

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of February 2nd, 2012 wherein the ministry determined that under section 10(2) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) the appellant, who is a family unit of one, was not eligible to receive disability income assistance between May 2009 and August 2010 because during this period the appellant's total assets were greater than \$3,000. The ministry found the appellant had cash assets in a bank account exceeding \$3,000 and these are not listed under section 10(1) EAPWDR as being exempt from the calculation of the total value of assets.

The ministry further determined the appellant is liable under section 18(1) EAPWDA to repay the income assistance that he was not eligible to receive.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 18(1)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 10

PART E – Summary of Facts

The facts before the ministry at the time of reconsideration were:

- Request for reconsideration dated December 15th, 2011.
- Letter to ministry from appellant's relative date stamped September 22, 2011.
- Bank statements in the appellant's name covering the period from Feb 2009 to Jan 2010.
- Bank statement's in the appellant's name covering the period from May 2009 to July 2011
- 1 page recap of appellant's bank account from Jan 2009 to August 2011
- Overpayment Chart (4 pages) in appellant's name covering the period of May 2009 to May 2011.

Summary of Facts:

The appellant was a single recipient of disability assistance from December 1997 and until January 2011 when his spouse was added to his file. In September of 2011 the ministry conducted a review of the appellant's benefits file and found that the appellant had a bank account with a cash balance which exceeded the allowable total assets limit of \$3,000 which is stated in the EAPWD regulation making him ineligible for disability income assistance. The ministry's review showed the appellant had opened a bank account on May 1st, 2009 and within the same month (May 2009) the appellant's cash assets exceeded the \$3,000 limit. The bank records showed the appellant's bank account continued to grow from May 2009 until mid-August 2010 and continually carried a cash balance that kept the appellant's total assets above the \$3,000 limit. As a result of the review, the ministry received a letter (undated) from a relative of the appellant which stated the appellant had been given a one-time gift of \$2,000 in summer of 2010 to assist the appellant with his down payment to purchase a home. The bank record shows this amount was deposited and withdrawn within the same month but this deposit did not make a significant difference in the calculation of the appellant's assets for that month. The ministry found that cash assets, as defined under EAPWD regulation, are not exempt from the calculation of a recipient's total assets and determined the appellant was not eligible for disability assistance from May 2009 until August 2010 and was required to repay the income assistance received for that period.

Prior to the hearing the panel received a 9 page addendum to the Appeal Record from the EAAT. The addendum contained the following documents forwarded to the EAAT by appellant's advocate. The advocate said that the documents in the addendum were sent to the Reconsideration Branch but because they were not included in the Appeal Record she is concerned that they were not before the Reconsideration Officer. The Advocate requested that these documents be considered by the panel:

1. Letter from a rehabilitation worker to appellant's advocate dated November 28th, 2011 outlining the rehabilitation workers contact with the appellant regarding a Registered Disability Savings Plan (RDSP) application.
2. Facsimile cover letter dated January 10th, 2012 from rehabilitation worker to the advocate apologizing for the delay in sending the letter of November 28th, 2011.
3. Memo from appellant's advocate to MHSD dated January 12, 2012 attaching the facsimile sheet (item #2) and the letter from the rehabilitation worker (Item#1). The advocate also provided an overview of the appellant's relationship with rehabilitation worker, the appellant's medical condition (PWD status) and the circumstances leading up to him moving to his new community.
4. Release of Information form signed by appellant.
5. Fax cover sheet dated February 17th, 2012 from advocate to EAAT expressing concerns that the facts in the letter of November 28th, 2011 from the rehabilitation worker were not considered in the reconsideration decision.

The panel finds the letter, item #1, contains information that was before the ministry when the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA as this letter contains information that is in support of the information or records that were before the ministry at the time of reconsideration.

The panel finds that items listed in #2, #4 and #5 do not contain any evidence and are informational documents submitted to ministry or EAAT in support of the letter listed in Item #1 above.

The panel finds that item #3 contains information (appellant seeing rehabilitation worker about RDSP) that is contained in item #1 above and information that was not before the ministry at reconsideration – appellant's medical condition and the appellant's limited contact with the ministry. The panel finds that this memo, except for the reference to the letter from the rehabilitation worker, contains information is not in support of the information or record that was before the ministry at the time of reconsideration and therefore is not admissible as evidence under section 22(4) EAA.

Item # 6 - At the hearing the appellant introduced 'a notice' that was attached to an Income Assistance cheque that he received from the ministry.

The 'notice' states,

"IF YOU ARE A PERSON WITH A DISABILITY OR HAVE CHILD WITH A DISABILITY. YOU MAY BE ELIGIBLE FOR THE DISABILITY TAX CREDIT. TO APPLY. VISIT WWW.CRA-ARC.GC.CA/E/PBG/TF/T2201.

ELIGIBLE INDIVIDUALS CAN APPLY FOR A REGISTERED DISABILITY SAVINGS PLAN (RSDP). THE RSDP ALLOWS YOU, FRIENDS, AND/OR FAMILY TO BUILD LONG-TERM SAVINGS IN AN RDSP ACCOUNT. THE FEDERAL GOVERNMENT ALSO PROVIDES GRANTS AND BONDS TO HELP GENERATE SAVINGS. FOR MORE INFORMATION, VISIT WWW.RDSP.COM OR CALL 1-800-622-6232.

ASSETS IN AN RDSP ARE FULLY EXEMPT FROM PROVINCIAL ASSISTANCE CALCULATIONS AND ANY FUNDS WITHDRAWN WILL NOT AFFECT YOUR ASSISTANCE PAYMENTS. IF YOU ALREADY HAVE AN RDSP, REPORT IT ON THE BACK OF YOUR CHEQUE STUB AND WE WILL INFORM YOU HOW TO CLAIM ADDITIONAL FUNDS TO GROW YOUR SAVINGS. MORE INFORMATION ON THIS FUNDING WILL BE PROVIDED IN SEPTEMBER. FURTHER INFORMATION SPEAK TO YOUR EMPLOYMENT ASSISTANCE WORKER." (the capital text is typed as it appeared on the notice and the punctuation errors are as per the original document)

The panel finds this 'notice' contains information that is in support of the information or record that was before the ministry at the time of reconsideration and therefore is admissible as evidence under section 22(4) EAA.

At the hearing the appellant testified that he has a mental impairment which resulted in his PWD designation and prior to moving to his current location he lived in a remote area, with limited or no access to ministry workers. The appellant testified he relied heavily on his rehabilitation worker to provide him with assistance on many different matters. The appellant testified that when he received 'the notice' attached to his assistance cheque regarding the RDSP he went to the rehab worker to seek assistance who gave him an application. The appellant testified he took the application and when he returned to see her again to complete it she informed him that his disability was not severe enough to qualify for the RSDP program. The appellant testified he found a home but only had limited time to save for a down payment so he opened a bank account and continued to deposit all his savings. The appellant testified he lived in sub-standard conditions and relied heavily on other community agencies for support (food, clothing, etc) and only spent money when absolutely necessary. The appellant testified he only worked 1 1/2 months during this time and didn't complete income stubs because he knew he could earn up to \$500 a month. The appellant testified that he didn't know what he was doing was wrong; believes in rules and obeys them; just wanted a better standard of living and wanted to go through the RDSP program because he could save money 3 times faster but was told he didn't qualify for the program.

The ministry relied on the facts within the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 2nd, 2012 wherein the ministry determined that under section 10(2) EAPWDR the appellant, who is a family unit of one, was not eligible to receive disability income assistance between May 2009 and August 2010 because during this period the appellant's total assets were greater than \$3,000. The ministry found the appellant had cash assets in a bank account and these are not listed under section 10(1) EAPWDR as being exempt from the calculation of the total value of assets.

The ministry further determined the appellant is liable, under section 18 EAPWDA, to repay the disability income assistance for the period to which he was not eligible to receive assistance.

Legislation considered:

Employment and Assistance for Persons with Disabilities Act (EAPWDA)

Section 18 - Overpayments

(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*].

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

PART 1 - INTERPRETATION

Definitions

Section 1 (1) In this regulation:

asset means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

cash assets, in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party that must pay it to the person or the dependant on demand,
- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Asset limits

Section 10(1) The following assets are exempt for the purposes of subsection (2):

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;
- (c) a family unit's place of residence;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is:

- (i) applied to the amount owing on the family unit's current place of residence, or
- (ii) used to pay rent for the family unit's current place of residence;
- (e) a child tax benefit under the *Income Tax Act* (Canada);
- (f) a goods and services tax credit under the *Income Tax Act* (Canada);
- (g) 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); (B.C. Reg. 180/2010);
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for disability assistance (part 2) form, and female stock held for stock replacement; (B.C. Reg. 306/2005)
- (l) essential equipment and supplies for farming and commercial fishing;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;
- (n) prepaid funeral costs;
- (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
- (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (s) money that is
 - (i) 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
 - (ii) 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; (B.C. Reg. 276/2004)
- (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (u) 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;
- (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
- (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C.;
- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,
 - (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
 - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
 - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
 - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan; (B.C. Reg. 462/2003)
- (y) assets exempted under section 11 (2) [*asset development accounts*] or 12 (2) [*assets held in trust for person with disabilities*]
- (z) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
- (aa) 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];

(bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program. (B.C. Reg. 115/2003)

(cc) payments granted by the Government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program; (BC Reg. 209/2003)

(dd) 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.

(BC Reg. 209/2003)

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

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

(ii) Autism Funding: Ages 6 - 18 Program.

(ff) funds held in a registered education savings plan. (B.C. Reg. 305/2005)

(gg) 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

(hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada).

(ii) 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. (B.C. Reg. 165/2007)

(jj) funds held in a registered disability savings plan; (B.C. Reg. 362/2007)

(kk) a working income tax benefit provided under the *Income Tax Act* (Canada). B.C.Reg. 48/2008)

(ll) Repealed (B.C. Reg. 180/2010)

(mm) the climate action dividend under section 13.02 of the *Income Tax Act*; (B.C. Reg. 94/2008)

(nn) 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. (B.C. Reg. 87/2008)

(oo) 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.C. Reg. 242/2010)

Section 10 (1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m). (B.C. Reg. 461/2003)

Section 10(2) A family unit is not eligible for disability assistance if any of the following apply:

(a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3, 000;

(b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5,000.

The ministry argued that section 10(2) EAWPDR regulates that for a family unit of one to be eligible for disability assistance the recipient's total assets cannot be valued at more than \$3,000. The ministry argued that under section 1 EAPWDR savings held on deposit in a financial institution is defined as a cash asset and are not listed in section 10(1) EAPWDR as being exempted from the calculation of the total value of assets. The ministry argued that the appellant, who had been a single recipient of disability assistance since 1997, had a bank account balance greater than \$3,000.00 from May 2009 until August 2010 making him ineligible for disability assistance.

The appellant argued that as a result of a motor vehicle accident he has a PWD designation and was living under less than satisfactory circumstances and made a conscious decision to save money and improve his standard of living. The appellant argued that because of his mental impairment he does not comprehend

things well, his ability to make decisions is impaired and that he did not have a ministry office in his community so relied heavily on his rehabilitation worker to provide him with guidance and assistance where necessary. The appellant argued that all the money he was able to save from his disability assistance went into his bank account as he was not intending to hide anything. The appellant argued he relied heavily on community organizations, i.e. food bank, for assistance so he could save as much as he could for his down payment which had to be made a by certain date. The appellant argued that he didn't know he was not allowed to accumulate these assets as his only intention was to buy a house and improve his standard of living.

The panel finds the appellant's bank statements clearly show that the appellant's bank account consistently carried a balance in excess of \$3,000 from May 2009 until August 2010. The appellant acknowledged he had two bank accounts – one chequing and one savings and that the funds shown on the bank statements are correct. The appellant states that he did not know he could not have assets in excess of \$3,000 and the ministry failed to assist him in providing that advice, however, in the appellant's evidence he states he did not seek advice from the ministry but rather from his rehabilitation worker. The panel finds that in the letter from the rehabilitation worker she stated the appellant's attendance at the office was sporadic over the course of several years; that he did express his desire to buy a house; that he did have concern for how he would be able to save the money for a down payment; that any advice given was within the context of the written material that was on hand in the office; and that it would be the appellant's decision as to whether to submit the application (RDSP) to his doctor as the next step in the process. The panel finds the letter from the rehabilitation worker does not support the appellant's position; 1) that he often sought her assistance and advice rather than going to the ministry as she stated his attendance to her office was sporadic over the years; 2) that the letter does not support his argument that he did not apply for the RDSP program. The panel finds that the rehabilitation worker states that the decision to submit the RDSP application to his doctor was left with the appellant.

Section 10(2) EAPWDR states that a sole recipient is not eligible for disability assistance if they have assets with a total value in excess of \$3,000 and cash assets, as defined by EAPWDR include deposits held by a savings institution, are not listed in section 10(1) EAPWDR as being exempt from calculating the value of a recipient's assets.

Therefore, based on the evidence provided by the appellant's bank statements, the panel finds the ministry reasonably determined the appellant had assets with a total value more than \$3,000 and therefore was not eligible for disability assistance between May 2009 and August 2010.

In reference to the repayment of the disability assistance, the ministry argued that section 18(1) EAPWDA states that if disability assistance is provided to or for a family unit that is not eligible for it, recipients are liable to repay to the government the amount or value of the overpayment for that period. The ministry argued that the appellant, who was not eligible to receive disability benefits between May 2009 and August 2010 as the value of his assets exceeded the \$3,000 limit, was provided with disability benefits for this period because the appellant failed to report his cash assets.

The appellant argued that he did not know the funds in his bank account had to be reported; that the funds, except for the money received from his aunt as a gift, had all been accumulated from his disability assistance; and that he sacrificed many things to reach his goal. The appellant argued that had the ministry done an annual review on his file they could have informed him much sooner of his ineligibility to receive disability benefits.

Section 18(1) EAPWDA legislation states that if a recipient receives income assistance for a period to which the recipient is not eligible, then that amount must be repaid to the government. The panel finds the ministry has reasonably applied section 18(1) EAPWDA and the ministry's decision that the appellant must repay to the

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government the disability income assistance paid for the period of ineligibility was reasonable.

Therefore, the Panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act.