

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 20, 2021 in which the Ministry determined the Appellant had incurred an overpayment of assistance and is required to repay the overpayment amount, pursuant to sections 2, 11, 27 & 28 of the *Employment and Assistance Act*, and sections 16 & 33 of the *Employment and Assistance Regulation*.

PART D – RELEVANT LEGISLATION

EAA – *Employment Assistance Act*, Sections, 2, 11, 27 & 28
EAR – *Employment and Assistance Regulation*, Sections 16 & 33

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

- 1) **January 2018** – The Appellant completed an Employment Plan for the term of January 16, 2018 – July 4, 2020 for Activities Towards Independence and for the Employment Program of BC.
- 2) **November 18, 2020** – The Ministry became aware that the Appellant was attending College with funding. The Appellant had received unearned income totalling \$27, 500 in Student Financial Assistance that was not declared on the monthly reports (income received February and July 2020).
- 3) **November 26, 2020** – The Ministry received a letter confirming the Appellant’s enrollment from January 6, 2020 – December 31, 2020 at a College.
- 4) **January 21, 2021** – The Ministry mailed the Appellant a letter indicating that it had been determined the Appellant potentially received an overpayment of \$14,868.04 because the Appellant attended funded schooling from January 6, 2020 – December 23, 2020. The letter included a copy of the overpayment chart and requested the Appellant respond to the letter by February 10, 2021.
- 5) **February 3, 2021** – The Appellant submitted a letter to the Ministry in response.
- 6) **February 10, 2021** – The Ministry completed a review confirming the \$14, 868.04 overpayment. The Ministry determined that the Appellant had no eligibility for income assistance from February 2020 to December 2020 as the Appellant was attending funded schooling.
- 7) **The Ministry considered these financial and reporting details:**
 - o February 2020 StudentAid BC Revised Notification of Assessment - StudentAid BC approved the Appellant for \$27,500 in student loans and grants for the study period of January 6 – December 31, 2020.
 - o The student loan funding was provided for a 52-week study period
 - o \$63,994 was the assessed need for tuition, fees, books, supplies, and living allowance.
 - o A Loan Statement the Appellant provided lists \$17,477 of the student loan disbursements received; \$10,920 received March 17, 2020 and \$6,557 on July 24, 2020.
 - o An RBC Bank Statement shows \$11,207 of the student loan funding received in July.

Monthly Reports submitted in February 2020, April 2020, and August 2020. The following are the pertinent details of those reports:

 - o February 4, 2020 the Appellant reported “no” to schooling/training and did not report that they had already started the full-time funded program in January.
 - o April 3, 2020 the Appellant reported that they were attending school and reported income from child tax benefits only. The Appellant did not report the student funding received in July and did not include an explanation of any changes or income.
 - o August 5, 2020 the Appellant reported they were in school/training and reported income from child tax benefits only and did not report or explain that they had received student funding income in July).

The Ministry calculation of the overpayment did not include the \$600/month the Appellant’s family received May-December 2020 as an emergency disaster supplement. Review of file confirms the overpayment included the 11 months of income assistance plus the August school start-up and December Christmas supplement.

- 8) **February 3, 2021** - The Ministry considered the following information that the Appellant provided in their letter related to their schooling and income:
 - o The Appellant applied to the 2-year post-graduate program to be able to find a job as they were a doctor and have good experience that can help the community and support your family.
 - o They started their studies January 6, 2020 as a full-time student and were still trying to find a job with the help of Work BC but finding a job was even harder during the Covid19 crisis.
 - o They applied for a student loan and were approved for and received a loan of \$27,500 that included an allowance for educational costs and living expenses but was not enough to support the family
 - o They did not know that while in full-time studies you could not get help from the Ministry.

- They called Student Aid BC and were told that they would need to seek additional sources of funding outside of Student Aid
- They received the student loan cheques in March and July 2020; however, the bulk of the money received was used to pay off debts.

Additional Information

The Appellant submitted a May 17, 2021 dated letter that was written by the Appellant's legal advocate. The contents of letter outlined the misinformation provided to the Appellant by Student Aid BC. The panel admitted this information as new evidence; as it was determined to be 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 decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 9, 2021 in which the Ministry determined the Appellant had incurred an overpayment of assistance and is required to repay the overpayment amount, pursuant to sections 2, 11, 27 & 28 of the *Employment and Assistance Act*, and sections 16 & 33 of the *Employment and Assistance Regulation*.

Legislation

Employment and Assistance Act

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

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 specified 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.

Employment and Assistance Regulation

Effect of family unit including full-time student

16 (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student (a) in a funded program of studies, or (b) in an unfunded program of studies without the prior approval of the minister.

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

(1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person (a) is a sole recipient of income assistance who (i) has a dependent child, or (ii) provides care to a supported child, (b) is required to enroll in the program of studies as a condition of an employment plan and (c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist. (2) The period referred to in subsection (1) (a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and (b) is not longer than one year.

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.

Panel Decision

The Ministry's position is that the Appellant must repay an income assistance overpayment of \$14,868.04 because of inaccurate or incomplete reporting and being enrolled as a full-time student in a funded program of studies for the duration of January 6, 2020 to December 23, 2020.

The Appellant's position, as was outlined in the May 17, 2021 dated letter and written by the Appellant's legal advocate is that the Appellant did attempt to meet all reporting requirements, and did not know that they were ineligible for income assistance while attending full-time schooling. The Appellant asserts that due to misinformation provided by an employee at Student Aid BC, the Appellant was informed that they would need to secure any remaining funding need from other sources such as the Ministry.

As outlined in Section 16 of the *Employment and Assistance Regulation (EAR)*, subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student (a) in a funded program of studies, or (b) in an unfunded program of studies without the prior approval of the minister.

The panel finds that the evidence establishes the Appellant was enrolled in a funded program of studies from the period between January 6, 2020 and December 23, 2020. The panel considered that the Appellant believed that they were permitted to attend the full-time funded schooling while collecting income assistance to meet the unmet financial needs of their family – the panel acknowledges that this misinformation and direction received by Student Aid BC was an honest mistake made by both Student Aid BC and the Appellant. The panel therefore finds that the Ministry's decision was reasonable under section 16 of the *EAR* to determine that the Appellant was ineligible for income assistance for the funded schooling period of January 6, 2020 to December 23, 2020 (less emergency supplements) and must repay the overpayment as calculated (\$14,868.04), pursuant to section 27 of the *Employment and Assistance Act (EAA)* (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].

The panel acknowledges that the letter to the Appellant from the ministry informing him that he had been receiving assistance for which he was not eligible and that he had been overpaid by the amount of \$14,868.04 must have caused him much stress, but the panel also notes that the ministry has tried to minimize the financial impact of the repayment by deducting the sum of \$10 every month from his assistance.

Considering all of the evidence in this appeal that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal, the panel finds that the Ministry was reasonable in its determination to require the Appellant to repay the overpayment of \$14,868.04 as requested under Section 27 of the *Employment and Assistance Act*.

Accordingly, the panel confirms the Ministry's decision, and the Appellant is not successful in this appeal, pursuant to Section 24(1)(b) and (2)(a) of the *Employment and Assistance Act*.

APPEAL NUMBER
2021-0089

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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

21/06/04

PRINT NAME

Vivienne Chin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

21/06/08

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

21/06/04