

Reasons for Decision:

Order # AP1819-0735

On <date removed>, the appellant filed an appeal against the decision of the Director, River East Transcona to assess an overpayment. The decision was communicated in a letter dated <date removed>.

The decision letter stated the appellant had received Employment Insurance sick benefits in February and March, <year removed>, and those benefits made their ineligible for assistance in those months. The Department assessed an overpayment for March only, as the appellant received their EI benefits after February assistance had been paid.

At the hearing, the Department stated all assistance recipients are obligated to report to any changes in circumstances to the Department, including the receipt of income. The reporting requirements are explained at a pre-intake orientation session, which all potential recipients must attend.

The Department asserted that the appellant must have attended such a session and had the requirements explained to them.

The Department stated that every assistance recipient must sign an action plan. The appellant has signed four action plans since they began receiving assistance, and all four plans state that they must report any income received.

The Department stated it provides assistance to potential EI claimants while their EI claim is being processed, because Service Canada takes six to eight weeks to process a claim. Once the lump sum payment for retroactive benefits is received by the recipient, the Department treats the payment as income received in the month. The assistance recipient is supposed to declare the lump sum payment to the Department.

The Department asserted that there was no question that the appellant knew they had an obligation to report their EI benefits, but they did not do so. The appellant completed income declaration forms for January and March <year removed> and declared no income. The Department discovered the appellant had been receiving EI benefits through a tape match with Service Canada.

The Department asserted that it was not debatable that the appellant intended to hide the income.

The appellant was represented at the hearing by an advocate. The advocate noted that the appellant had been assigned approximately five workers in the past year. The

hearing was the first time the appellant met their current worker. The advocate stated the appellant was working part-time when they suffered a debilitating dog bite. The appellant was told by Service Canada that they could apply for EI sickness benefits.

The advocate asserted the appellant has extensive documentation of the efforts they made to contact the Department and explain the situation. Despite the appellant's efforts, they were unsuccessful in having a discussion with the Department about how to handle the income.

The appellant told the Board they received a letter from the Department dated <date removed>, advising they were no longer required to file income declaration forms. Based on that letter, they did not file a form.

The appellant's advocate asserted the appellant was misinformed by the Department, and acted in good faith on that misinformation.

In response to a question from the Board, the Department stated the appellant was no longer required to complete a hand-written income declaration form, as the form is auto-generated by the Department's system.

The Board asked if the Department had returned the appellant's telephone calls. One of the workers representing the Department stated they had a large workload, adding that if they returned every phone call they would not get any work done. The worker told the Board they only returned phone calls where they identified a concern.

The Department stated income declaration forms are only generated automatically when recipients declare a regular monthly income. The Department added that the case notes on the appellant's file indicated they were not eligible for Employment Insurance, so the Department did not anticipate they would need income declaration forms.

The appellant's advocate asserted the Department's evidence at the hearing demonstrated that they were not notified of the need to submit income declaration forms. The appellant told the Board the confusion over income declaration forms was part of the reason they wanted to meet with their worker.

The Department told the Board that it was not collecting the overpayment because the appellant's file was closed, but it would start collecting if their file reopens. The Department was unsure what the current overpayment recovery rate was for a two-person household. The appellant noted their EI benefits ended at approximately the same time as their assistance file was closed, depriving them of any income.

In response to a question from the Board, the Department acknowledged the appellant's file was shuffled among a small number of workers for a period of time. The

Department asserted their file was managed during that time period, but admitted it was not "fully managed"

The Board noted the most recent action plan submitted in evidence was dated in <year removed>. The Department stated a new action plan was not completed because the appellant was working. The appellant responded that they have not worked since their son was murdered in <date removed>.

In its submission, the Department asserted that it was not debatable that the appellant intended to hide their income. In fact, the appellant's intent was the proper focus of the hearing, and the Board heard considerable conflicting evidence about their intent.

The Board notes that the appellant's evidence that they attempted to resolve the issue with the Department before an overpayment was created was uncontested by the Department.

Furthermore, the Department acknowledged that the appellant's file was not fully managed for a period of time, and that phone calls are not returned unless the worker identifies a problem.

The Board believes the appellant's confusion was further increased by the letter sent on <date removed>, telling the appellant they did not have to file income declarations. Since the letter was not submitted in evidence, the Board relies on the appellant's description of its contents. The Board notes that the Department had some difficulty explaining the intent of the letter at the hearing, and that the appellant's efforts to obtain the same explanation from the Department were unsuccessful.

While the Department did not submit its complete overpayment policy in evidence, the Board is aware that the Director has the discretion to deem an overpayment non-recoverable. After careful consideration of the written and verbal evidence submitted to it, the Board determined that the Department's handling of the appellant's file resulted in considerable confusion. The Board varies the Director's decision to assess an overpayment and orders the Department to deem <name removed>'s overpayment as non-recoverable.

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