

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 05 April 2012 which held that the appellant was ineligible for the disability assistance he received as a single person for November and December 2011 and January 2012, because he had been living with his spouse beginning in October, 2011. The ministry further determined that, pursuant to section 18 of the Employment and Assistance for Persons with Disabilities Act, the appellant is liable to repay the resulting overpayment.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 18
Employment and Assistance for Persons with Disabilities Regulation, Schedule A and B

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

- From the ministry's file: the appellant attended the ministry office on December 20 and advised an Investigative Officer that he had married his spouse in June 2010 and had been living with her since October 2011. The appellant is designated a person with disabilities (PWD) and his spouse is designated as PWD with medical services only status as she is in receipt of CPP benefits greater than those for a sole recipient of PWD disability benefits.
- A ministry Overpayment Chart covering the assistance months of 2011NOV-2012JAN. The chart shows what the appellant received in disability benefits as a sole recipient for the months of November and December 2011 and January 2012, the amounts for which he would have been eligible as the head of a household with of two persons, both PWD, and the amount of overpayment.

For example, for November 2011:

Amount received = \$906.42 = \$531.42 support, sole recipient + \$375 shelter, 1 person = \$486 cheque + \$400 rent + \$20 repay.

Amount eligible = \$1519.96 (\$949.06 support for 2 PWD + \$570 shelter 2 persons) - \$1239.13 spouse CPP benefits - \$20 repay = \$259.93.

Overpayment = \$906.42 - \$259.93 = \$646.49

The calculations for December 2011 and January 2012 differ because of the appellant's earned income applied to those months, with a change in the earned income exemption from \$500 to \$750 for 2 PWD in the household.

The ministry calculates the total overpayment as \$1995.19

- The appellant's Request for Reconsideration dated 08 March 2012, with no new information provided.

In his Notice Of Appeal dated 21 April 2012, the appellant's spouse writes:

"So, when my husband and I were in addiction, we couldn't deal with any matters of finance. We were barely able to keep our roof over our heads. When we weren't using, my depression prevented me from getting out of bed or out of the apartment. When we got clean, it took us a while to find a place to live and to get healthy enough to start dealing with our finances. When we finally did, I found out that over half of what I received for CPP, I was not eligible for. So, even though I received \$1239.13 per month, I have to repay the \$650 per month for the 3.5 years I was supposed to receive \$589.13. So if we have to repay CPP and you, our actual income would be \$869.06 per month for the two of us. It doesn't make sense that I should pay both federal and provincial. The CPP is because my children are not with me and the money I repay goes to my children's caregiver. We are just trying to get out of the whole that mental health illness and addiction caused."

At the hearing, the appellant's spouse reviewed her debt owed CPP, as described in the Notice of appeal, and the resulting financial consequences for the couple. In total, she owes approximately \$30,000 to CPP, repayable at the rate of \$200 per month. The balance of their presentation went to argument.

The ministry reviewed the calculations in the Overpayment Chart. The ministry indicated that the total amount owing from its review of the couple's eligibility is \$1995.19 and this would be added to a previous debt owed by the appellant, the total to be repaid at the rate of \$20 per month.

At the hearing, the appellant confirmed to the panel that:

- There is no dispute that he and his spouse are married and reside together.
- He does not dispute the ministry calculations as to what disability assistance he received in the months under review and the amounts for which he was eligible as an applicant with a dependent spouse with PWD designation.

The panel finds that the new information provided by the appellant and his spouse in the Notice of Appeal and at the hearing is in support of the information and records that were before the ministry at the time of reconsideration. The information concerning the amount owing to CPP, how this debt arose and the rate at which it is to be repaid clarifies the status of his spouse's CPP benefits referred to in the Overpayment Chart. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was ineligible for the disability assistance he received as a single person for November and December 2011 and January 2012, because he had been living with his spouse beginning in October, 2011 and that as a result the appellant is liable to repay the resulting overpayment, was reasonably supported by the evidence or was a reasonable application of the legislation.

Given what the appellant confirms is not in dispute, the relevant section of the EAPWDA for this appeal is section 18:

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

The position of the ministry is that the appellant was not eligible for the disability assistance he received as a single person for November and December 2011 and January 2012, as he had advised the ministry that he had been living with his wife since October 2011, and therefore became an applicant for a family unit with one dependant, his spouse. The appellant does not dispute that this was the case. The position of the ministry is that this change in the appellant's circumstances gave rise to an overpayment for the months under review. The appellant does not dispute the ministry's calculations.

The panel has reviewed the evidence and the applicable legislation regarding disability benefit rates (Schedule A and B of the EAPWDR) and finds that, due to the appellant's spouse being in receipt of CPP benefits, the ministry reasonably determined that that the appellant was ineligible for the disability assistance he received for November and December 2011 and January 2012, because he had been living with his spouse beginning in October, 2011 and that as a result an overpayment had been provided.

The position of the ministry is that, pursuant to section 18 (1) of the EAPWDA, the appellant is liable to repay the amount of the overpayment.

The position of the appellant is that it is unreasonable for the ministry to demand repayment as he and his spouse must at the same time also repay CPP. They argue that having to repay both the sizable amount due to CPP and to the ministry would impose undue financial hardship. They further submit that in the past, if the spouse had not been receiving ineligible benefits from CPP, she would have been otherwise eligible for partial PWD benefits, and so they are being penalized twice, and this should be taken into consideration by the ministry.

The panel finds that there is no discretion in the legislation for any extenuating circumstance as submitted by the appellant. Section 18 clearly states that if benefits are provided for which the recipient is not eligible, the recipient is liable to repay the amount of overpayment. As there is no dispute that an overpayment occurred, the panel finds the ministry reasonably determined that the appellant is liable to repay the amount of the overpayment.

Pursuant to section 18(2) of the EAPWDA, the panel does not have the jurisdiction to review the actual amount of overpayment as calculated by the ministry.

Accordingly, the panel finds that the that the ministry decision that appellant was ineligible for the disability assistance he received as a single person for November and December 2011 and January 2012, because he had been living with his spouse beginning in October, 2011 and that as a result the appellant is liable to repay the overpayment, was reasonably supported by the evidence. The panel therefore confirms the ministry decision.