

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated January 12, 2012 which found that pursuant to section 18 of the Employment and Assistance for Persons With Disabilities Act ("EAPWDA"), the Appellant was required to repay to the Ministry \$5,461.96 of disability assistance benefits for which he was not eligible. The Appellant's obligation to repay the disability assistance benefits arose from his receipt of hardship assistance in September 2009, October 2009, November 2009, December 2009, May 2010, June 2010, July 2010 and September 2010 for which he was not eligible.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA") sections 6, 18 and 19
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") sections 39 and 55 and
Schedule D, section 1

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's Request for Reconsideration dated November 24, 2011;
2. A Ministry of Housing and Social Development ("the Ministry") Overpayment Notification dated October 9, 2009 and signed by the Appellant;
3. A Ministry Overpayment Notification dated May 14, 2010 and signed by the Appellant;
4. A Ministry Overpayment Notification dated May 19, 2010 and signed by the Appellant;
5. A Ministry Overpayment Chart dated January 10, 2012 relating to the Appellant for the months of August 2009 through September 2010;
6. A letter from the Ministry to the Appellant dated August 16, 2011 regarding an alleged income assistance overpayment;
7. A letter from the Ministry of Employment and Income Assistance to the Appellant dated August 24, 2011 regarding hardship assistance;
8. A letter from the Ministry to the Appellant dated September 28, 2011 regarding an alleged income assistance overpayment;
9. A letter from the Ministry to the Appellant dated October 11, 2011 regarding an alleged income assistance overpayment;
10. A Ministry Overpayment Chart dated October 11, 2011 relating to the Appellant for the months of August 2009 through September 2010;
11. The Appellant's bank account history for July 14 2009 through September 14 2010;
12. A copy of the Appellant's bank statement dated October 23, 2009 and corresponding cheque dated October 21, 2009 in the amount of \$600.00 and payable to another party;
13. A copy of the Appellant's bank statement dated November 10, 2009 and corresponding money order dated November 6, 2009 in the amount of \$606.99 and payable to another party;
14. A copy of the Appellant's bank statement dated November 18, 2009 and money order dated November 6, 2009 in the amount of \$50.00 and payable to another party;
15. Two money orders in the amount of \$70.00 and \$300.00, both issued November 12, 2009;
16. A bank statement for the Appellant dated December 30, 2009 and corresponding money order dated December 30, 2009 in the amount of \$700.00 and payable to another party;
17. A bank statement for the Appellant dated January 11, 2010 and corresponding money order dated January 11, 2010 in the amount of \$250.00 and payable to another party;
18. A money order issued December 30, 2009 in the amount of \$650.00 payable to another party;
19. A bank statement for the Appellant dated February 1, 2010 and corresponding money order dated February 1, 2010 in the amount of \$5,500.00 and payable to the Appellant;
20. A bank statement for the Appellant dated February 26, 2010 and corresponding money order dated February 26, 2010 in the amount of \$2,000.00 and payable to the Appellant;
21. A bank statement for the Appellant dated February 4, 2010 and corresponding money order dated February 4, 2010 in the amount of \$3,500.00 and payable to the Appellant;
22. A bank statement for the Appellant dated March 26, 2010 and corresponding money orders in the amount of \$1,500.00 (the date of issue is obscured) and payable to the Appellant and \$40.00 issued March 26, 2010 and payable to another party; and
23. An unsigned and undated Overpayment Notification issued to the Appellant in the amount of \$5,895.06.

Prior to the hearing commencing, the appellant applied to the panel have the hearing adjourned. The appellant argued that he did not pre-approve or agree with the scheduled date of the appeal and that he was not prepared for the hearing. The appellant said he was having issues with the ministry regarding an ongoing audit of his hardship benefit application and that he had recently been served with an eviction notice due to financial problems he was experiencing. The appellant stated that he was overwhelmed and that it was impossible for him to go ahead. The ministry took the position that three previous adjournments of the hearing

had already been granted and a fourth had recently been denied. The ministry commented that the issue at the hearing would not affect the determination of his current eligibility for hardship assistance and the ministry opposed the appellant's adjournment request. In response, the appellant added that he was seriously injured in a motor vehicle accident in April 2010 and his injuries have contributed to his adjournment requests. The appellant further noted that he has attempted to seek legal advice regarding this hearing but that he has had difficulty finding a lawyer that could help him on a pro bono basis. The appellant also stated that the evidence has changed concerning the amount that the ministry says he has to repay.

After due consideration of the reasons for the adjournment request and the impact that granting or refusing it would have on the parties and the public interest, the panel denied the appellant's adjournment request. The appellant had been granted three previous adjournments of the hearing of this appeal. The appellant's Notice of Appeal was dated February 3, 2012 and to adjourn this matter further would be contrary to the public interest particularly considering section 85(1) of the Employment and Assistance Regulation which provides that a hearing must be held within 15 business days after the appeal form is delivered under section 84, unless the chair of the tribunal and the parties consent to a later date. While the panel acknowledges the appellant's current personal situation and his attempts to consult with a lawyer, it is the opinion of the panel that the prejudice to the ministry and the public in general in granting the adjournment outweighs that which the appellant might suffer with the hearing proceeding as scheduled and the panel finds further that the appellant has been provided with ample time to prepare for and proceed with the hearing.

The appellant then requested a 10 minute delay to retrieve his appeal package which he confirmed he had received but which was in his office in his home where he was calling from and the parties were directed by the panel chair to re-convene in 15 minutes. The hearing re-convened after a 15 minute break. The appellant, who was attending the hearing by teleconference, did not call in at that time and the panel waited a further 15 minutes for the appellant to call in which he did not. Being satisfied that the appellant had been properly notified of the date and time of the hearing, the panel proceeded to hear the appeal in the absence of the appellant pursuant to s.86(b) of the Employment Assistance Regulation.

In his Notice of Appeal, the appellant says that he disagrees with the decision requiring him to repay the hardship assistance benefits that he was not eligible to receive.

At the hearing, the ministry took the position that the reconsideration consideration was reasonable and supported by the evidence and applicable legislation.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which found that pursuant to section 18 of the Employment and Assistance for Persons With Disabilities Act ("EAPWDA"), the Appellant was required to repay to the Ministry \$5,461.96 of disability assistance benefits for which he was not eligible. The Appellant's obligation to repay the disability assistance benefits arose from his receipt of hardship assistance in September 2009, October 2009, November 2009, December 2009, May 2010, June 2010, July 2010 and September 2010 for which he was not eligible.

Section 6 of the EAPWDA provides as follows:

6 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that
 (a) is eligible for it, and
 (b) is not eligible for disability assistance.

Section 18 of the EAPWDA provides as follows:

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].

Section 19 of the EAPWDA provides as follows:

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

Section 39 of the EAPWDR provides as follows:

39 The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because the income of the family unit exceeds the limit under section 9 [limits on income] if
 (a) the minister considers that undue hardship will otherwise occur,
 (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
 (c) the family unit includes one or more dependent children, and
 (d) the income that causes the family unit to be ineligible for disability assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

Section 55 of the EAPWDR provides as follows:

55 (1) In this section:
 "living cost" means the cost of accommodation and meals;
 "moving cost" means the cost of moving a family unit and its personal effects from one place to another;
 "transportation cost" means the cost of travelling from one place to another.
 (2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance to assist with one or more of the following:
 (a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has

- arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;
- (b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;
- (c) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because the family unit's rented residential accommodation is being sold or demolished and a notice to vacate has been given, or has been condemned;
- (d) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area if the family unit's shelter costs would be significantly reduced as a result of the move;
- (e) moving costs required to move to another area in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;
- (f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the Child, Family and Community Service Act, if a recipient is given notice of the hearing and is a party to the proceeding;
- (g) transportation costs, living costs, child care costs and fees resulting from
- (i) the required attendance of a recipient in the family unit at a hearing, or
- (ii) other requirements a recipient in the family unit must fulfill
- in connection with the exercise of a maintenance right assigned to the minister under section 17 [categories that must assign maintenance rights].
- (3) A family unit is eligible for a supplement under this section only if
- (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
- (b) a recipient in the family unit receives the minister's approval before incurring those costs.
- (4) A supplement may be provided under this section only to assist with
- (a) the cost of the least expensive appropriate mode of moving or transportation, and
- (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate living costs.

Schedule D, section 1 of the EAPWDR provides as follows:

- 1 (1) The minister may provide a family unit that is eligible for hardship assistance under Part 4 of this regulation an amount not exceeding the amounts authorized by this Schedule.
- (2) Subject to subsection (1), the actual amount of hardship assistance to be provided under this Schedule is in the discretion of the minister based on the financial need of the applicant's family unit.
- (3) Nothing in this Schedule or in Part 4 of this regulation entitles a family unit to a specific amount of hardship assistance.

The appellant's position as set out in the Notice of Appeal is that he disagrees with the decision requiring him to repay the hardship assistance benefits that he was not eligible to receive. The appellant requested an adjournment of the hearing which was denied by the panel and the appellant then failed to appear after a brief delay with the result that the hearing proceeded in his absence.

The ministry argues in the course of an investigation which began on July 28, 2010, it determined that the sum of the appellant's net income and the value of his assets was not used in calculating the amount of hardship assistance issued to him for September, October, November and December 2009 as well as May, June, July and September 2010. The ministry considers any income or assets available in a given month to be resources for a client for the next month and as such, for example, any income or assets a client would have in August 2009 would be deducted from hardship assistance in September 2009. The ministry argues that the appellant's bank statements for August through November 2009 and April, May, June and August 2010 show deposits which, when applied to the hardship assistance, including a \$1,495.00 moving supplement in May 2010 received by the appellant, demonstrate a total overpayment of \$5,461.96. The ministry argues further that the appellant has not denied receiving the income reflected in the bank statements and that as the

appellant received hardship assistance for which he was not eligible, he is liable to repay it to the government without exemption.

The Panel finds that the ministry was reasonable in its determination that as evidenced by the appellant's bank account history, the appellant was in receipt of income for the months of August, September, October, and November 2009 as well as April, May, June, July and August 2010 which effected the amount of hardship assistance, including the May 2010 moving supplement, that the appellant was eligible to receive for each subsequent month. As the appellant received hardship benefits and a moving supplement for which he was not eligible, the panel finds that the ministry's decision that appellant is required to repay hardship benefits and a moving supplement totaling \$5,461.96 to the government is a reasonable application of the applicable enactment in the circumstances of the appellant and the panel therefore confirms the ministry's decision.