

Reasons for Decision:

Order # AP1920-0743

On <date removed>, <name removed> filed an appeal against the decision of the Director, Downtown Point Douglas to assess an overpayment of <amount removed>. The decision was communicated in a letter dated <date removed>.

The decision letter stated the overpayment was the result of unreported income received by their common-law spouse, <name removed>, in <date removed>.

At the hearing, the Department stated the appellant and <name removed> are involved with a cleaning business owned by <name removed>. The business was originally owned by <name removed>'s parent. In <date removed>, <name removed>'s parent transferred the business to their adult child, but kept the residential cleaning contracts for themselves.

The Department told the Board <name removed> filed an income declaration in <date removed> that showed <amount removed> in income, but the source of that income was unclear. The Department requested bank statements from <name removed> and the appellant.

<name removed> and the appellant supplied the bank statements in <date removed>. The <month removed> bank statement showed <amount removed> in unreported income. <name removed> originally claimed the deposit was their parent's Canada Pension Plan cheque, and then subsequently stated that the deposit was payment on a cleaning contract. <name removed> told the Department they could not disclose the name of the company because of a Non-Disclosure Agreement.

The Department calculated an overpayment for benefits received in <month removed>. The Department applied the work incentive rules when calculating the overpayment, resulting in an overpayment of <amount removed>.

The Department noted it had requested information about business income and expenses for several months, but did not receive any information until recently. The Department did not receive a copy of the business plan until after the appeal was filed. The Department stated that it has not approved a self-employment plan for the appellant and <name removed> because it has not determined if the business is viable.

The appellant was represented at the hearing by <name removed>.

<name removed> told the Board that they and the appellant submitted income declarations in <months removed> that included spreadsheets tracking business

income and expenses. They asserted that they did not know that the self-employment plan was not approved when they submitted the income declarations.

<name removed> stated they signed a retirement agreement with their parent when they transferred the business to them. They have a legal obligation to pay their parent <amount removed> per month. They are also responsible for all business expenses.

<name removed> told the Board they understood why the Department would not approve a self-employment plan for a non-viable business, but they asserted that their company had been established for 20 years and had a revenue stream. They acknowledged that their self-employment plan was not approved, but stated they did not understand that meant the Department would not allow them to net business expenses from business revenues.

In response to a question from the Board, the Department stated it has not approved a self-employment plan based on the business plan submitted in <month removed>. The Department asserted that information was still missing from the plan. In particular, the Department cannot assess the viability of the business plan if it does not have a copy of the only contract the business has signed.

The Department told the Board it was still concerned that <name removed> had provided two different explanations for the source of the <month removed> deposit. The Department also has concerns about the source of funds for their parent's monthly retirement payment.

In response to a question from the Board, <name removed> stated they are trying to grow their business, but they believed they were not getting adequate support from the Department. They asserted that their parent kept the residential contracts because their elderly clients did not want a young male in their homes. They noted their parent no longer had the contracts.

The Board asked the Department to clarify the basis for including the entire payment of <amount removed> as income, rather than deducting the payment for their parent. The Department explained its policy is to disallow any business expense if the self-employment plan is not approved.

While the Board heard a significant amount of evidence about the viability of <name removed>'s business, the issue before the Board is relatively narrow. The Board must determine if the Department applied an overpayment correctly for income received in <month removed>.

The Department characterized the income as unreported. <name removed> objected to that characterization, asserting that they supplied spreadsheets to the Department that explained how they calculated the income they declared. The Board notes that the income and expenses listed in the <date removed> spreadsheet supplied by <name

removed> do not match the deposits and withdrawals on the <date removed> bank statement.

The appellant was advised by letter on <date removed> that they needed to complete a business plan before the Department would approve their self-employment plan. On <date removed>, they were advised their benefits would be held until they signed the required self-employment plan. On <date removed>, the appellant and <name removed> were advised that their request for employment supports was denied, and they were told they must declare all income. On <date removed>, the appellant and <name removed> were advised that the Department was not supporting their self-employment plan. On <date removed>, <name removed> was reminded that the Department did not support their self-employment plan, and that they must submit bank statements each month with their income declaration.

The Board determines that the Department provided consistent communication over a period of several months explaining that the self-employment plan was not approved, and that all income must be declared. <name removed>'s assertion that neither they nor the appellant was aware in <date removed> that the self-employment plan was not approved, and that they could not deduct business expenses from their income, is not credible.

<name removed> submitted that the Department unreasonably withheld approval of their self-employment plan, because the business had been viable for their parent for many years. However, their parent kept all the existing contracts for themselves and imposed an additional cost of <amount removed> per month on the business. <name removed> was unable to secure contracts between <month removed> and <month removed>, and had only one contract beginning in <month removed>. The Department's concern about the viability of the business was reasonable.

The Board determines that the appellant and <name removed> were aware that their self-employment plan was not approved, and that they were required to declare all income. The spreadsheet submitted by <name removed> did not match the bank statements and did not constitute an accurate declaration of income.

After careful consideration of the written and verbal evidence submitted to it, the Board determined that the Department correctly assessed income received by the appellant, according to the legislation and regulation. The Board confirms the Director's decision to assess an overpayment of <amount removed> against the appellant.

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