

Systemic Investigation Update

WORKING WITHIN THE RULES:

Supporting Employment for
Income Assistance Recipients

INTRODUCTION

One of the key ways in which the Office of the Ombudsperson can effect change in the fair administration of government programs is by making recommendations. Our recommendations result from investigative findings of unfairness. In other words, when our investigation highlights a problem in fair administration, our recommendations aim to fix that problem. Our recommendations may involve individual remedies or systemic change, and often contain timelines by which we expect an authority to have made the change.

We monitor authorities' implementation of the recommendations made in our

public reports. As part of this monitoring commitment, we issue periodic updates on specific reports and their recommendations.

We begin monitoring implementation once a report is released publicly. We collect information from the authority about the steps it has taken to implement a recommendation. We expect the authority to provide us with specific, relevant and verifiable information about its implementation steps – a general commitment to take action is not sufficient. We then assess this information to determine whether, in our view, the recommendation has been fully implemented.

WORKING WITHIN THE RULES REPORT AND RECOMMENDATIONS

Working Within the Rules: Supporting Employment for Income Assistance Recipients was released in May 2018. It was the result of an investigation that arose from a single complaint to our office. An individual, Ms. Smith,¹ complained about a decision made by the Ministry of Social Development and Poverty Reduction that affected her eligibility for income assistance benefits.

The ministry administers the income assistance program that is established and governed by the *Employment and Assistance Act* and the *Employment and Assistance Regulation*. The ministry has also established the *BC Employment and Assistance Policy and Procedure Manual* that is intended to assist staff in making decisions about income assistance that are consistent with the legislation.

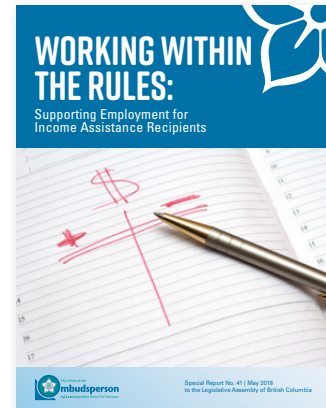
Ms. Smith's complaint was about how the ministry had applied the "earnings exemption" that is set out in the Regulation. The earnings exemption allows individuals to keep some of the money they earn from employment, with no corresponding deduction from their rate of assistance, up to a prescribed limit. According to the ministry, the purpose of the earnings exemption is to allow people to take advantage of part-time or temporary work and to better provide for themselves and their families.

Because of a medical condition, Ms. Smith was not able to work consistently and so her earnings fluctuated from month to month. In some months, Ms. Smith earned enough that she was ineligible for assistance the following month. However, when Ms. Smith returned to assistance, the ministry denied

her claim for the earnings exemption on the basis that she did not receive income assistance in the previous month. In effect, the ministry had imposed a one-month waiting period policy for the earnings exemption in cases such as Ms. Smith's. On two separate occasions, Ms. Smith was successful in having these decisions reconsidered. Ms. Smith complained that it was unfair to have to repeatedly seek reconsideration of the same decision.

We investigated whether the ministry had followed a reasonable procedure in assessing Ms. Smith's eligibility for the earnings exemption. As we gathered information, we broadened our investigation to include an assessment of whether the ministry had acted consistently with its legislative authority in determining the eligibility of claims for all of the earnings exemptions set out in the Regulation.

We found that the ministry's application of its one-month waiting period policy for the earnings exemption was contrary to the *Employment and Assistance Regulation*. We also found that the ministry acted improperly and in breach of its duty to its clients by continuing to publish and apply the earnings exemption policy when it knew its interpretation of the Regulation was wrong. We found that the ministry acted unjustly and oppressively in requiring recipients to



¹ The name of this complainant has been changed in this update and in the report.

seek reconsideration of earnings exemption decisions in order to obtain the exemption. We also found that imposing a waiting period for the earnings exemption for clients who did not receive assistance in the previous month due to their income is unreasonable and, for clients with the Persistent Multiple Barriers to employment designation, unfair.

To address our findings, we made four recommendations, all of which the ministry accepted. We recommended that the ministry

immediately revise its policy to accurately reflect the Regulation, begin making eligibility decisions that are consistent with the Regulation and by October 1, 2018 develop guidelines for responding to systemic and/or repetitive legal errors that the reconsideration branch identifies. We also recommended that the ministry, by October 1, 2018, identify and reimburse all recipients of income assistance who were wrongly denied the earnings exemption.

KEY IMPLEMENTED RECOMMENDATIONS

To date, the ministry has implemented three of the four recommendations made in *Working Within the Rules*.

Recommendations 1 and 2 are that the ministry:

- **Immediately begin making eligibility decisions about the earnings exemption that are consistent with the *Employment and Assistance Regulation* and cease finding recipients ineligible for the earnings exemption only because they did not receive income assistance in the previous month (Recommendation 1)**
- **Immediately revise the section of the *BCEA Policy and Procedure Manual* that relates to the earnings exemption to accord with and give effect to the language in the *Employment and Assistance Regulation* (Recommendation 2)**

On March 27, 2018, the ministry updated the *BCEA Policy and Procedure Manual* to clarify that clients who do not use an Application for Assistance (Part 2) to apply for income

assistance “**are not** required to serve a one-month waiting period before being eligible for the earnings exemption [emphasis in original].”²

On July 16, 2018, the earnings exemption regulation was amended. The regulation now provides that if a person in a family unit received income or disability assistance in at least one of the three preceding calendar months, the family unit is eligible to claim the earnings exemption. This regulation change codified the existing practice that a person who leaves assistance temporarily for fewer than three months does not complete a new application. The ministry updated its *BCEA Policy and Procedure Manual* to reflect this regulation change.³

Since the policy change in March, 2018, the ministry has had staff manually check earnings exemption decisions to ensure that clients who are entitled to the earnings exemption are not being denied it.

These steps implement Recommendations 1 and 2.

² Ministry of Social Development and Poverty Reduction, “Income Treatment & Exemptions – Earnings Exemptions” effective 27 March 2018.

³ Ministry of Social Development and Poverty Reduction, “Income Treatment & Exemptions - Earnings Exemptions” effective 16 July 2018, <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/income-treatment-and-exemptions>.

The ministry has also implemented Recommendation 4, which provides that:

- **By October 1, 2018, [the ministry] develop guidelines for responding to systemic and/or repetitive legal errors that the Reconsideration section identifies regarding the ministry’s application of its income and disability assistance legislation (Recommendation 4).**

The ministry has finalized these guidelines and shared them with us. The guidelines provide that systemic or legal errors identified by the Reconsideration Branch are referred to the ministry’s executive to review and consider options to resolve the issue. Importantly, the guidelines provide that the executive should consider these options within 90 days.

This is important to ensure a timely and effective response to systemic or repetitive issues that may arise.

In this case, the problem with the ministry’s application of its earnings exemption policy was identified internally but allowed to linger for several years. As a result, the problem grew and more people were adversely impacted. These guidelines, properly implemented, should prevent similar issues from arising.

As we stated in *Working Within the Rules*, this recommendation:

... is intended to promote more sound policy development and better decision making at the service delivery level moving forward.⁴

Clients of the ministry should be able to expect that its decision making process is not only consistent but responsive to issues that may arise, and the guidelines will help to ensure this.

FURTHER MONITORING

The Office of the Ombudsperson is continuing to monitor one outstanding recommendation. This recommendation was due to be implemented by October 1, 2018; however, the ministry has not fully met this timeline. The outstanding recommendation is:

- **By October 1, 2018, [the ministry] identify all recipients who, from October 1, 2012, onward, were wrongly denied the earnings exemption because they did not receive income assistance in the previous month, and reimburse them for the amount of income assistance they were entitled to under the *Employment and Assistance Regulation* (Recommendation 3).**

When we released *Working Within the Rules*, the ministry told us that an estimated 3,700 people had been denied up to \$700 in earnings exemptions (per eligible month) since October 1, 2012. When we met with the ministry to discuss implementation, we learned that the ministry had done a further review of these files and determined that 2,651 people had been denied earnings exemptions totaling \$658,336. Of this number, about 1,147 were still receiving income assistance. The ministry reviewed these individuals’ files and reimbursed them by October 1, 2018. These payments totaled \$291,560.

The remaining 1,504 individuals, who were collectively owed \$366,776 in underpayments,

⁴ Office of the Ombudsperson, *Working within the Rules: Supporting Employment for Income Assistance Recipients*, Special Report No. 41 (Victoria, BC: May 2018), 20 <https://www.bcombudsperson.ca/documents/working-within-rules-supporting-employment-income-assistance-recipients>.

were no longer receiving assistance when the ministry reviewed its files. We asked the ministry about the process it used to contact them. The ministry confirmed that it had sent letters to the last address on file informing former clients that they are eligible for a payment and to contact the ministry by telephone to arrange payment, except for 73 former clients who had no fixed address at the time the file was closed. These 73 clients are owed a total of \$14,533.

As of December 17, 2018, 516 former clients had contacted the ministry and received payments totaling \$141,065.

The ministry also explained that beginning January 2019, it planned to review unpaid files quarterly to see whether any individuals had resumed receiving assistance and provided updated contact information. In any such cases, the ministry would provide the payment to the client. The ministry plans to do similar reviews in April, July and October 2019.

The ministry confirmed that following the first quarterly review in January 2019, it plans

to begin attempting to contact by telephone former clients who are owed payments. In our view, the ministry should immediately seek to contact the 73 individuals with no fixed address by phone, in keeping with its commitment to reimburse affected individuals by October 1, 2018.

We also expect the ministry will ensure its staff have access to appropriate information and resources to assist any clients or former clients who contact it about these reimbursements.

The steps the ministry has committed to take should result in some of the remaining individuals receiving the money they are owed, but are unlikely to locate all 988 individuals who have not yet been reimbursed. While the planned steps are underway, the ministry should explore other proactive methods to locate the remaining individuals.

Because work to reimburse former clients is still underway, we have assessed this recommendation as ongoing.

CONCLUSION

We are pleased that the ministry acted quickly to revise its policy manual once it received our report. Ensuring that policy is consistent with the governing legislation is a foundational principle of good public administration. As we noted in *Working Within the Rules*, the nature of the income assistance program administered by the Ministry of Social Development and Poverty Reduction only emphasizes the power imbalance between government and individual citizens. Given this, “the onus is on the ministry and not service recipients to ensure that its decisions are consistent with its legal authority.”⁵ Where they are not, the ministry should take remedial action. The ministry’s work to implement the recommendations from *Working Within the Rules* reflects a commitment to improve its services and practices going forward.

We look forward to receiving further updates from the ministry about the implementation of the outstanding recommendation from our report. A more proactive approach to finding individuals who the ministry has agreed to reimburse is in order. We will continue to monitor and provide updates on this recommendation.

Further details about our investigation and recommendations can be found on our website at <https://www.bcombudsperson.ca/documents/working-within-rules-supporting-employment-income-assistance-recipients>

⁵ Office of the Ombudsperson, *Working within the Rules: Supporting Employment for Income Assistance Recipients*, Special Report No. 41 (Victoria, BC: May 2018), 1 <https://www.bcombudsperson.ca/documents/working-within-rules-supporting-employment-income-assistance-recipients>.

RECOMMENDATION SUMMARY

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| <p>R1</p> | <p>Immediately begin making eligibility decisions about the earnings exemption that are consistent with the <i>Employment and Assistance Regulation</i> and cease finding recipients ineligible for the earnings exemption only because they did not receive income assistance in the previous month.</p> | <p>Fully implemented</p> |
| <p>R2</p> | <p>Immediately revise the section of the <i>BCEA Policy and Procedure Manual</i> that relates to the earnings exemption to accord with and give effect to the language in the <i>Employment and Assistance Regulation</i>.</p> | <p>Fully implemented</p> |
| <p>R3</p> | <p>By October 1, 2018, identify all recipients who, from October 1, 2012, onward, were wrongly denied the earnings exemption because they did not receive income assistance in the previous month, and reimburse them for the amount of income assistance they were entitled to under the <i>Employment and Assistance Regulation</i>.</p> | <p>Ongoing</p> |
| <p>R4</p> | <p>By October 1, 2018, develop guidelines for responding to systemic and/ or repetitive legal errors that the Reconsideration section identifies regarding the ministry’s application of its income and disability assistance legislation.</p> | <p>Fully implemented</p> |



The Office of the
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