

Reasons for Decision:

Order #AP2021-0127

On July 15, 2020, <name removed> filed an appeal listing six points related to the management of their file by the Director, Fort Garry/River Heights:

- The application of an overpayment recovery rate of \$60 per month;
- Withholding the shelter amount;
- An alleged error concerning his health bus pass that occurred in <year removed>;
- Unavailability of a support person or e-mail;
- Appeal documents should be single-sided and in duplicate; and
- Funding for a service animal.

The Board office advised <name removed> that points 3 and 6 had previously been appealed, and could not be appealed again. The office also advised <name removed> that points 4 and 5 were administrative issues and were not appealable.

<name removed> declined to speak at the hearing. The appellant submitted a written statement and a number of documents as evidence. <name removed> made the following assertions in their written statement:

- While the Department maintains they are not eligible for the Canada Emergency Response Benefit (CERB), they have not confirmed that assertion with the federal government;
- The federal government has publicly urged provincial governments not to claw back CERB payments;
- They were not required to report the CERB payment until they received clear instructions how to report it;
- The overpayment recovery rate imposed a hardship; and
- They believed the Department was not allowed to withhold the shelter amount under any circumstance.

At the hearing, <name removed> told the Board that they received \$2,000 in CERB payments, but returned <amount removed>. The appellant asserted that they could not repay the remaining <amount removed> to the federal government if the Department was deducting \$60 per month for the overpayment.

The Department confirmed that <name removed> received \$2,000 in CERB payments, but returned <amount removed>. The Department treated the remaining <amount removed> as an overpayment. The Department asserted that <name removed> did not qualify for the CERB.

The Department acknowledged that <name removed> told it the \$60 recovery was a hardship. The Department stated it has the ability to reduce the overpayment recovery rate, but not waive the recovery in full.

Consistent with Department policy, <name removed> was asked to submit a written explanation of the hardship. <name removed> did not respond, despite the Department following up on its request. <name removed> asserted that the Department had sufficient information in their file to independently determine the overpayment recovery would be a hardship. The Department responded that <name removed> bore the responsibility for making the case that the recovery should be reduced.

In response to a question from the Board, <name removed> stated they applied for the CERB because they needed the money. The appellant disputed the Department's assertion that they were not eligible for the CERB.

<name removed> was accompanied at the hearing by their support worker. The support worker asked if the Department would reimburse <name removed> for the overpayment recovery if the federal government required <name removed> to return the remaining <amount removed>. The Department deferred to the federal government.

<name removed> stated the shelter allowance appeal related to the Department's refusal to implement a Board order to reimburse them for a late fee incurred in <year removed>. The Department argued that implementation of a Board order was not listed as an appeal issue.

The Board has heard a number of CERB-related appeals. The Board is aware that the eligibility criteria for CERB are:

1. You did not apply for, nor receive, CERB or EI benefits from Service Canada for the same eligibility period
2. You did not quit your job voluntarily
3. You reside in Canada and are at least 15 years old
4. You earned a minimum of \$5,000 (before taxes) in the last 12 months, or in 2019, from one or more of the following sources:
 - a. employment income
 - b. self-employment income
 - c. provincial benefit payments related to maternity or parental leave
5. One of the following:
 - a. Your work hours have been reduced because of COVID-19
 - b. You have stopped or will stop working because of COVID 19
 - c. You are unable to work because of COVID-19, for example because you are taking care of someone.

It is evident to the Board from <name removed>'s file that they do not meet the second, fourth and fifth eligibility criteria. Furthermore, the Board is aware that CERB applicants

must attest that they meet these criteria. Therefore, the Board determines that the Department correctly assessed the overpayment.

The Department has invited <name removed> to provide evidence of the specific hardship the overpayment recovery is causing. <name removed> has chosen not to respond beyond their ongoing and generic assertion that the Department does not provide them with adequate funds. Therefore, the Department has no basis on which to make a determination about the overpayment recovery rate.

With respect to the shelter amount appeal, the Board determines that the basis of appeal was not clear when the appeal was accepted. If the Board office knew <name removed> was re-appealing a two-year old decision, the appeal point would have been rejected as out-of-jurisdiction.

<name removed> has made the same assertion that that the Department has not implemented the Board order in the past. The Board notes that <name removed> has had four previous appeal hearings. The Board has confirmed the Director's decision in all four hearings. Simply put, the Board has never made an order for the Department to provide <name removed> with any requested benefit.

The Board notes with approval the following excerpt from previous Reasons for Decision to the appellant:

The Board notes that <name removed> once again invested a considerable amount of effort raising issues before the Board that were not relevant to the appeal. The Board is aware that <name removed> is not satisfied with the outcome of their <year removed> appeal, and that they have engaged in an ongoing dispute with the Department over the most appropriate means of communication. The Board has no need to be reminded of these issues at every appeal.

After careful consideration of the written and verbal evidence submitted to it, the Board determines that the Department has calculated <name removed>'s overpayment recovery rate according to the legislation, regulation and policy.

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