overpayment.

When asked why the appellant wrote \$0 received on his monthly reports for January, February, August and September 2019, the appellant responded that he didn't think he had to write it down because the ministry had all the documents. He also stated that he did try and correct the mistakes on the reports by sending in the documents.

Ministry

At the hearing the ministry stated that the inheritance money was never reported on the monthly stubs. Each month the cheque is based on the information from the monthly reports as the monthly report is the legal document and the information on the stub is what the ministry uses to determine the next cheque. If the appellant would have reported the money on the monthly reports, he would not have received a cheque. The ministry does consider other documents, besides the monthly reports when determining an overpayment. However, in this case the review would have "happened after the fact."

The ministry stated that there are many workers on the file and the documents the appellant submitted are not necessarily going to affect the appellant's cheque. If a mistake is made on the monthly report, the appellant could call the ministry or correct the information on the next report and the next cheque could be in debt. The ministry does file reviews all the time. It can take time to review files and debt can come later.

The ministry could not find any information in the file about losing the documents or where a worker said the appellant was eligible.

The panel determined that the additional information at the hearing from the appellant regarding the notarized document is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the EAA. The rest of the information from the appellant at the hearing was considered argument and does not require an admissibility determination.

The panel determined that the additional information at the hearing from the ministry was considered argument and does not require an admissibility determination.

PART F – REASONS FOR PANEL DECISION

The issues on appeal are:

a) whether the ministry's reconsideration decision, which determined that the appellant incurred a \$2,982.18 overpayment, which he is required to repay the ministry under section 27 of the EAA, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant; and

b) whether the ministry reasonably determined that the appellant was ineligible for assistance for the months of March and August 2019, as per sections 1, 10, 11, 28, 33 and schedules A and B of the EAR, due to the inheritance income received in January and June 2019.

Legislation relied upon by the ministry

Employment and Assistance Act

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*].

Employment and Assistance Regulation

Definitions

1 (1) In this regulation: ...

"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;

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

- (l) a trust or inheritance...

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.

Asset limits

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

...

(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 \$10 000

...

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 specified by the minister:

(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.

...

Schedule A

Income Assistance Rates

(section 28 (a))

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 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

...

(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	\$601.06

...

(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
6	6 persons	\$785

Schedule B

Net Income Calculation

(section 28 (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:

(i) any income earned by a dependent child attending school on a full-time basis;

(ii) Repealed. [B.C. Reg. 96/2017, App. 1, s. 2 (a).]

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

(iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;

(iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;

(v) the basic child tax benefit;

(vi) a goods and services tax credit under the *Income Tax Act* (Canada);

(vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);

(viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;

(ix) individual payments granted by the government of Canada under the

Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

(x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

(xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;

(xii) money that is

(A) 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

(B) 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;

(xiii) the BC earned income benefit;

(xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

(xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

(xvi) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 22 (a).]

(xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;

(xvii.1) money that is paid or payable to or for a person if the payment is in accordance with

(A) the Sixties Scoop Settlement made November 30, 2017, or

(B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;

(xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;

(xx) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]

(xxi) 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*,

(xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]

(xxiv) 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;

(xxv) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

(B) received and used for the purposes set out in the business plan;

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

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxvii) Repealed. [B.C. Reg. 148/2015, App. 1, s. 1 (a).]

(xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxix) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxx) 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;

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

(xxxii) 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;

(xxxiii) money withdrawn from a registered disability savings plan;

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

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

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

(xxxvii) 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;

(xxxviii) 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;

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

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

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

(xlii) 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;

(xlili) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xliv) a BC early childhood tax benefit;

(xlv) child support;

(xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlvii) gifts, other than recurring gifts;

(xlviii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;

(xlix) 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;

(l) 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;

(l.1) 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 of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(l.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(li) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lii) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(liii) 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;

(liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lv) money that is paid or payable from a settlement under

(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(lvi) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act (Canada)*,

(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.

Exemptions — unearned income

7 (0.1) In this section:

...

(1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [s] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:
 - (i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation;
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;
 - (iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula (A-B) x C, where
 - A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or
(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*,
(f) a tax refund;

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

Appellant Position

The appellant argues that when he first received the money he called the ministry and explained that he received the money and where it was spent. At the time no problem was indicated by the ministry, until this year. The appellant received a note that said he was eligible and didn't receive a letter saying he was ineligible until February 2020. He argues that all notes from the last year regarding any money received were given to the ministry. In 2019 there were three reviews completed on the file, but nothing was mentioned. In October 2019 the ministry asked the appellant to send back all documents as it had lost them. He also argues that he didn't think he had to write down his inheritance money on his monthly reports because the ministry had all the documents.

The appellant's position is that as he was not hiding anything and because he told the ministry about the money he has the right to cancel the overpayment.

Ministry Position

The ministry argues that the inheritance money was never reported on the monthly stubs. The monthly report is the legal document and the information on the stub is what the ministry uses to determine the next cheque.

The ministry stated that it does consider other documents besides the monthly reports when determining an overpayment; however argues that there are many workers on the file and the documents the appellant submitted are not necessarily going to affect the appellant's cheque. If a mistake is made on the monthly report, the appellant could call the ministry or correct the information on the next report.

The ministry does file reviews all the time. It can take time to review files and debt can come later. In this case the review would have "happened after the fact."

Analysis

Section 1 (EAA) – inheritance as unearned income

In his Reason for Request for Information, the appellant states the money received in January and June 2019 was a legacy after his father's death. The panel finds the ministry's determination that the money received by the appellant in January and June 2019 is considered an inheritance is reasonable, and section 1 of the EAA states that money or value received from a trust or inheritance, is considered unearned income.

Section 33 (EAR) – reporting obligations

Section 33 of the EAR sets out the reporting obligations required to be eligible for income assistance. "For the purposes of section 11(1)(a) [*reporting obligations*] of the Act,...the report must be submitted by the 5th day of each calendar month, and...the information required is all of the following, as requested in the monthly report form specified by the minister:...

(iii) all income received by the family unit and the source of that income;..."

The panel notes that as per section 33 of the EAR, all income received in January 2019 was to be reported by February 5, 2019, and all income received in June 2019 was to be reported by July 5, 2019. Evidence in the form of monthly reports submitted by the appellant dated January 5, February 15, August 9 and September 12, 2020 show no amount declared by the appellant under "Income Description" "all other income or money received".

Section 11 (EAR) – Asset limits

Section 11(2) of the EAR states, "A family unit is not eligible for income assistance if...an applicant has one or more dependents and the family unit has assets with a total value of more than \$10,000..." The panel notes that although the asset value was increased from \$4,000 to \$10,000 effective July 1, 2019 this increase has no effect on whether or not an overpayment was established.

Section 10 (EAR) – eligibility for income assistance

Section 10 of the EAR states that 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."

Section 28 (EAR) – formula for income assistance

Section 28 of the EAR states, “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.”

Schedule A of the EAR provides the assistance rates and Schedule B provides information on deductions and exemption rules to determine net income. Inheritance money is not listed as “exempt from income”.

The panel notes the appellant's monthly assistance rates were determined as \$1,341.09 for March 2019 and \$1,641.09 for August 2019.

Therefore, the panel finds as \$6,000 US is greater than \$1,341.09 and \$5,982.60 US is greater \$1,641.09, and inheritance money is not exempt, the ministry's determination that no assistance benefits were payable for March and August 2019 is reasonable. The overpayment chart shows assistance benefits paid for March and August 2019.

The ministry's position is that the inheritance money was never reported on the monthly reports and the monthly report is the legal document which the ministry uses to determine the next cheque.

The appellant's position is that as he was not hiding anything and because he told the ministry about the money he has the right to cancel the overpayment.

Although the panel appreciates the appellant's many efforts to provide the correct information to the ministry regarding the inheritance money, the panel is bound by the legislation.

Therefore, the panel finds the ministry's determination that the appellant was not eligible for March and August income assistance benefits as per sections 1, 10, 11, 28, 33 and schedules A and B, of the EAR, was reasonable and as benefits were paid for March and August 2019, an overpayment was created.

Section 27 (EAA) – overpayment repayment to ministry

Section 27 states that if income assistance is provided to a family unit that is not eligible for it, recipients are liable to repay to the government the amount of the overpayment. As the panel finds that the ministry's determination that an overpayment was established was reasonable, the panel has also finds that as per section 27 of the EAA, the appellant is liable to repay the overpayment.

Section 27(2) states, “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*]”. Therefore the amount of overpayment is not within the panel's jurisdiction.

Conclusion

For these reasons, the panel finds the ministry's decision that the appellant incurred an overpayment, which he is required to repay the ministry, was reasonably supported by the evidence. The panel confirms the ministry's decision. Therefore, the appellant's appeal is unsuccessful.

APPEAL NUMBER
2020-00088

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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/05/05

PRINT NAME

Anil Aggarwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/05

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/05