

APPEAL NUMBER

2020-00132

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 2, 2016 in which the ministry found that the appellant is not eligible for income assistance received over the period September 2010 to June 2013. The ministry found that the family unit's net income from self-employment in the month, as calculated pursuant to Schedule B of the EAR, was more than the income assistance amount for the month, as calculated under Schedule A of the EAR, pursuant to Sections 10(2) and 28 of the EAR.

The ministry concluded that the appellant received a total overpayment of assistance of \$1,868.84, for which the appellant is liable to repay the ministry, pursuant to Section 27 of the *Employment and Assistance Act*. (EAA)

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Section 27

Employment and Assistance Regulation (EAR), Sections 1,10(2), 28, 79 and 80

Schedules A and B

PART E – SUMMARY OF FACTS

The ministry requested the attendance of a ministry observer. The appellant did not consent and the proposed observer did not attend the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Undated Request for Reconsideration;
- 2) Undated blank monthly reports;
- 3) Letter to the appellant dated June 7, 2013 in which the ministry wrote that a meeting had been scheduled for June 20, 2013 and the appellant was required to bring specified information and/or documents, pursuant to Section 10 of the EAA, including confirmation of earnings for the period January 1, 2010 to June 7, 2013;
- 4) Letter to the ministry dated July 18, 2013 in which the appellant's advocate enclosed the appellant's reports about income for the period September 2010 on. The advocate wrote that the appellant does not have any records for the period January to August 2010 as the appellant only started keeping track of everything in September 2010;
- 5) Handwritten summary of income received in September 2010 (\$579), October 2010 (?), November 2010 (\$606), December 2010 (\$505), January 2011 (\$608), February 2011 (\$656), March 2011 (\$664), April 2011 (\$516), May 2011 (\$720 or \$755), September 2011 (\$742), October 2011 (\$678), November 2011 (\$750), December 2011 (\$638), January 2012 (\$740), February 2012 (\$460), March 2012 (\$855), April 2012 (\$500), May 2012 (\$348), June 2012 (\$690), July 2012 (\$68), September 2012 (\$691), October 2012 (\$807), November 2012 (\$490), December 2012 (\$665), January 2013 (\$549), February 2013 (\$602), March 2013 (\$656), and April 2013 (\$622);
- 6) Statement of the appellant's earnings for the period 2007 through 2013 stamped received by the ministry on February 13, 2014 and also received on April 29, 2016, indicating yearly totals as follows: 2007 (\$330), 2008 (\$475), 2009 (0), 2010 (\$1,555), 2011 (\$4,098.50), 2012 (\$3,252.50), 2013 (\$3,472.50), and 2014 (\$360);
- 7) Letter to the appellant dated August 1, 2014 in which the ministry wrote that the appellant was to arrange an appointment with the ministry by August 14, 2014 and bring specified information and/or documents;
- 8) Monthly report by the appellant for September 2014 income of \$575, October 2014 income of \$1,180 and November 2014 income of \$935;
- 9) Overpayment Notification dated January 2, 2015 indicating that the appellant received \$1,476.84 of assistance for which the appellant was not eligible. The Notice also indicates: "If you disagree with the ministry's decision that you received assistance for which you are not eligible, you may request the ministry to reconsider that decision. A request for reconsideration must be delivered to the Employment Assistance Centre within 20 business days after the date you were notified of the decision."
- 10) Overpayment Chart dated January 2, 2015 covering the period from November 2010 through February 2014 and indicating a total overpayment of \$1,476.84 ("the first Overpayment Chart");
- 11) History of the appellant's file with the ministry indicating:
 - On January 2, 2015- the first Overpayment Chart was submitted;
 - January 15, 2015- the appellant received the first Overpayment Chart and wanted time to review it;

- January 19, 2015- a request for reconsideration was received from the appellant for the overpayment and the appellant was advised to allow 48 hours for the reconsideration package to be created. The appellant stated that stubs have not been submitted as they were not received in the mail starting February 2014 and the appellant is paid cash and is unable to prove that the appellant did not receive \$805 income monthly;
- January 21, 2015- the appellant's February 2015 cheque was cancelled and reissued for office pick up for \$781.42 after \$105 income deducted (December earnings over exemption limit).
- January 22, 2015- the first Overpayment Chart submitted in error as ministry investigation is ongoing. Closing reconsideration.

- 12) Bank deposit slip dated January 19, 2015 for a total amount of \$935 and a handwritten note referencing November 2013 income and a total of \$905 with a note referencing December 2014 income;
- 13) Letter to the appellant dated October 22, 2015 in which the ministry advised of a telephone appointment for a review of the appellant's file on November 6, 2015. The ministry wrote that the first Overpayment Chart was enclosed as well as the documents used to calculate the overpayment, as provided by the appellant. The ministry advised the appellant to submit verifiable documentation from employers if the appellant disagrees with the information;
- 14) Overpayment Chart dated November 19, 2015 covering the period from November 2010 through June 2013 and indicating a total overpayment of \$1,868.84 ("the second Overpayment Chart"). The ministry indicated: "The Overpayment is based on the [company] monthly income report and the client's handwritten record of income earned and where the income was earned. Where there was a discrepancy noted in the [company] statement and the client's handwritten record, the [company] amounts were used";
- 15) Letter to the appellant dated November 26, 2015 in which the ministry wrote that the amount of the overpayment has been calculated at \$1,868.84, enclosed the second Overpayment Chart, and advised of a telephone appointment for December 11, 2015;
- 16) Letter to the appellant dated December 24, 2015 in which the ministry wrote that the amount of the overpayment has been calculated at \$1,868.84, enclosed the second Overpayment Chart, and advised of a telephone appointment on January 25, 2016;
- 17) Handwritten letter dated January 21, 2016 in which the appellant requested information and documents be made available by the ministry at the appointment on January 25, 2016;
- 18) Letter to the appellant dated January 26, 2016 in which the ministry wrote that the amount of the overpayment has been calculated at \$1,868.84, enclosed the second Overpayment Chart, and advised of a telephone appointment for February 11, 2016;
- 19) Letter to the appellant dated February 11, 2016 in which the ministry wrote that the amount of the overpayment has been calculated at \$1,868.84, enclosed the second Overpayment Chart, and advised of a telephone appointment for February 19, 2016;
- 20) Copy of cheque dated February 16, 2016 from the province to the appellant in the sum of \$114.16 as a refund of an overpayment;
- 21) Handwritten letter dated February 17, 2016 in which the appellant wrote that:
 - The ministry was negligent in putting \$1,476 of debt on the appellant's file.

- The ministry did not inform the appellant of the debt and denied and interfered with the appellant's right to appeal.
- The ministry opened a new file without lawful reason and should not have been opened as the appellant had been paying on the \$1,476 debt since approximately June 2015;

22) Letter to the appellant dated March 4, 2016 in which the ministry wrote that a review of the appellant's assistance between September 1, 2010 and June 30, 2013 has been completed and the ministry has determined that the appellant received assistance in the amount of \$1,868.84 for which the appellant was not eligible. The ministry wrote that documents were obtained to show that the appellant received \$19,724.50 from various sources and the appellant declared \$17,020.50 for the period and the undeclared income resulted in an overpayment;

23) Overpayment Notification dated March 4, 2016 indicating the appellant received \$1,868.84 for which the appellant was not eligible;

24) Letter dated March 30, 2016 in which the appellant wrote that the reconsideration packet was received this day and the appellant will need an extension;

25) Monthly report stamped received by the ministry on April 29, 2016 indicating employment income of \$935;

26) Notice of Appeal stamped received by the ministry on April 29, 2016 in which the appellant wrote that:

- The appellant never received any copy of notification that the reconsideration was denied.
- Since there was no response, the appellant thought he had won the decision on reconsideration;
- The appellant asks if it is reasonable that the investigation has taken from July 2013 to April 2016 and that some information has been ignored.
- The appellant wrote that information was requested by the ministry and the information was arbitrarily not used.
- At the November 6, 2016 appointment with the ministry, the appellant stated that a calendar is used rather than a logbook to record income received.
- The appellant had records for \$22,215.30 and the ministry said the appellant was eligible for \$20,738.46, with an overpayment of \$1,476.84.
- The appellant is the only one doing this type of contract work who is declaring income, with over half paid in cash and untraceable, and yet the appellant reports all income to the ministry by the rules.
- The appellant has provided the names and telephone numbers of all employers, even those who pay in cash.
- The ministry has not confirmed any of the appellant's income from anywhere, even when given the information to confirm.
- The appellant's Request for Reconsideration in early 2015 had been closed without notice, abrogating the appellant's right to reconsideration and right to appeal, breaking the procedure regarding proper notice.
- The ministry had made the decision to apply a \$1,476 debt to the appellant's account without the appellant's knowledge, consent, or agreement.
- The ministry had been collecting \$20 per month since approximately June 2015 to January 2016 on the \$1,476 debt and denied the appellant's right to

reconsideration and appeal.

- The ministry between February 19, 2015 to March 4, 2016 determined this information is irrelevant and that the appellant's rights were not going to be respected.
- The ministry has arbitrarily chosen to ignore the appellant's information regarding all employment and chose to make the Overpayment Charts ignoring this evidence.
- The appellant has not supplied any new information since August 1, 2014.
- The ministry uses information in the Overpayment Charts that has not been disclosed to the appellant. The ministry has not provided the requisite proof of this information on income or has omitted supplied information.
- The appellant asks that both files be set aside due to the ministry frustrating the appellant's right to proper time limits and procedures. The ministry continued to open a new file on the same information.
- The ministry owed a duty of care to their jobs which they failed, causing the appellant mental anguish and a lost of income and timely justice.
- The appellant asks that where there is no evidence for numbers in the Overpayment Charts, that the numbers be ignored; and,

27) The appellant's Request for Reconsideration dated April 1, 2016 in which the appellant requested an extension.

Additional Information

In an email to the Tribunal dated May 6, 2020, the ministry wrote that:

- The Reconsideration Decision is from April 2016 and the decision was mailed to the appellant on April 29, 2016.
- The appellant submitted the Notice of Appeal to the ministry on May 13, 2016 and it was scanned and profiled to the closed file and never forwarded to the Tribunal.
- There is a note on the appellant's file from November 8, 2017 indicating the appellant contacted the ministry regarding the Notice of Appeal and was advised to follow up with the Tribunal.
- The appellant was in contact with the ministry on May 6, 2020 disputing the legitimacy of the overpayment and asking the ministry to cease deducting funds from the appellant's income assistance.

In the Notice of Appeal dated May 6, 2016, the appellant expressed disagreement with the ministry's reconsideration decision and wrote:

- The appellant is a contract worker; self-employed.
- The appellant contracts for work and should have exemptions for equipment, fees, dues, travel.
- Fixed costs for all the appellant's contracts are \$5.00 bus fare.
- The appellant was seeking clarification from Canada Revenue Services on the appellant's status regarding being a self-employed contract worker during the years 2011, 2012 and 2013, for which the appellant was in the process of doing business tax returns. The appellant would be able to supply tax returns for those years in about 2

weeks.

- Some of the appellant's costs are bus fare of \$5 per contract, required safety equipment, maintenance of equipment \$5 to \$7 per week.
- The appellant is asking the Tribunal to reject and dismiss the application of deduction and exemptions in Section 9(1) in its entirety as it is unjust and unethical to charge a recipient of assistance twice when they declare and later if they cash their cheque at a later date and the ministry calls it an "income" twice.
- Cancelling an application for Reconsideration is not anywhere in the Rules or the Regulations.
- The appellant asks the Tribunal to set aside this application for Reconsideration in favour of the first application dated January 2, 2015 and follow due process. The appellant's application should have been completed as per the Regulations and Rules and another one made later if the first was found lacking or incomplete.
- Not following the process, the ministry violated the appellant's right to reconsideration and appeal.
- Then, after abrogating the appellant's rights, the ministry added \$1,476 to the appellant's debt while starting a new file and never notifying the appellant.
- When the appellant found out 6 months later, the ministry said nothing when the appellant asked who made these decisions. The money was returned and silence was their response.

At the hearing, the appellant stated:

- The appellant does not agree with this process going ahead 4 years after the appellant delivered a Notice of Appeal to the ministry and objects to the proceedings that disregard the appellant's right to be heard at the time that the events occurred. The courts recognize that a lengthy delay in proceedings is a denial of justice and the appellant participates under protest to make his position known.
- The appellant delivered a letter to the ministry that stated the appellant's position and the appellant was prepared to read the letter, which was not included in the record. The appellant requested that the ministry cease and desist in deducting \$20 from the appellant's monthly disability cheque. The appellant wrote that the ministry abrogated the appellant's right to be able to be heard by the Tribunal, which the appellant applied for in 2016. The demand was for the ministry to return all the monies deducted since the ministry began deductions in 2016 or before. The appellant requested that the ministry not be allowed to make further deductions, and the appellant would like the decision dismissed with prejudice so the ministry can never come back to the appellant on this issue.
- These events occurred so long ago that the appellant cannot remember the specifics and the appellant believes it is not fair to ask the appellant to recall the notes and details now.
- The appellant is not sure when the deductions began but acknowledged receiving a cheque dated February 16, 2016 from the ministry in the amount of \$114.16 as a refund of amounts that had previously been deducted. The appellant did not cash the cheque.
- Everyone who is self-employed writes off the expenses needed to earn the income. The appellant has costs such as \$90 per month for bus fare as well as the cost of equipment and supplies to provide the self-employment services.

- The appellant researched the requirements to register as a self-employed person with Canada Revenue Agency (CRA) in 2016 and the appellant understands that there is not enough yearly income from self-employment to warrant going through this process as it is required by CRA that there be \$10,000 minimum yearly income.
- When the appellant received the first Overpayment Chart and Notification from the ministry, the appellant filled out a Request for Reconsideration form and delivered it to the ministry. The appellant stated that the appellant has followed the ministry's processes throughout, attending meetings, providing information and responding to the ministry.
- The appellant acknowledged that the accounting for self-employment income was difficult due to the ministry's requirement of reporting in the month after the income is earned and there were times when the appellant was not sure which month to assign income to when the income was partly received in cash and partly by cheque.
- The appellant is considered a "contract worker" and the appellant considers that, despite the challenges, the reporting of income to the ministry was within 95% accuracy.
- The appellant cannot remember the details of the handwritten notes made many years ago where there was more than one amount written for a month.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that:

- The letter described by the appellant was delivered to the ministry on April 30, 2020 and this precipitated the ministry's review of the appellant's files and the forwarding of the original Notice of Appeal of May 2016.
- For the ministry's current self-employment program, if the client says they have an interest in registering for the program, then the ministry will review the information provided and advise the client if they qualify. The ministry relies on the client to take the initiative to apply for the program. The client is only allowed to deduct expenses if they are registered in the program with the ministry.
- The money must be reported when it is received and not when it is earned.
- The ministry relied on the appellant's handwritten notes as well as the statements received from an employer and, where there was a discrepancy, the statement from the employer was used.
- The ministry is not aware whether there were confirmations obtained by the ministry from other than one employer of the amounts paid to the appellant.
- The deduction of \$20 per month made from the appellant's monthly benefits between October 2011 and June 2013 as indicated on the second Overpayment Chart did not relate to the overpayment under review and could be anything from an overpayment to a security deposit that has to be paid off. There are previous security deposits on the appellant's file.
- Although an Overpayment Notification was completed in 2015, it was sent to the appellant prematurely.
- The appellant delivered a completed Request for Reconsideration in response, but the investigation was still ongoing and the calculations were not finalized and the service request was cancelled by the ministry.
- A final decision on the overpayment was not made at the time and the amounts deducted were refunded to the appellant.

- The process is that an Overpayment Chart is sent to the client with the expectation that there will be further discussions and the client may provide further information to clarify the income received. A decision is only made on the overpayment when this process is completed.
- The Overpayment Notification dated January 2, 2015 referred to an invalid period as the review was still ongoing and it included incorrect information since it was not the final amount and the ministry continued with the review after this time.
- The letter from the ministry dated March 4, 2016 is a final decision letter, which states that the ministry's review is complete.
- When the appellant delivered a Notice of Appeal in May 2020, it was inadvertently filed in the closed file instead of the current file and it was not forwarded to the Tribunal.

Admissibility of Additional Information

The panel considered the appellant's and the ministry's testimony as relating to the ministry's finding of ineligibility for income assistance received over the period September 2010 to June 2013 and, therefore, admitted the additional information as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision, which found that the appellant is not eligible for income assistance received over the period September 2010 to June 2013 was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence. Specifically, the ministry found that the family unit's net income from self-employment in the month, as calculated pursuant to Schedule B of the EAR, was more than the income assistance amount for the month, as calculated under Schedule A of the EAR, pursuant to Sections 10(2) and 28 of the EAR,

The applicable legislation is set out in Appendix A to this decision.

Panel's decision*Parties' positions*

In the Notice of Appeal dated May 6, 2016, the appellant wrote that cancelling an application for Reconsideration is not anywhere in the Rules or the Regulations. The appellant asks the Tribunal to set aside this Reconsideration in favour of the first application dated January 2, 2015 and follow due process. The appellant wrote that the appellant's application should have been completed as per the Regulations and Rules and, by not following the process, the ministry violated the appellant's right to reconsideration and appeal. In the Notice of Appeal stamped received by the ministry on April 29, 2016, the appellant argues that the appellant's Request for Reconsideration in early 2015 had been closed without notice, abrogating the appellant's right to reconsideration and right to appeal. The appellant wrote that the appellant never received any copy of notification that the reconsideration was denied and, since there was no response, the appellant thought the appellant had won the decision on reconsideration. The appellant wrote that the ministry had been collecting \$20 per month since approximately June 2015 to January 2016 on the \$1,476 debt and denied the appellant's right to reconsideration and appeal.

At the hearing, the appellant stated that when the appellant received the first Overpayment Chart and Notification from the ministry, the appellant filled out a Request for Reconsideration form and delivered it to the ministry. The appellant stated that the appellant has followed the ministry's processes throughout, attending meetings, providing information and responding to the ministry. The appellant also argued that the ministry abrogated the appellant's right to be able to be heard by the Tribunal, which the appellant applied for in 2016. The appellant demanded the ministry to return all the monies deducted since the ministry began deductions in 2016 or before. The appellant requested that the ministry not be allowed to make further deductions, and the appellant would like the decision dismissed "with prejudice" so the ministry can never come back to the appellant on this issue.

In the April 2016 Notice of Appeal, the appellant wrote that the ministry uses information in the Overpayment Charts that has not been disclosed to the appellant. The appellant wrote that the ministry has not provided the requisite proof of this information on income or has omitted supplied information. The appellant asks that where there is no evidence for numbers in the Overpayment Charts, that the numbers be ignored. In the May 2016 Notice of Appeal, the appellant wrote that it is unjust and unethical to charge a recipient of assistance twice when they declare and later if they cash their cheque at a later date and the ministry calls it an "income" twice.

At the hearing, the ministry stated that although an Overpayment Notification was completed in 2015, it was sent to the appellant prematurely. The ministry stated that while the appellant delivered a completed Request for Reconsideration in response, the investigation was still ongoing and the calculations were not finalized and the service request was cancelled by the ministry. The ministry argued that a final decision on the overpayment was not made at the time and the amounts deducted were refunded to the appellant. The ministry stated that the Overpayment Notification dated January 2, 2015 referred to an invalid period as the review was still ongoing and it included incorrect information since it was not the final amount and the ministry continued with the review after this time. The ministry stated that the letter from the ministry to the appellant dated March 4, 2016 is a final decision letter as it states that the ministry's review is complete. The ministry stated that when the appellant delivered a Notice of Appeal to the ministry in May 2016, it was inadvertently filed in the previous closed file instead of the current file and it was not forwarded to the Tribunal until May 2020.

In the reconsideration decision, the ministry referred to Section 10 of the EAR, which stipulates that a family unit is not eligible for assistance if the net income of the family unit determined under Schedule B of the EAR equals or exceeds the amount of income assistance determined under Schedule A. The ministry also referred to Section 28 of the EAR, which sets out that income assistance may be provided to a family unit in an amount that is not more than the income assistance amount, as determined under Schedule A, minus the family unit's net income determined under Schedule B. The ministry wrote that the appellant, as a sole recipient with the status of a Person With Persistent Multiple Barriers to employment (PPMB) was entitled to income assistance in the total amount of \$657.92 according to the rates in effect at the time, as set out in Schedule A. The ministry wrote that, as a PPMB, the appellant is eligible for a \$500 per month earnings exemption under Section 3 of Schedule B of the EAR. The ministry wrote that the appellant received earned income from self-employment that was not accurately reported to the ministry between September 2010 and June 2013 and resulted in the appellant receiving income assistance in the total amount of \$1,868.84 for which the appellant was not eligible. The ministry stated at the hearing that the ministry relies on the client to take the initiative to apply for the ministry's self-employment program and the client is only allowed to deduct expenses if accepted into the program with the ministry.

Analysis

Based on statements by both the appellant and the ministry at the hearing, and the notes made by the ministry in the appellant's file on January 19, 2015, the panel finds as fact that the appellant delivered a Request for Reconsideration to the ministry on or about January 19, 2015 in accordance with Section 79 of the EAR. The appellant requested that the ministry reconsider the decision reducing the amount of income assistance the appellant would receive due to self-employment income earned in excess of income assistance rates and the \$500 earnings exemption. Although the ministry argued that there had not been a final decision by the ministry, the appellant pointed to the Overpayment Notification dated January 2, 2015 that advised the appellant that the ministry considered that there was an overpayment of income assistance in the total amount of \$1,476.84 and also advised that the appellant had the ability to request a reconsideration of "the ministry's decision that you received assistance for which you are not eligible."

When a request is delivered to the ministry pursuant to Section 79 of the EAR, Section 80 of the EAR provides that the ministry *must* reconsider the decision and mail a written determination on the reconsideration to the person who delivered the request within a specified time period of between 10 to 20 business days. As the ministry stated that the notice was sent to the appellant prematurely since the overpayment amount was not correct as it was not finalized and the investigation was ongoing, the ministry "cancelled" the decision and closed the file rather than following the directive in Section 80 of the EAR, which is not a discretionary process. At the hearing, the ministry pointed out that the debt was reversed and the amounts deducted from the appellant's income assistance were refunded by the ministry; however, the appellant stated at the hearing that the refund cheque dated February 16, 2016 in the sum of \$114.16 was never cashed by the appellant.

The ministry proceeded to deliver the second Overpayment Chart dated November 19, 2015 for the sum of \$1,868.84 and the appellant responded with a handwritten letter stating that the ministry was negligent in putting \$1,476 of debt on the appellant's file. The appellant wrote in the letter that the ministry opened a new file without lawful reason and should not have been opened as the appellant had been paying on the \$1,476 debt since approximately June 2015. The panel finds as fact that the appellant has consistently maintained the position that the appellant was entitled to a decision by the ministry in response to the Request for Reconsideration delivered to the ministry on January 19, 2015.

At the hearing, the ministry stated that the letter from the ministry dated March 4, 2016 is a final decision letter, which states that the ministry's review is complete and the ministry had determined that the appellant received income assistance of \$1,868.84 for which the appellant was not eligible. The appellant disputed this decision by the ministry and rather than completing a Request for Reconsideration form with the reasons, the appellant completed a Notice of

Appeal, stamped received by the ministry on April 29, 2016, and maintained the position that the appellant's Request for Reconsideration in early 2015 had been closed without notice, abrogating the appellant's right to reconsideration and right to appeal. Following the ministry's reconsideration decision dated May 2, 2016 relating to the second Overpayment Chart, the appellant provided a Notice of Appeal dated May 6, 2016 asking the Tribunal to set aside this application for Reconsideration in favour of the first application dated January 2, 2015 and to follow due process. The appellant wrote that by not following the process, the ministry violated the appellant's right to reconsideration and appeal.

In the reconsideration decision, the ministry addressed the appellant's argument by stating that the overpayment decision in January 2015 "was later cancelled as it was incorrect" and "the debt was later reversed." This approach by the ministry may have been possible if the appellant had not yet delivered a Request for Reconsideration as the requirements of Section 79 would not have been met. Disregarding the first decision, the ministry proceeded to make another first level decision and to offer the appellant a reconsideration of the March 4, 2016 decision based on the second Overpayment Chart. The panel finds that the ministry has not reasonably applied Section 80 of the EAR in the appellant's circumstances, which required that the ministry make a reconsideration decision based on the Overpayment Notification dated January 2, 2015 and the appellant's Request for Reconsideration delivered on January 19, 2015.

The ministry wrote in an email to the Tribunal that the appellant submitted the May 2016 Notice of Appeal to the ministry on May 13, 2016 and it was scanned and profiled to the closed file and never forwarded to the Tribunal. The ministry also wrote that there is a note on the appellant's file from November 8, 2017 indicating the appellant contacted the ministry regarding the Notice of Appeal and was advised to follow up with the Tribunal. The appellant stated at the hearing that a letter was delivered to the ministry in May 2020 with the appellant's position that the ministry abrogated the appellant's right to be able to be heard by the Tribunal, which the appellant applied for in 2016. The appellant demanded that the ministry return all the monies deducted since the ministry began deductions in 2016 or before. The appellant requested that the ministry not be allowed to make further deductions, and the appellant would like the decision dismissed with prejudice so the ministry can never come back to the appellant on this issue.

The requirement for commencing an appeal to the Tribunal is set out in Section 84 of the EAR and specifies that that an applicant or recipient must complete an appeal form and must submit that form to the Tribunal. Although the appellant submitted the Notice of Appeal to the ministry and there is no legislative requirement that the ministry forward a Notice of Appeal to the Tribunal, the appellant was not made aware that the appeal had not been forwarded to the Tribunal until May 2020. The appellant stated at the hearing that he cannot remember the specifics from several years ago and the appellant believes it is not fair to ask the appellant to recall the notes and details now. The ministry stated at the hearing that the second

Overpayment Chart relied on the appellant's handwritten notes as well as the statements received from an employer and, where there was a discrepancy, the monthly income report from one named employer was used. The second Overpayment Chart refers to statements received by the ministry from only one employer of the many that are listed. In the April 2016 Notice of Appeal, the appellant wrote that the appellant provided the names and telephone numbers of all employers, even those who paid in cash. The appellant also wrote that the ministry did not confirm any of the appellant's income from anywhere, even when given the information to confirm. The ministry stated at the hearing that the ministry is not aware whether there were confirmations obtained by the ministry from other than one employer of the amounts paid to the appellant.

At the hearing, the appellant acknowledged that the accounting for self-employment income was difficult due to the ministry's requirement of reporting in the month after the income is earned and there were times when the appellant was not sure which month to assign income to that was received from some employers in cash and some by cheque. In the May 2016 Notice of Appeal, the appellant wrote that it is unjust and unethical to charge a recipient of assistance twice when they declare and later if they cash their cheque at a later date and the ministry calls it an "income" twice. A bank deposit slip dated January 29, 2015 in the total amount of \$935 included a handwritten reference to November 13 income and a deposit of \$905 referenced December 14 income, indicating that the appellant did not always deposit cash in the month it was received. According to the second Overpayment Chart, the appellant made errors in reporting more income to the ministry than the appellant had received in several months, including the months of January, March, April, May, August and December 2011, as well as January, February, and April 2013.

In response to the ministry's initial letter dated June 7, 2013 advising of the requirement to provide information, the appellant replied with a letter dated July 18, 2013 enclosing a handwritten summary of income received over the period September 2010 through April 2013. The appellant also prepared a statement of earning from the period 2007 through 2013, stamped received by the ministry on February 13, 2014, indicating yearly totals that do not correspond to the totals yielded from the handwritten notes. In the May 2016 Notice of Appeal, the appellant wrote that the appellant is a self-employed contract worker who should be permitted to claim expenses for equipment, fees, dues and travel and offset these against income. Section 4 of Schedule B of the EAR allows a small business exemption for "permitted operating expenses" incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for such expenses as purchase of supplies and products, taxes, fees, licences and dues, and equipment purchases or rentals. At the hearing, the ministry stated that the ministry relies on the client to take the initiative to apply for the self-employment program and the client is only allowed to deduct expenses if they are registered in the program with the ministry. Given the ministry's investigation of the appellant's

reporting of self-employment income spanning the period June 2013 to March 2016, there were opportunities for the ministry to make the appellant aware of the ministry's program that, if the appellant qualified, would allow the offsetting of expenses incurred in earning the income.

With the noted discrepancies in the appellant's accounting, the appellant's stated difficulty with reporting self-employment income and the appellant's claim that income was counted twice, both when the appellant reported income and then again when the appellant deposited funds, the panel finds that the ministry was unreasonable to rely on the appellant's handwritten notes of monthly income in the second Overpayment Chart, without confirmation from each of the employers for which the appellant provided contact information to the ministry.

Conclusion

The panel finds that the ministry has not reasonably applied Section 80 of the EAR in the appellant's circumstances. The panel also finds that the ministry was unreasonable in relying solely upon the appellant's handwritten notes of income received and confirmation from one employer in calculating the overpayment of income assistance when confirmation from all of the employers was possible.

Therefore, the panel finds that the ministry's decision, which found that the appellant is not eligible for income assistance received over the period September 2010 to June 2013, in the amount that the family unit's net income from self-employment in each of the months, as calculated pursuant to Schedule B of the EAR, was more than the income assistance amount for each of the months, as calculated under Schedule A of the EAR, pursuant to Sections 10(2) and 28 of the EAR, is not reasonably supported by the evidence. The panel finds that the ministry's conclusion that the appellant received a total overpayment of assistance of \$1,868.84, pursuant to Section 27 of the EAA, was not reasonably supported by the evidence. The panel rescinds the decision pursuant to Section 24(2)(b) of the *Employment and Assistance Act*.

Therefore, the appellant is successful in the appeal.

Appendix A

The EAR in force during the relevant time period provides:

Section 1 of the EAR defines "earned income" as:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service . . .

Section 10 of the EAR provides:

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.

Section 28 of the EAR provides:

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.

Section 79 of the EAR provides:

How a request to reconsider a decision is made

79 (1) A person who wishes the minister to reconsider a decision referred to in section 17 (1) of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 17 (1) of the Act and may be delivered by

- (a) leaving it with an employee in the ministry office, or
- (b) being received through the mail at that office.

Section 80 of the EAR provides:

Time limit for reconsidering decision

80 The minister must reconsider a decision referred to in section 17 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 79 (1) [how a request to reconsider a decision is made],

- (a) within 10 business days after receiving the request, or

- (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

Schedule A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

In calculating the net income of a family unit under Schedule B of the EAR, some deductions and exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAR provides as follows:

When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation . . .

- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 [exemption- earned income] and 4 [small business exemption] 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.

Section 2 of Schedule B of the EAR provides as follows:

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.

Section 3 of Schedule B of the EAR provides as follows:

Exemption — earned income

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

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(2) If an application for income assistance (part 2) form is submitted to the minister, the 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 under the Employment and Assistance for Persons with Disabilities Act for the calendar month 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) \$200, if the family unit is not described in paragraph (b), (c) or (d);

(b) \$400, 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) \$500, 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) \$500, 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.

Section 4 of Schedule B of the EAR provides as follows:

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.

Section 27 of the EAA in force during the relevant time period provides

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,

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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].

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PART G – ORDER**THE PANEL DECISION IS: (Check one)**UNANIMOUSBY MAJORITY**THE PANEL**CONFIRMS THE MINISTRY DECISIONRESCINDS 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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-09-15

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-09-15

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-09-15