

Reasons for Decision:

Order # AP1617-0035

The appellant appealed that the appellant's income assistance file was closed and an overpayment was assessed in the amount of <amount removed>.

The program representative stated that the appellant has been receiving income assistance benefits since <date removed>. In <month removed> the program received the appellant's annual review in which the appellant indicated that the appellant was employed part time. No paystubs or supporting income verification was submitted at that time. A letter was sent to the appellant on <date removed> requesting all paystubs from when the appellant started working. When they were not received by <date removed> another letter was sent requesting them. The appellant dropped off the requested pay verification at the income assistance office on <date removed>. The financial worker then phoned the appellant to advise that the pay information the appellant dropped off was not clear in certain areas and requested further verification. The appellant provided the requested information shortly after. The pay information showed that the appellant began part time employment in <date removed>. This information was not reported until the appellant completed an annual review in <date removed>. The appellant's gross employment earnings from <dates removed> totaled <amount removed>. Based on this income information the appellant would not have been eligible for income assistance as the appellant's earnings far exceeded the budget amount, therefore reaching the exit point. The "exit point" is reached when the total gross monthly employment earnings plus the non-job earnings are 35 per cent higher than the monthly income assistance budget.

An overpayment of <amount removed> was assessed as a result of unreported income received from <dates removed>. The program representative stated that the appellant has worked in the past and is aware of the income reporting requirements. As the appellant's income was sufficient for more than two months, the file was closed effective <date removed>. The appellant is encouraged to reapply if the appellant's income changes as the overpayment has no bearing on eligibility, and the overpayment will be deducted from benefits at the rate of \$50.00 per month for a single person.

The appellant attended the hearing with legal counsel who presented on the appellant's behalf. Counsel provided summary of the appellant's history in regards to mental health, losing the appellant's life savings, and having to live in a homeless shelter for a period of time. Since receiving income assistance the appellant has complied with submitting the annual report as requested. The appellant sent it in by the deadline of <date removed> and disclosed that the appellant was working part time and then didn't hear back from the program for almost three months. In <date removed> the appellant was first contacted by letter asking to provide paystubs; then received another letter on <date removed>. The appellant's argument is that the

overpayment is not a result of not reporting but that the program didn't act on the receipt of the information on time. Counsel then referred to Section 24.3.1 of the Employment and Income Assistance Administrative Manual in regards to the program determining when recovery of an overpayment is appropriate. It is their submission that the overpayment is a result of an administrative error due to failure of staff to act on information received or known as stated in section 24.3.1. Counsel also referred to points 4 and 5 under the guidelines to recover an overpayment and advised that the appellant has difficulty understanding the budget adjustment and monitoring the budget and benefits. The second grounds for appeal is the appellant receives disability benefits because of poor health and the appellant should continue receiving benefits as the job is only part time and the pay fluctuates from month to month.

At the hearing, the appellant stated that the reporting requirements are very hard for the appellant to understand and that they have not been explained to the appellant. The appellant said that the program never told the appellant what was going to happen after the overpayment was calculated and that the file would close. The appellant said the appellant is still working at a part time job which is better than being on social assistance; however the overpayment is very difficult to deal with.

Section 16.1.5 of the Employment and Income Assistance Administrative Manual states:

Declaration of employment income

Participants with earnings are responsible for making a full declaration of employment income and expenses at each month end, prior to any calculations of EIA eligibility for the upcoming month, or payment of any assistance.

Section 16.3.7 of the Employment and Income Assistant Manuel states:

Exit Point

In accordance with [section 8\(6\)](#) of the Regulation, an Exit Point will be reached and cash assistance shall be reduced to \$0 when a household's total income from gross earnings and unexempted unearned income represents 135% or more of the household's monthly budget.

Section 24.3.1

RECOVERY OF OVERPAYMENTS DUE TO ADMINISTRATIVE ERROR

Overpayments resulting exclusively from administrative error shall not be subject to recovery except in cases where the director or designate is of the opinion that the participant clearly recognized that incorrect payments had been made. (This policy became effective October 1, 1985).

The intention of this policy is to avoid creating a hardship for participants through the recovery of overpayments to which they in no way contributed. It must be considered that these participants received the overpayments in good

faith if there are no facts to suggest they were aware that the assistance they were receiving was more than their entitlement.

Overpayments due to administrative error usually involve one of the following situations:

- a. failure of staff to act on information received or known;
- b. error in calculation;
- c. staff oversight (e.g., failure to make an age adjustment or delete a dependant turning 18 from the budget);
- d. staff error in judgement or interpretation of relevant legislation or policies;
- e. inability of the automated payment system to respond to reported changes in participant circumstances.

Guidelines

The decision to recover an overpayment due to an administrative error is at the discretion of the director or the designate. In determining whether recovery is appropriate, the director or designate should consider all the relevant facts of the case. The following guidelines are provided to assist in making these decisions, however, these guidelines do not exhaust all factors that might be considered and are not listed in order of weight and importance.

4. Participant's knowledge of a budget adjustment

Did the participant receive prior notification (either in writing or verbally, with a notation on file) that their assistance would be reduced or terminated effective a certain date? Recovery should be considered in cases where participants are advised that their benefits will be reduced or terminated and then fail to contact the office when the expected change does not occur (e.g., their assistance remains the same, the adjusted budget does not agree with the amount indicated in the notification, the participant continues to receive assistance when it should have been terminated).

5. Participant's ability to monitor budget

Consideration should also be given to the participant's ability to monitor his or her budget. Participants who are able to monitor the composition and amount of their budgets closely are more likely to notice errors in their assistance payments than those who are not able to do so.

After carefully considering the written and verbal information the Board has determined that the Department was correct under the The Manitoba Assistance Act and Regulation to apply the appellant's earned income as an available financial resource, which then exceeded the monthly income assistance budget, therefore becoming the appellant's exit point, making the appellant ineligible for benefits. The appellant's earned income in the months of <dates removed> far exceeded the maximum income assistance budget. As Employment and Income Assistance is a program of last resort, the appellant is expected to live off employment earnings. When participants are employed they must report their employment earnings at the end of each month, in

order for the Department to assess further eligibility. In the appellant's case, the appellant started working in <date removed> but did not inform the program of this development until <date removed>. The Board has no reason to believe that the appellant would not or should not have known that the appellant would be required to report work and income in between having to submit annual reports. The Board finds the appellant responsible for failing to report income in a timely manner and therefore, responsible for an overpayment made because of this omission. However, the Board also finds fault with the inaction of the program. The appellant submitted an annual review advising the program that the appellant was working in <date removed> and the program didn't act on it until <date removed>. When asked at the hearing why the program did not act on this sooner, the representative stated "We can't look at every piece of paper that comes into our office; yes if we had looked at it sooner, the appellant would not have this big of an overpayment". The program also stated that it did not advise the appellant as to what would happen when the overpayment was assessed and the file was closed. The Board finds the program should have clearly acted sooner which was also confirmed by the program representative's own admission. Therefore, the Board is varying the decision of the Director and declaring the overpayment for the months of <text removed> be assessed as a non recoverable overpayment due to an administrative error. The overpayment amount will then be reduced by <amount removed> which equals two months of the appellant's income assistance budget of <amount removed> per month.

DISCLAIMER

These are electronic copies of the Reasons for Decision issued by the Social Services Appeal Board. These written reasons have been edited to protect the personal information of individuals by removing personal identifiers.