

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision of January 06, 2012, which determined that the appellant had received overpayment of income assistance she was not entitled to receive in the amount of \$422.82 due to failure to notify the ministry of changes to her custody arrangements for her child who was no longer a dependent child under Section 1. The ministry stated that the cited amount must be repaid, per Section 18(1) and 19 (1) (b) of the Employment and Assistance for Persons with Disabilities Act.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act – Sections 1, 11, 18 and 19

## PART E – Summary of Facts

The evidence before the Panel was provided in part in the appeal record and in part through oral evidence submitted at the hearing. In the appeal record, as part of the evidence, were copies of the following documents:

- 1) Copy of the appellant's affidavit submitted to the Provincial Court of British Columbia regarding the issues with the custody of the appellant's child.
- 2) Copy of a letter from the Ministry of Social Development addressed to the appellant, informing her about an overpayment in the amount of \$422.82.
- 3) Copy of an Overpayment Notification from the Ministry of Social Development addressed to the appellant, informing her about an overpayment in the amount of \$422.82, which document was acknowledged, signed, and dated by the appellant on December 19/11.
- 4) Copy of the Overpayment Chart, which indicated the amount of overpayment to the appellant in the amount of \$422.82 for the months of September and October 2011.
- 5) The appellant's Request for Reconsideration dated December 12/11 with a statement she provided in which she stated that she and her child's father had a custody agreement in which she was the primary caregiver for her child; that on August 08/11 her child was taken from her care by the child's father; that it took a month for her to get a Court date and she was expecting to have her child back after the Court date, but this did not happen; that after the first Court date, there has been several additional Court dates without her receiving a decision on this matter; that she cannot be penalized due to the delay in the Court system and asked the ministry to reconsider its decision under her special circumstances.
- 6) The appellant's Notice of Appeal, dated January 22/12 with a statement she provided in which she stated that when the ministry informed her about the overpayment, the worker asked her to provide a copy of the affidavit regarding the custody battle; that the social worker informed her that because it was a "custody gone bad", the overpayment would not be executed; that she had many Court appearances and until now she could not regain custody of her child; that she has another hearing booked for February 24/12. Finally, that due to these circumstances the overpayment should be dismissed.

At the hearing, the Appellant presented a submission that covered the following points:

- When she became aware of the overpayment, the ministry worker that spoke to her at that moment told her that usually in a custody dispute the overpayment can be waived;
- She had primary custody of her child since April/11 and the child used to spend the weekends with the father.
- On August/11 her child's father took the child and refused to return the child to her.
- She expected that the Court would give a decision at the September 14/11 hearing, but it did not happen because the judge needed more information.
- She had Court hearings on Sep. 14, Oct. 12, Oct. 17 and Nov. 14/11.
- The appellant did not have contact with her child from August 11, 2011 to October 21, 2011.
- In October/11 she started having her child on the weekends.
- Since her child was taken from her she has been under stress, dealing with lawyers, Court dates, her child's school.

- When she received the letter from the ministry in October informing her about the overpayment, she immediately contacted the ministry worker.
- She did not intend to be dishonest or deceive the ministry.
- She did not communicate the situation with the child to the ministry because she expected to have the child returned to her after the first hearing; and then she became too stressed dealing with this issue to remember to contact the ministry to inform about the change in her household.

The ministry restated the position as it is set out in the reconsideration decision, reaffirming the appellant had not disclosed to the ministry that her child was not living with her since August 8, 2011 until the ministry became aware of this fact; that the appellant did not ask for the due alteration on her file and kept receiving her benefit as a single person with one dependent child. The ministry stated that the legislation defines dependent child as a child that resides with the parent for more than 50% of each month and that the appellant's child has not resided with the appellant since August 8, 2011; that the legislation requires the communication of any change in circumstance that may affect eligibility, such as the change in the custody arrangement with regard the dependent child. Finally that the ministry understands the appellant's situation but that the legislation does not provide any exception that could be applied to the appellant's situation.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that the appellant was in receipt of disability assistance that she was not eligible to receive and therefore is required to repay, pursuant to Sections 1, 11, 18 and 19 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA).

The legislation applicable to this case provides that:

### **Interpretation**

#### **1 (1) In this Act:**

**"applicant"** means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

**"child"** means an unmarried person under 19 years of age;

**"dependant"**, in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental responsibility for the person's dependent child;

**"dependent child"**, with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

**"family unit"** means an applicant or a recipient and his or her dependants;

### **Reporting obligations**

**11 (1)** For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form prescribed by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

**Overpayments**

**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].*

**Liability for and recovery of debts under Act**

**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's position is that the appellant failed to notify the ministry of the change in her circumstances when her child ceased to reside with her for more than 50% of the month, as of August 08, 2011. The ministry informed that the appellant did not disclose this fact to the ministry despite numerous opportunities to do so and continued receiving the disability assistance as a single person with one dependent child during the months of September/11 and October/11. The ministry stated that, as a consequence, the appellant is required to repay the disability assistance she received in this period of time in the amount of \$422.82.

The appellant argued that her child was taken from her in August 8/11 by the child's father and since then she has been dealing with the custody dispute in Court; that she had attended Court dates on Sept. 14/11, Oct. 12/11, Oct. 17/11, Nov. 14/11 without receiving a final decision in the case; that she has another hearing at the Court booked for January 24, 2012; that she had no contact with her child from August 08, 2011 to October 21, 2011, when she finally started having her child on weekends. The appellant stated that since her child was taken from her she has been under stress, dealing with lawyers, Court dates, her child's school, and also with the death of her mother. Finally, that when she received the letter from the ministry informing her about the overpayment, she immediately contacted the ministry worker; that she did not intend to be dishonest or deceive the ministry.

The panel finds that the evidence demonstrates that the appellant, as a person with disability designation, was receiving disability assistance as a single person with a dependent child; that the appellant was the primary caregiver of her child and that the child was residing with her for more than 50% of the month since 2009; that on August 8, 2011 the child's father took the child and has refused to return the child to the appellant's care since then; that the custody dispute is an ongoing matter before the Courts; that only in October 2011 did the appellant get permission to spend weekends with her child. The evidence also demonstrates that although her child was not living with her since August 08, 2011, the appellant did not disclose this fact to the ministry; that it was only when the ministry became aware of the change in the number of dependents in the appellant's household that the appellant confirmed her new circumstance to the ministry.

The applicable legislation defines "dependent child" as a child younger than 18 years of age who resides in the parent's place for more than 50% of each month and relies on that parent for the necessities of life. The same piece of legislation also requires that for a family unit to be eligible for disability assistance, a recipient must notify the minister of any change in circumstances or information that (1) may affect the eligibility of the family unit, and (2) was previously provided to the minister. Concerning overpayments, the prescribed legislation provides that a person is liable to repay disability assistance that the person received while ineligible for such payments.

Based on the evidence, the panel finds that the appellant was obliged by the pertinent legislation to disclose to the ministry the change in the number of dependents in her household at the point when the child had been in her care for less than 50 % of the month, in order for the ministry to be able to process the reduction in the amount of her monthly disability assistance, but that for a variety of reasons, she did not do so. The panel acknowledges that the appellant has been through a very stressful period because of the custody dispute, but the legislation does not provide her any other option but to inform the ministry when her family unit's circumstances change.

Therefore, the panel finds that the ministry's decision to require the appellant to repay the amount of \$422.82 for the disability assistance she received in September/11 and October/11, for which she was not eligible, was reasonably supported by the evidence and the pertinent legislation and, therefore, confirms the decision of the ministry under Section 24 (1)(a)(b) and 24(2)(a) of the Employment and Assistance Act.