

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated March 21, 2012 that determined that the appellant had received an overpayment of her disability assistance being provided to her when she was not eligible for it and is liable to repay pursuant to Section 18 of the EAPWDA.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act Section 18  
Employment and Assistance for Persons with Disabilities Regulations Sections 1, 10, 24, 29 and Schedules A and B

## PART E – Summary of Facts

The documents before the ministry at the reconsideration decision were:

- An overpayment chart completed by the ministry stating that the appellant received two overpayments in July 2010 for \$999.08 and in August 2010 for \$872.08 for a total of \$1871.16.
- Three computer screen prints. Two dated February 28, and one dated March 21, 2012 showing the appellant was issued two cheques for \$999.08 and \$852.08.
- A copy of the notification from the ministry dated March 1, 2012 sent to the appellant stating that she was overpaid \$1665.08 and that the appellant was liable to repay this amount as per the legislation.
- A letter from the education consulting company that was providing training and funding to the appellant dated June 21, 2010. The letter states that the contractor deposited \$333. net into the appellant's bank account on June 9, 2010.
- A letter from the education consulting company that was providing training and funding to the appellant dated August 24, 2010. The letter states that the appellant had withdrawn from the education program and her file was closed on July 19, 2010. She had received \$352 on August 4, 2010 for living expenses for the period of July 18-23, 2010.
- A letter from the education consulting company that was providing training and funding to the appellant dated February 9, 2012. The letter states that the contractor sponsored the appellant and that she received living expenses from May 31, 2010 until the end of July 2010 when the appellant withdrew from the program. The living expenses she received in 2010 was June, 9 \$352, June 23, \$704, July 7, \$704, July 21, \$704, July 31, \$352.
- A second draft of the overpayment chart completed by the ministry stating that the appellant received two overpayments in June 2010 for \$666 and July 2010 for \$999.08 for a total of \$1665.08.
- Two letters from a ministry investigative officer to the appellant dated December 20, 2011 and January 9, 2012 requesting that the appellant contact the ministry by January 3, 2012 to discuss her file. The ministry requests that she bring her bank statements, identification, rent receipt, pay-stubs, and her tax returns for 2009 and 2010.
- A letter from a ministry investigative officer to the appellant dated February 1, 2012 requesting that the appellant submit to the ministry by February 10, 2012 including bank statements, Money Mart statements, rent receipt, pay stubs, and her tax returns for 2009 and 2010.
- A letter from the ministry to the appellant dated February 14, 2012 informing the appellant that she is obligated to repay the money she received as an overpayment.
- A letter from a ministry investigative officer to the appellant dated February 14, 2012 stating that an audit of her file has determined that she had received an overpayment of \$2331.16 due to her delay in notifying the ministry of the living support of the training allowance of the funds she received from the consulting company.
- A request for reconsideration form completed by the appellant dated March 6, 2012. In the request the appellant writes that the ministry was aware of the money she was receiving from the contractor and she does not think that she was overpaid. She writes that she wants to see the paperwork relating to the overpayment and the cheques that she cashed.

At the hearing the appellant told the panel that she remembers receiving the funding for her living

expenses from the contractor but does not remember receiving money from the ministry at the same time. The appellant stated that the two cheques the ministry determined are overpayments, July 2010 in the amount of \$999.08 and August 2010 in the amount of \$852.08 were not cashed by her and she has no recollection receiving these. She added that she has asked the ministry to provide her with copies of the cashed cheques to prove that she did receive the money but she said the ministry has not provided her with any documents to support their claim. When she met with the investigating officer on January 27, 2012 she asked her for copies of the cheques but was not given them. At this meeting the appellant states she provided the ministry with her bank statements and ID and brought in all the other documents that the ministry requested soon after.

At the hearing the ministry stated that the printed screen-shots from the ministry computer system show that there were two cheques issued to the appellant, July 2010 in the amount of \$999.08 and August 2010 in the amount of \$852.08, and the printout shows the status of those cheques as cashed. The ministry maintains that this information is sufficient to conclude that the appellant received the funds in question. The ministry added that the appellant was sent two letters asking her to meet with the investigating officer and to provide documentation including bank statements, Money Mart statements, confirmation of living arrangements, and confirmation of assets and income. The ministry maintains that the appellant met with the investigation officer on January 27, 2012 and provided her bank statements and ID only and that there was no note in the file that the appellant had requested a copies of the cashed cheques. The panel asked the ministry if there is a process within the ministry to deal with payees that claim they did not receive or cash the cheques that was issued to them. The ministry told the panel that they could request a copy of the cashed cheques from the bank and that this bank copy of the cashed cheque would show who cashed it. The ministry added that they only complete this process when there is a suspicion that the cheque may have been cashed fraudulently and in the case of the appellant the ministry did not request the bank copy of the cheque.

The panel finds that:

- The appellant was enrolled in an education program and received a living allowance from June 9, 2012 until July 31, 2010.
- The appellant met with the ministry investigative officer on January 27, 2012 and provided her bank statement and her identification
- The appellant requested copies of the disputed cheques showing the details from the bank about who cashed them.
- The ministry has an internal process to retrieve cheques that have been cashed to determine who cashed them.
- The appellant received a living allowance from an education program contractor in 2010 in the amounts of June, 9 \$352, June 23, \$704, July 7, \$704, July 21, \$704, July 31, \$352.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's reconsideration decision that held that the appellant is obligated to repay the amount of disability assistance provided to her and for which she was not eligible, pursuant to Section 18 of the EAPWDA. The ministry determined the amount was an overpayment caused by her receiving a living allowance from an education contractor while she was enrolled in school at the same time she received assistance from the ministry and is liable to repay the overpayment.

The Employment and Assistance for Persons with Disabilities Act Section 18 states:

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

The Employment and Assistance for Persons with Disabilities Regulation Sections 1, 24, 29 state:

**"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*;
- (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 payment
- (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)*.

**Amount of disability assistance**

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.

**Reporting requirement**

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 in paragraph (b), and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:
  - (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.

The ministry's position is that the appellant was receiving assistance from the ministry as a person with disabilities at the same time she was receiving a living allowance from an education contractor that was supporting her during her education program. The ministry calculated that the appellant received an overpayment of assistance because she did not fully disclose to the ministry all the money she received from the contractor during her course. The ministry has ordered her to repay the amount they calculated to be \$1871.16.

The appellant's position is that she remembers receiving the money from the contractor in June and July 2010 but maintains she fully disclosed to the ministry the arrangement she had with the contractor. She does not remember receiving the overpayment money from the ministry while the contractor was supporting her. The appellant maintains that she has provided the ministry with all the documentation that was requested by the ministry including bank statements, Money Mart statements, rent receipts, etc. The appellant's position is that she requested copies of the cheques from the ministry and that the ministry should provide her with copies of the two cashed cheques to determine who cashed them however the ministry has not provided them to her.

The panel finds that the appellant received funding from the education contractor for the months of June and July 2010. The panel finds that the ministry issued two cheques in the name of the appellant that would have created an overpayment as the living allowance from the contractor falls within the definition of "unearned income" (s.1) and the amount of income exceeds the assistance payable (s.24) triggering an overpayment (s.18). In coming to its decision the panel considered that the appellant had on at least two occasions requested copies of the cashed cheques from the ministry. The panel also considered the ministry's testimony at the hearing that the ministry has a process in place to retrieve copies of cashed cheques that are in dispute however in the case of the appellant, the process was not initiated. The panel accepts the ministry's evidence that the two

cheques issued by the ministry in July 2010 for \$999.08 and in August 2010 for \$872.08 were both cashed, it is not clear from the evidence in the appeal record or from the evidence given during the hearing, who cashed and received the funds from these cheques. The panel considered that it would have been reasonable that the ministry request copies of the cashed cheques to determine if the appellant was the one that received the funds since she claimed that she did not receive the cheques. The issue of who cashed the cheques could have been settled shortly after the January 27, 2012 meeting with the ministry. Based on the evidence, the ministry could only determine that the cheques had been cashed but not who cashed them. The panel finds that the ministry was not reasonable to determine that the appellant had received the funds from the two cheques and therefore been overpaid.

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and therefore rescinds the ministry's decision. Therefore, the ministry's decision is overturned in favour of the appellant.