

### PART C – Decision under Appeal

In a reconsideration decision dated 13 January 2012, the Ministry denied the Appellant's request to waive the requirement to make the repayment of \$3,864 due to the Ministry due from the receipt of excess disability assistance (DA) he received from March 2010 through October 2011. The Appellant received \$3,864 in US Social Security benefits during the time period and did not declare it. The Ministry determined it as "unearned income" and as such the Appellant received an overpayment of his eligible rate of DA under EAPWDR, Schedule A and the overpayment must be repaid as per Section 18 of the EAPWRA.

### PART D – Relevant Legislation

Employment and Assistance Persons with Disabilities Act, (EAPWDA) Section 11, 18, 19  
Employment and Assistance Persons with Disabilities Regulation, Section 1, "unearned income"  
Employment and Assistance Persons with Disabilities Regulation, (EAPWDR) Section 24  
Employment and Assistance Persons with Disabilities Regulation, Section 29  
Employment and Assistance Persons with Disabilities Regulation, Schedule B, Section 1, 6 and 7

## PART E – Summary of Facts

Preliminary Matter: The Ministry requested that an observer sit in on the hearing for training purposes. The Advocate, acting for the Appellant, did not object to the observer being present. The Panel then conducted the hearing with the observer present.

The evidence before the Ministry at the time of the reconsideration decision included:

- A letter from the Appellant's parents (his Advocate) dated January 24, 2012,
- An overpayment notification from the Ministry dated 15 December 2011,
- An overpayment chart dated December 16, 2011,
- A notice of award from a US Social Security Administrator stating the Appellant will receive a first check of \$384 and a scheduled monthly payment of \$184 from March 2010 onward,
- A social security benefit statement for 2010, specifying payments totaling \$2,024 to the Appellant in 2010,
- (US) bank statements (18 pages) from March 2010 – October 2011,
- A (4 page) PWD review,
- A (3 page) representation agreement dated 28 October 2002,
- The (7 page) Appellant's history of care from his Advocate dated 6 January 2012,
- A letter to the local MLA from the Advocate dated 3 January 2012,
- Letters of support from:
  - The Appellant's sister dated 6 January, 2012,
  - The Appellant's (second) sister dated 22 December, 2011,
  - A community service provider dated 3 January, 2012,
  - A pharmacist dated 28 December, 2011,
  - A dentist (undated),
  - A dental hygienist dated 29 December, 2011,
  - A friend of the Advocate (undated),
  - The Appellant's instructor of special education dated 9 January, 2012,
  - The Advocate's financial advisor dated 3 January, 2012.

The Appellant is a recipient of DA and designated as a person with disabilities (PWD) with the Ministry. He is diagnosed as mentally handicapped, autistic, legally blind and with Addison's disease. He lives and is under the care of his parents who have the legal authority to act on his behalf. The father is advocating on behalf of the Appellant.

The Advocate states in the notice of appeal that the Ministry did not consider the Appellant's inability to work and did not consider a past shelter increase that he did not receive. In the letter of January 24, 2012 the Advocate states he understands the Ministry has no authority for discretion under the current legislation and he has agreed to repay the "unearned income" if the Ministry's decision is not overturned. However he believes the legislation is flawed and unfair because those whose disabilities are such that they are unable to work may not receive any "unearned income" while others can earn up to \$500 per month "earned income".

Secondly, the Advocate states the Ministry did not notify the Advocate of an increase in shelter allowance from \$325 to \$375 in 2007. The Advocate suggests the repayment should be offset by the amount the Appellant did not receive in shelter allowances for the time period.

The Appellant's history of care details the Appellant's health and family care over the years. In it the Advocate notes that as a dual American/ Canadian citizen, the Appellant became eligible to receive \$191 (USF) per month from US social security.

In the request of reconsideration, the Advocate states the Appellant is unable to work and it seems unjust that he is not allowed any "unearned income".

The Ministry states the Appellant received monthly payments and the Advocate had understood that all income must be declared to the Ministry. The US social security was not declared and therefore the Appellant was overpaid his eligible DA and he is legislated to repay the overpayment.

At the hearing the Advocate stated the legislation is unfair because those disabled and are not capable of working (like his son) are unable to have any additional income without it affecting his DA. He suggests the legislation needs to be revised to be right, fair and proper. Furthermore, the Advocate states "US social security" is not mentioned within the definition of unearned income under the EAPWDR and therefore the Ministry has some discretionary interpretation of whether it falls under the definition of "unearned income".

The Advocate states the Appellant has been eligible for \$50 per month more in shelter that he has not received and he calculates it as approximately \$2,900. He suggests it would be appropriate to consider deducting his additional shelter allowance, not received, from the amount owing to the Ministry.

Upon, questioning, the Advocate, as the legal authority to act on the Appellant's behalf, stated he was "remiss" to report the change in the Appellant's income in March of 2010. He stated that he had taken in other changes but missed this item.

The Appellant's first witness, a community service provider, stated the Appellant needs care 24/7 and his company has provided respite care for the Appellant for approximately 10 years. He says that in his experience with a variety of individuals on PWD that the ability to earn \$500 per month often makes a difference in the quality of life for that individual. He confirmed that the Appellant is unable to work and it seems inequitable if he cannot access other available income without affecting his eligible DA. The witness also stated the parents maintain the Appellant in a quality environment that is inexpensive when compared to a group home environment which would be another alternate for the Appellant.

The Appellant's second witness, a family friend, confirmed that the Appellant is well cared for and that his parents as full time care givers spend time and money on necessary home renovations and programs to ensure the Appellant has a good quality of life.

At the hearing the Ministry stated the Appellant has been receiving DA since 2001 and the over payment had been discovered in a review of his file undertaken in November 2011. The Ministry stressed that the Appellant or his designate has an obligation to report any changes in household status or income to the Ministry. The Ministry acknowledged the excellent care the Appellant receives under his parent's care but stressed the Ministry is meant to be one of "last resort". The Ministry also stated that if income does not fall under the definition of earned income that it must be designated as unearned income.

From the information presented, the Panel finds:

- the Appellant is designated as a PWD and lives with his parents,
- the Appellant is eligible for DA each month,
- the Appellant received \$3864 in US social security benefits from March 2010 through October 2011,
- The Appellant did not declare the US social security benefits to the Ministry.

## PART F – Reasons for Panel Decision

The issue is the reasonableness of the Ministry to deny the Appellant's request to waive the requirement to make the repayment of \$3,864 due to the Ministry from the receipt of excess disability assistance (DA) he received from March 2010 through October 2011. The Appellant received \$3,864 US Social Security benefits during the time period and did not declare it. The Ministry determined it as "unearned income" and as such the Appellant received an overpayment of his eligible rate of DA under EAPWDR, Schedule A and the overpayment must be repaid as per Section 18 of the EAPWRA.

The relevant legislation in the EAPWDA is as follows:

### **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.*

The relevant legislation in the EAPWDR is as follows:

**1 (1)** *In this regulation:*

**"unearned income"** *means any income that is not earned income, and includes, without limitation, money or value received from any of the following:*

*(t) any other financial awards or compensation:*

**24** *Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than*

*(a) the amount determined under Schedule A, minus*

*(b) the family unit's net income determined under Schedule B.*

**29** *For the purposes of section 11 (1) (a) [reporting obligations] of the Act,*

*(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and*

*(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:*

*(ii) change in income received by the family unit and the source of that income;*

**Schedule B**

**1** When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,

(a) the following are exempt from income:

(i) any income earned by a dependent child attending school on a full-time basis;

(ii) the basic family care rate paid for foster homes;

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]

(iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;

(v) the basic child tax benefit;

(vi) a goods and services tax credit under the Income Tax Act (Canada);

(vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);

(viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;

(ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

(x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

(xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;

(xii) money that is

(A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

(B) paid or payable to or for a person if the payment is in

*accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;*

*(xiii) the BC earned income benefit;*

*(xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;*

*(xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;*

*(xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;*

*(xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;*

*(xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;*

*(xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;*

*(xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;*

*(xxi) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;*

*(xxii) payments granted by the government of British Columbia under section 8 of the Child, Family and Community Service Act [agreement with child's kin and others];*

*(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;*

(xxiv) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;

(xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child to a person other than a parent of that child;

(xxvi) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the Mental Health Act, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided by the Fair PharmaCare program of the Ministry of Health Services;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);

(xxxiii) money paid by the government of Canada, under a settlement



agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the Income Tax Act (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the Income Tax Act;

(xxxviii) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age,

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry,

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

### **Deductions from unearned income**

**6** The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

### **Exemptions — unearned income**

**7** The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (2) [assets held in trust for person with disabilities] of this regulation if
- (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 12 (1) of this regulation, and
  - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A-B) \times C$ ,

The Ministry argues the legislation is not discretionary in nature and unearned income must be deducted from DA. Because it was not deducted, the Appellant received assistance for which he was not eligible and this must be repaid.

The Advocate argues the legislation is flawed and unfair because those, like the Appellant, that are unable to work may not receive any "unearned income" and others can earn up to \$500 per month "earned income". Secondly, the Appellant did not receive an increase in shelter allowance in 2007 and this underpayment should be used to offset the repayment.

Regarding the second argument from the Advocate, the parameters of this hearing is limited to the specific appeal of the repayment of excess income due to undeclared unearned income. Therefore the Panel cannot consider argument or evidence regarding a dispute of shelter allowance received.

The letters of support and the Appellant's history of care acknowledge the good care and support the Appellant receives from his parents and family. The evidence from the witnesses also confirm the excellent care the Appellant receives in the care of his parents as well as the perceived unfairness

regarding the Appellant's inability to receive any income without it affecting the eligible amount calculated by the Ministry. The Panel also recognizes the Advocate's frustration towards their perceived unfairness within the legislation. However, the Panel does not have a mandate to comment on legislation, its mandate is limited to deciding whether the Ministry's decision was reasonable in view of the evidence and the applicable legislation as set out in the Employment and Assistance Act (EAA), Section 24(1) as follows:

*the panel must determine whether the decision being appealed is, as applicable,*

*(a) reasonably supported by the evidence, or*

*(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.*

It is an undisputed fact that the Appellant did receive \$3864 in income between March 2010 and October 2011 and it was not declared to the Ministry. The Panel finds the Ministry reasonably determined that the US social security payment falls within the definition of "unearned income" as any income, that is not earned, and includes, without limitation any other financial awards or compensation, as set out in the EAPWDR

Based on the legislation, the Panel finds the Ministry reasonably determined the unearned income received by the Appellant had no exemption and therefore must be included in the calculation of eligible DA. The Panel finds the Ministry reasonably determined that Section 18 of the EAPWDR leaves no discretion to the Ministry, repayment must be made to the Ministry in the amount or value or the overpayment provided. The Panel finds the Ministry made a reasonable decision to deny the Appellant's request to waive the requirement to repay the overpayment. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.