

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of February 15<sup>th</sup>, 2012 wherein the ministry determined the appellant received an overpayment of disability benefits because the appellant had unearned income (rent) that was not reported to the ministry (section 29 EAPWDR) and the appellant is now liable to repay the overpayment to the government as stated in section 18(1) Employment and Assistance for Persons with Disabilities Act (EAPWDA).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 18  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Definitions, section 9, 24, 29

## PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) Employment and Assistance Regulation.

The following evidence was before the ministry at the time of reconsideration:

- Request for reconsideration dated February 1<sup>st</sup>, 2012;
- Letter dated July 21<sup>st</sup>, 2010 from solicitor regarding registration of mortgage on appellant's property;
- Letter to appellant from ministry dated November 15<sup>th</sup>, 2011;
- Consent for Disclosure of Information dated December 5<sup>th</sup>, 2011 signed by the appellant;
- Letter from appellant to ministry IO (Investigating Officer) dated December 5<sup>th</sup>, 2011.
- Appellant's bank statement covering period 01/11/2011 to 4/12/2011.
- Appellant's bank statements (mortgage) for June, September, and December of 2010 and March June, July, August and September 2011;
- Document titled – Account Activity – Historical Details for month October and November 2011.
- Letter dated December 2<sup>nd</sup>, 2011 to the ministry from a co-owner to property where appellant resides.
- Copy of State of Title Certificate for the property where the appellant resides.
- Copy of Assessment Roll Report showing the appellant as co-owner of property where she resides.
- 2 Pages showing rental activity and payments (Oct '08 to Dec '11) on property where appellant resides.
- Letter dated December 9<sup>th</sup>, 2011 from ministry to appellant advising a review of her file had been conducted which revealed the appellant may have been paid assistance between October 1<sup>st</sup> 2008 and October 31<sup>st</sup>, 2011 for which she was not eligible because of rental income from a self-contained suite in the house where she resides.
- 6 pages of IOI's notes on file.
- Letter dated January 12<sup>th</sup>, 2012 from ministry to appellant regarding overpayment and sanction applied to appellant's file.
- Overpayment chart (3 pages) in appellant's name.

In 2005 the appellant moved into her residence as a tenant. In 2008 when the home was sold the appellant purchased 25% interest in the home and then in 2010 the home was sold again but this time the appellant purchased 50% ownership the home with another party. The appellant did not report to the ministry her portion of the rental income for the period of October 2008 to March 2010 that she had received, which resulted in an overpayment of benefits being paid to the appellant. The appellant confirmed that the self-contained suite in the residence was being rented but that not all her expenses were being considered. It's the appellant's position that she has not received any rental income from the property since June 2010. The appellant co-owns the property with a friend. The appellant resides upstairs and the co-owner rents out the self-contained suite on the lower level. Together they share the mortgage and cover the maintenance and repairs. The appellant advised the IO that not all the essential operating costs had been considered in calculating her net income. The IO reviewed the essential operating expenses with the appellant and then adjusted the amount of overpayment due to the government.

At the hearing the appellant submitted the following documents for the panel to consider:

#1 – Letter dated January 30<sup>th</sup>, 2012 to Reconsideration committee from a member of provincial legislature providing an opinion, in support to appellant, on the reconsideration matter.

The appellant advised the panel this letter was submitted to the ministry earlier and was to be considered at the time of the Reconsideration decision but was not included in the Appeal package. The panel finds the letter contains information in support of the information or records that were before the ministry at the time of

reconsideration and is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

#2 – Personal Account Application form dated November 30<sup>th</sup>, 2011 from the appellant's financial institution which bears the name of the appellant and the other owner of the home where the appellant resides. On the form under "intended Uses of Account" it is noted [Family and Household Income/Expenses] which has been stroked out and under notation on the form is printed {Rental Income and Expenses}. The panel notes the change is initialed by an official of the financial institution.

The appellant advised the panel this document was submitted to the ministry earlier and was to be considered at the time of the Reconsideration decision but was not in the Appeal package. The panel finds the document contains information that is in support of the information or records that were before the ministry at the time of reconsideration and is admissible as evidence under section 22(4) EAA.

#3 – Property Tax Notices for 2009 to 2011; 11 pages of utility statements and a page of tax account transactions in the appellant's name from a web site operated by the city in which the appellant resides. The panel finds these documents contain information that was not before the ministry when the reconsideration decision was made and therefore is not admissible as evidence under section 22(4) EAA.

#4 – A letter from a financial institution to the appellant dated July 9<sup>th</sup>, 2010 and refers to a Property Tax Savings Account. The panel finds that this document contains information that was not before the ministry when the reconsideration decision was made and therefore is not admissible as evidence under section 22(4) EAA.

The appellant stated that there are 4 issues in dispute:

1. The alleged overpayment from August 2008 to present.
2. There should be no overpayment at all since April 2010, since the co-owner of the property owns the rental suite.
3. Whether the co-owner and the appellant live together.
4. If (2) is denied, then, subtract 50% of all costs submitted previously (i.e. repair and maintenance invoices, taxes, user rates) from the overpayment amount.

The appellant called one witness – co-owner of the property where she resides.

The witness testified that he owns his own home and has never lived with the appellant or lived on the property where the appellant is living. The witness testified the appellant is a friend and when she asked if he would share in the purchase this property with her, he agreed. The witness testified this property is a two-storey home with separate external entrance and exits and has a legal suite. He stated there is an internal passage way from the upper floor to the lower floor (and vice versa) which can be "locked off". He testified that he and the appellant verbally agreed that he would own the lower half, rent it out and then the rent would pay his share of the mortgage and anything left over would remain in the bank account to pay any repairs and maintenance. He testified that he and the appellant went to the bank and requested a joint account but he didn't sign the proper bank documents (signature card, etc) so his name didn't appear on any bank records. He testified the appellant was the administrator/manager of the property; that she collected the rent and put the money in the bank account and paid all the utility bills. He testified the suite has its own hydro meter so it was easy to separate the two areas. The witness testified there was a rental agreement with the suite but that the agreement was between the appellant and the renter because she was managed the property.

The appellant testified that she had difficulty dealing with the IO and because of her mental disability would simply agree with what he said because she has problems communicating and often didn't understand what she was being told. The appellant testified the last thing she wanted was to get into trouble with the ministry as she relies on their support, medical and otherwise, to survive. The appellant testified that she moved into her

current residence in 2008 when the house was purchased with another party; she had 25% ownership and the other party had 75%. The lower suite was rented and she received her share of the rent money when the unit was rented (\$380 in 2008, \$2100 in 2009 and \$637.50 in 2010 = \$2737.50). In March 2010 the home was sold and the appellant found another party to share the purchase. On this occasion the appellant had 50% ownership and her friend had the other 50%; the understanding being that she would reside in the upper part of the residence, pay her 50% of the mortgage and would manage the property – collect the rate pay the utility bills, et cetera and that he would own and rent out the lower half of the residence, receive all the rent money and pay his 50% portion from the rental income. The appellant testified that she didn't know that rental income had to be reported that it was considered "passive income" and "passive income" was exempt. The appellant testified that she was reporting properly and didn't consider that she had received an overpayment (had received benefits when she was not eligible) because the ministry told her she could earn up to \$500 a month without declaring any income and the most she worked was one day a week - \$100. The appellant testified the IO didn't accept her explanation(s) – that all the rent money went to the other owner; that she was only acting as the agent or property manager and that she didn't receive any money from this arrangement. The appellant testified this agreement allowed her to be in her own home; that both parties went to the lawyer who registered the property as "joint tenants" when they asked it be registered as "tenants in common" and that they went to the bank and opened a "joint" account for the sole purpose of handling the mortgage. The appellant testified she didn't realize that only having her name on the utility bills, both names but one address on the Certificate of Title for the property and not ensuring the bank account was "joint" would cause her such a problem. The appellant testified she acknowledged the rental agreement for the suite was between herself and the renter but stated this was done as she was managing the property and her friend basically didn't want to have anything to do with it. She collected the rent, paid the bills and put the rent money in the bank.

The panel finds the oral testimony from the appellant and the witness all relate to income from the property jointly owned by the appellant and the witness which is information that was before the ministry when it made its reconsideration decision. Therefore, the panel admits the testimony as being in support of the ministry pursuant to section 22(4) EAA.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 15<sup>th</sup>, 2012 wherein the ministry determined the appellant received an overpayment of disability benefits because the appellant had unearned income (rent) that was not reported to the ministry (section 29 EAPWDR) and the appellant is now liable to repay the overpayment to the government as stated in section 18(1) Employment and Assistance for Persons with Disabilities Act (EAPWDA).

Legislation considered:

### **Employment and Assistance For Persons With Disabilities Regulation**

#### **Limits on income**

##### **Section 9**

- (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

#### **Amount of disability assistance**

Section 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.

#### **Effect of failing to pursue or accept income or assets or of disposing of assets**

Section 27 (1) For the purposes of section 13 (3) (a) *[consequences of not accepting or disposing of property]* of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

#### **Monthly reporting requirement**

Section 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:
  - (i) change in the family unit's assets;
  - (ii) change in income received by the family unit and the source of that income;
  - (iii) change in the employment and educational circumstances of recipients in the family unit;
  - (iv) change in family unit membership or the marital status of a recipient.

#### **SCHEDULE B Net Income Calculation(section 24 (b)) - Deduction and exemption rules**

Section 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)
- (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); (B.C. Reg. 180/2010)
- (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; (B.C. Reg. 276/2004)
- (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. (B.C. Reg. 115/2003)
- (xxiv) 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)
- (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. (BC Reg. 209/2003)
- (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. (B.C. Reg. 462/2003)

(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, (B.C. Reg. 22/2005)

(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. (B.C. Reg. 91/2005)

(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, (B.C. Reg. 292/2005)

(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. (B.C. Reg. 192/2006)

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada). (B.C.

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

(xxxiv) money withdrawn from a registered disability savings plan, (B.C. Reg. 362/2007 )

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

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

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

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

(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.C. Reg. 242/2010)

(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 earned income**

Section 2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

(i) income tax,

(ii) employment insurance,

(iii) medical insurance,

(iv) Canada Pension Plan,

(v) superannuation,

(vi) company pension plan, and

(vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

**Exemption - earned income****Section 3**

- (1) The amount of earned income calculated under subsection (2) is exempt for a family unit if
- (a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed
    - (i) disability assistance under the Act,
    - (ii) income assistance under the *Employment and Assistance Act*,
    - (iii) disability assistance or income assistance under a former Act,
    - (iv) a youth allowance under the *BC Benefits (Youth Works) Act*, or
    - (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv), and
  - (b) Repealed (B.C. Reg. 265/2002)
- (2) The exempt amount for a family unit that qualifies under subsection (1),
- (a) in the case of a family unit that is composed of one recipient who is designated as a person with disabilities, is calculated as the lesser of
    - (i) \$500, and
    - (ii) the family unit's total earned income in the calendar month of calculation, or
  - (b) in the case of a family unit that is composed of two recipients, both of whom are designated as persons with disabilities, is calculated as the lesser of
    - (i) \$750, and
    - (ii) the family unit's total earned income in the calendar month of calculation. (B.C. Reg. 43/2006)

**Deductions from unearned income**

**Section 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**

**Section 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  $(A - B) \times C$ , where
  - A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;
  - B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of the Act; or
  - (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;
  - C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act*



(Canada) and section 4.1 (1) (a) of the *Income Tax Act*. (B.C. Reg. 58/2003)

### **Minister's discretion to exempt education related unearned income**

Section 8 (1) In this section:

**"education costs"** means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

**"day care costs"** means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit, for a semester.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of

- (a) a training allowance,
- (b) student financial assistance, and
- (c) student grants, bursaries, scholarships or disbursements from a registered education savings plan received for the semester.

### **Employment and Assistance for Persons with Disabilities Act (EAPWDA)**

#### Definitions

#### Section 1

(1) In this regulation:

**"earned income"** means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) tax refunds,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*; (B.C. Reg. 518/2004)
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) widows' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;**
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;

- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*.

(2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under

- (a) an order of a court in British Columbia,
  - (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
  - (c) an agreement filed in a court in British Columbia,
- the child is a dependent child of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the Community Care and Assisted Living Act is not required. (B.C. Reg. 93/2005)

### Reporting obligations

Section 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.C. Reg. 265/2002)
- (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.

### Consequences of not accepting or disposing of property

Section 13

(1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of disability assistance, hardship assistance or supplements;
- (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for disability assistance for the prescribed period if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has disposed of real or personal property to reduce assets.

(3) In circumstances described in subsection (1), the minister may

- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit of the person ineligible for disability assistance or hardship assistance for the prescribed period.

### Overpayments

Section 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**

#### **Section 19**

(1) An amount that a person is liable to repay under this Act or the regulations 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.

In the reconsideration decision the ministry's position is that the appellant had received rental income from the rental of a self-contained suite in the home of which she is a co-owner since 2008; first at 25% ownership and now at 50% ownership. The other owner(s) do not live at the residence. The ministry argued that rental income is defined as "unearned income" and must be included (Schedule B, section 1 (xxxvii)(d) EAPWDR) in the calculation of a family units net income. The ministry argued rental income is listed in section 2 EAPWDR as a permissible deduction from earned income or listed in section 3(1) EAPWDR as being an exemption. However, in section 3 EAPWDR a recipient of disability assistance has an exempt amount of \$500 in earned income. The ministry argued that in 2008 the appellant became a 25% owner of a home which generated rental income from a self-contained suite. The ministry argued the appellant received 25% of the rental income (\$2,727.50) and that this income was not reported to the ministry as required by section 29 EAPWDR. The ministry argued that in 2010 the home sold and on this occasion the appellant purchased 50% ownership. The ministry argued the appellant is listed as a joint tenant and therefore entitled to 50% of the rental income from the self-contained suite (\$900/month). The ministry argued the rental income was deposited into the appellant's bank account. The ministry argued that when the appellant's net income was calculated (pension, rental income @ \$450, and wages (\$300), the appellant's net income exceeded the eligible amount of disability assistance which resulted in an overpayment benefits.

The appellant argued that she thought rental income was considered "passive income" and did not have to be reported to the ministry. The appellant argued that she (and the co-owner) depended on many people to give her proper advice and do the proper thing – the residence was to be registered as "tenants in common" and not "joint owners"; the bank account was to be joint but when the co-owner (witness) didn't sign the bank documents the account was opened in the appellant's name only – as she did not want to be "in trouble" with the ministry. The appellant argued that the agreement with the co-owner was that they would each have a 50% ownership in the house where she lived; that she would manage the property; that a joint bank account would be opened and set up for the rent money and from which the mortgage payments taken; that she would own the upper part of the residence and live there and he would own the lower half and rent out the self-contained suite which would cover his portion of the mortgage. The appellant argued she did not receive any rental money after she purchased a 50% interest in the home. The appellant argued that she doesn't think she received an overpayment and only agreed with the IO because he told her that this didn't count and that could not be included. The appellant argued that once the IO made a determination that she had received an

overpayment he did not want to assist her by providing information on what could be deducted – operating expenses, et cetera that would reduce the amount of the overpayment.

EAPWDR legislation defines rental income as unearned income and Schedule B section 1(xxxvii)(d) EAPWDR states that all unearned income must be included, except the deductions under section 6 EAPWDR (essential operating costs to rent self-contained unit).

The panel finds that the appellant's argument that she did not receive any financial benefit from renting the self-contained suite is not supported by the document evidence; the Title Certificate shows the property is registered as "joint tenants" with the same address; that the bank account where the rent money is deposited, the mortgage payments are withdrawn and the utility bills are paid is only in the appellant's name ; and that the utility bills for the residence are only in the appellant's name. The panel noted that in November 2011 the co-owner was added to the bank account. The appellant may have had good intentions but the document evidence does not support her argument and there is no evidence before the panel that all the rent money went to the co-owner. The panel notes that the appellant did receive rental income from the self-contained suite when she only had a 25% interest in the home and that this income (\$2,737.50) was not reported to the ministry. The rental income, as documented in the Appeal Record, for the period when the appellant had a 25% interest in the home was \$2,727.50 and when the appellant became a 50% owner the rental income was \$10,800 and a 50% split would have been \$5,400.

The panel finds the evidence reasonably supports the ministry's decision to determine the appellant received an overpayment in disability income assistance benefits and therefore under section 18(1) EAPWDR is liable to repay to the government the amount or value of the overpayment provided for that period.

The appellant disagrees with the amount of the overpayment established by the ministry. Section 18(2) EAPWDR states that the minister's decision on the amount a person is liable to repay under section 18(1)EAPWDR is not appealable under section 16(3) EAPWDR.

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.