

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated November 29, 2011 which found that pursuant to section 18 of the Employment and Assistance for Persons With Disabilities Act ("EAPWDA"), the Appellant was required to repay to the Ministry \$5,099.20 of disability assistance benefits for which he was not eligible. The Appellant's ineligibility for the disability assistance benefits arose due to his failure to obtain prior approval from the Ministry to be outside the province of British Columbia for more than 30 days in a year for the purpose of participating in a formal education program, or obtaining medical therapy prescribed by a medical practitioner, or avoiding undue hardship as provided for by section 15 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA") sections 18 and 19
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") section 15

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of:

1. The Appellant's Request for Reconsideration. This document is date stamped by the Ministry November 17, 2011 but appears to have been dated May 17, 2011 by the Appellant;
2. An Employment and Assistance for Persons with Disabilities application form dated February 28, 2006;
3. A letter from the Ministry of Social Development ("the Ministry") to the Appellant dated August 23, 2011 regarding a request for a review;
4. A letter from the Ministry to the Appellant dated September 16, 2011 regarding a request for a review;
5. A copy of the Appellant's Canadian passport;
6. A copy of the Appellant's travel itinerary dated July 5, 2010 for travel outside of British Columbia;
7. A letter from the Ministry to the Appellant dated September 30, 2011 requesting information;
8. A letter from the Ministry to the Appellant dated October 7, 2011 enclosing an overpayment chart;
9. Ministry notes relating to contact with the Appellant for the period of June 23, 2010 through October 5, 2011;
10. A benefit payment record with balance dated June 22, 2011;
11. A letter from the Ministry to the Appellant dated October 20, 2011 enclosing an Overpayment Notification also dated October 20, 2011;
12. A prior Reconsideration Decision dated November 9, 2011;
13. An overpayment chart dated November 17, 2011; and
14. A letter from the Ministry to the Appellant dated November 17, 2011 enclosing an Overpayment Notification also dated November 17, 2011

The Appellant applied for Disability Assistance Benefits on February 28, 2006. The Benefit Application lists a number of responsibilities of the Government and the Appellant. One of the Appellant's responsibilities is that he must report all changes in his circumstances that might affect his eligibility for assistance. A copy of the Appellant's travel itinerary dated July 5, 2010 indicates that the Appellant was scheduled to travel from Vancouver out of the country on July 13, 2010 and return on September 21, 2010. An Overpayment Chart prepared by the Ministry and dated November 17, 2011 shows that the Appellant received Disability Assistance Benefits totaling \$5,099.20 from August 2010 through May 2011.

In the Request for Reconsideration, the Appellant says that he is on income assistance and therefore not in a position to repay the benefits. He states further that his mental health is not good and he is very worried about his health and ability to pay this debt which he describes as being large and one that he feels he cannot pay.

In his Notice of Appeal, the Appellant says that he was not aware of the applicable regulation, that he had to stay with his ailing father who passed away after 10 months and that therefore, he had to fulfill filial duties.

At the hearing, the Appellant stated that he was required to leave British Columbia and travel out of the country in July 2010 due to his father being very ill and he confirmed that he planned to return to British Columbia on September 21, 2010. He said that he did not advise the Ministry of his decision to leave British Columbia prior to his departure as he did not know he was required to do so. A few months after arriving at his destination out of the country, he says that his father passed away and he had to stay longer to fulfill his family obligations. Further, he says that his mother kept his passport thus preventing him from traveling. While out of the country, he received treatment for a medical condition but that this was not something that his family physician in British Columbia had prescribed nor was it something that he had planned prior to arriving at his destination out of the country. The Appellant confirmed that he was continuously out of the country from July 13, 2010 until approximately June 2011 when he returned to British Columbia.

At the hearing, the Ministry relied on the Reconsideration Decision. It submitted that the Appellant was outside British Columbia from July 13, 2010 until June 9, 2011 and that the Appellant acknowledged this. During this

period of absence, the Appellant continued to receive disability assistance benefits totaling \$5,099.20 for which he was not eligible and for which he was obliged to repay the Ministry pursuant to sections 18 and 19 of the EAPWDA. The Ministry referred to the Appellant's application for benefits dated February 28, 2006 which sets out the Appellant's duty to report all changes to his circumstances that might affect his eligibility for assistance.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which found that pursuant to section 18 of the Employment and Assistance for Persons With Disabilities Act ("EAPWDA"), the Appellant was required to repay to the Ministry \$5,099.20 of disability assistance benefits for which he was not eligible. The Appellant's ineligibility for the disability assistance benefits arose due to his failure to obtain prior approval from the Ministry to be outside the province of British Columbia for more than 30 days in a year for the purpose of participating in a formal education program, or obtaining medical therapy prescribed by a medical practitioner, or avoiding under hardship as provided for by section 15 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR").

Section 15 of the EAPWDR provides as follows:

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

Section 18 of the EAPWDA provides as follows:

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [reconsideration and appeal rights].

Section 19 of the EAPWDA provides as follows:

19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

- (a) recovered in a court that has jurisdiction, or
- (b) deducted, in accordance with the regulations from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

The Ministry argues that the Appellant was absent from British Columbia for more than 30 days without prior government approval and as such he was not eligible for disability assistance during his absence and as a result, the Appellant is liable to repay to the government the amount of the disability assistance benefits he received during his absence.

The Appellant acknowledges that he was absent from British Columbia for more than 30 days, that he continued to receive disability assistance benefits during his absence, that he did not notify the Ministry prior to leaving British Columbia and that he did not have authorization from the Ministry prior to leaving British Columbia. The Appellant argues however that the amount of benefits that the Ministry says he must repay is very large, that he is concerned about his ability to repay it and that he had no choice but to travel out of the country due to family matters.

The Appellant confirms that he left British Columbia on July 13, 2010 and that he did not return until sometime in June 2011. He further confirms that he did not seek or obtain prior authorization from the Ministry prior to leaving British Columbia. During his absence, the Appellant continued to receive disability benefits totaling \$5,099.20 and the Panel finds that the Appellant was not eligible for these benefits. Section 18 of the EAPWDA is clear that where disability assistance benefits are received by recipients who are not eligible, the amounts received are overpayments that recipients are liable to repay to the government. There is no discretion in the EAPWDA as to the Appellant's obligation to repay the overpayment and the Panel does not have the jurisdiction to review the amount of the overpayment.

The Panel finds that the Ministry's determination that due to the ineligibility the Appellant is required to repay disability assistance benefits totaling \$5,099.20 to the government is a reasonable application of the applicable enactment in the circumstances of the Appellant and the Panel therefore confirms the Ministry's decision.