

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 10, 2021 which determined that between September 2018 to December 2020 the appellant had received \$12539.50 for income assistance that they were not eligible and therefore must be repaid to the ministry.

Specifically, the ministry determined the appellant from September 2018 to June 2019, September 2019 to June 2020 and September 2020 to December 2020 the appellant's children did not meet the definition of dependent child under the Employment and Assistance Act as they did not reside with the appellant for more than 50% of the time.

**Part D – Relevant Legislation**

Employment and Assistance Act, Sections 1, 4, 27 and 28  
Employment and Assistance Regulation, Section 59, and Schedule A

**Part E – Summary of Facts**

The ministry was not in attendance at the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

**Summary of key dates:**

- September 20, 2021 – the appellant was informed of a possible overpayment of 14,681.24
- October 7, 2021 – the appellant submitted their disagreement of the overpayment amount and submitted additional information.
- October 13, 2021- the ministry re-confirmed the overpayment of \$14,681.24.
- November 10, 2021 – original submission date for the appellant's Request for Reconsideration. The ministry approved an extension.
- November 12, 2021- the appellant submitted a Request for Reconsideration. The ministry approved the appellant's request for an extension until December 10, 2021.
- December 10, 2021 the ministry completed its review of the appellant's Request for Reconsideration and confirmed a revised overpayment of \$12,539.50.

**Evidence before the ministry at the time of reconsideration:**

- Request for Reconsideration dated November 10, 2021 the appellant stated in Section 3, Reason For Request For Reconsideration:
  - The court decision dated March 20, 2017 was an Interim Order which was changed August 04, 2018.
  - The document identified as court decision dated March 15, 2017 was a proposed email with no relevance to the appeal.
  - The CRA denial of Child Tax Benefits was added to the package by the ministry but with updated evidence from the appellant of approval for CCB for the years 2018, 2019, 2020.
  - The appellant is not able to contest the other parent's statements made as they were not included in the package.
  - The appellant had a summer parenting agreement for 2019, 2020, and 2021 which was one week on, one week off.
- **Documents submitted by the appellant included:**
  - Canada Benefit Notice- confirming eligible for \$951.33 for August and September of 2020.
  - Screen shot from Canada Child Benefit- confirming eligible months.
  - Summer parenting proposal for July and August of 2019.
  - Varied summer parenting time proposals.
  - A letter from the appellant dated October 7, 2021 in which they state they did receive an overpayment but that calculations were not accurate especially in terms of summer arrangements.

**At the hearing the appellant stated:**

- They agreed with the ministry that an overpayment in the amount of \$12539.50 had been made, not \$14681.24 which had been issued earlier.
- They had appealed the reconsideration decision as the change in overpayment amount had not been communicated to them by the ministry. In particular, the income assistance chart itemizing payments or overpayments was not provided prior to submitting their appeal.
- The appellant had no evidence but thought that the ministry may have miscalculated monies owed for the summer month of July 2019, an issue he would discuss with the ministry when preparing a payback plan.

## **Part F – Reasons for Panel Decision**

The issue under appeal is whether the ministry's determination that the appellant between September 2018 to December 2020 had received \$12539.50 for income assistance that they were not eligible and therefore must be repaid to the ministry.

The ministry determined that from September 2018 to June 2019, September 2019 to June 2020 and September 2020 to December 2020 the appellant's children did not meet the definition of dependent child under the Employment and Assistance Act as they did not reside with the appellant for more than 50% of the time.

The appellant agreed that they had received an overpayment and were prepared to repay the ministry.

### **Panel Decision**

The panel finds that the ministry was reasonable to rely on the interim consent order and other documents provided by the appellant showing that the appellant's children resided with the appellant for less than 50% of the time between March 2018 and December 2020, except for August 2019 and July and August 2020. The panel notes that the appellant does not dispute this information. Therefore, the panel finds that the ministry reasonably determined that the appellant's children were not "dependent" children as defined under section 1 of the EAA and as a result the appellant received assistance that the appellant was not eligible for and must repay in accordance with section 27 of the EAA.

### **Conclusion**

The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision. The appellant is not successful in their appeal.

## **Relevant Legislation**

### **Employment and Assistance Act**

#### **Interpretation- Prior to January 1, 2020**

1 (1) In this Act:

"dependant", in relation to a person, means anyone who resides with the person and who

(a) is the spouse of the person, or

(b) is a dependent child of the person;

(c) indicates a parental role for the person's dependent child

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than

50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection.

**Interpretation- As of January 1, 2020**

1 (1) In this Act:

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person, or
- (b) is a dependent child of the person;
- (c) [Repealed 2019-36-87.]

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than

50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2) but excludes a child in circumstances prescribed under subsection (2.1);

"family unit" means an applicant or a recipient and his or her dependants;

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

**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:**

**Crisis supplement 59**

(1) The minister may provide a crisis supplement to or for a family unit that is eligible for income assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
- (i) imminent danger to the physical health of any person in the family unit, or
  - (ii) removal of a child under the Child, Family and Community Service Act.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
  - (b) any other health care goods or services.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit,
  - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
    - (i) the family unit's actual shelter cost, and
    - (ii) the sum of
      - (A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or
      - (B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D, as applicable, for a family unit that matches the family unit, and
    - (c) if for clothing, the amount that may be provided must not exceed the smaller of
      - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
      - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) Repealed. [B.C. Reg. 248/2018]
- (6) Repealed. [B.C. Reg. 248/2018]
- (7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:
- (a) fuel for heating;
  - (b) fuel for cooking meals;
  - (c) water;
  - (d) hydro.

**Section 59 (4)(b) prior to January 1, 2020**

- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
    - (i) the family unit's actual shelter cost, and
    - (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as

applicable, for a family unit that matches the family unit;

Section 59(4) (a) prior to December 1, 2018

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit

**Schedule A – Amount of Income Assistance:  
Monthly support allowance -As of April 1, 2019**

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);

"warrant" has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

(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.

1 Sole applicant/recipient and no dependent children

Applicant/recipient is under 65

years of age

Amount of support \$385.00

4 Sole applicant/recipient and one or more dependent children

Applicant/recipient is under 65

years of age

Amount of support \$525.58

**Schedule A – Amount of Income Assistance:  
Monthly support allowance -Prior to April 1, 2019**

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);

"warrant" has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

(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.

1 Sole applicant/recipient and no dependent children

Applicant/recipient is under 65 years of age

Amount of support \$335.00

4 Sole applicant/recipient and one or more dependent children

Applicant/recipient is under 65 years of age

Amount of support \$475.58

**Monthly shelter allowance between September 2018 and December 2020**

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of a warrant in section 15.2 [consequences in relation to outstanding arrest warrants] of the Act.

(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:

Maximum Monthly Shelter

1 person \$375

3 persons \$660



APPEAL NUMBER 2021-0249

**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)

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

**Part H – Signatures**

Print Name

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2022/01/14

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2022/01/14

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2022/01/14