

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 12, 2012 which held that under section 18(1) of the Employment and Assistance for Persons with Disabilities Act, the appellant had received an overpayment of disability assistance in the amount of \$16,555.55 that she was not entitled to receive and which must be repaid.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 11 and 18.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1 ("earned income"), 24 and 29.

Schedule B

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included:

(a) an overpayment chart; (b) T2032 tax statements for October and December 2010 and for January through November 2011; (c) payroll statements for January through April, June and September, 2011; and (d) the appellant's Request For Reconsideration dated February 28, 2012.

The overpayment chart identified the appellant's monthly, earned income beginning December 2010 and ending December 2011 for a total of \$23,800.51.

The appellant's T2032 tax statements identified her gross income, monthly expenses and net income for the months of October and December 2010 as well as for January through November 2011.

The appellant's payroll statements from a language school provided the number of hours she worked, the pay rate, her deductions and net pay for January through April, June and September, 2011.

In the Request For Reconsideration the appellant writes that she was never made aware of the Self Employment Program (SEP) and that she reported her income based on her net earnings as one would for regular tax purposes. The appellant states that she was informed that she could make up to \$500 per month in addition to her disability payment. She reports that she has had difficulties obtaining information about the SEP despite speaking with several workers. She admits that she was not 100% accurate in her net earnings reports as she did not realize that any changes to income had to be reported and she thought that as long as she did not earn more than an additional \$500 a month, she would not have to report the details. She also indicates that she has no problem with correcting any of these mistakes and being accountable for any minor overpayments.

The ministry's reconsideration decision reported that a review of the appellant's file after she had provided copies of her tax statements and employment statements indicated that earned income from self employment and the language school had not been previously declared. The reassessment resulted in an overpayment of assistance of \$16,555.55 for the period of December 2010 to January 2012 that the appellant had received for which she was not eligible.

With regards to the SEP, the ministry states that to be authorized to use the business deductions and exemptions set out in the regulation; the client must have Persons With Disabilities (PWD) status, be eligible to receive assistance and obtain approval to participate in the program. The ministry indicates that the appellant was not eligible to participate in the SEP prior to February 1, 2011, the effective date of the appellant's PWD status and that the appellant did not apply for approval to participate after PWD designation had been approved. The ministry states that the SEP had been discussed with the appellant in November 2010 which is confirmed in the ministry's record however; as she had not reported further self employment earnings, the ministry did not revisit the program with the appellant. The ministry also states that the appellant is not an approved participant in the SEP and there is no ability to backdate the SEP approval.

Additionally, the ministry refers to the EAPWD regulation where a person is required to report income by the 5<sup>th</sup> day of the month following the month of receipt. It is further indicated that receiving assistance for which one is not eligible is considered an overpayment which must be repaid.

With her Notice of Appeal dated March 16, 2012, the appellant provides a letter with her reasons for

the appeal. In the letter, the appellant states that she was not informed of the SEP on November 3, 2010. She argues that the intake worker would have then given her the application forms knowing that it would take 3 months to qualify for the program. After being self-employed for 20 years, the appellant adds that it doesn't make any sense that she would not have applied, should she have received the forms and information about the program. The appellant reports that the intake worker told the appellant not to declare any of her self employment income, due to the fact that it was only covering her costs; otherwise, she would not be eligible for assistance and she would not have any means of supporting herself. The appellant questions whether those details were contained in her file. The appellant indicates that several workers with whom she had spoken were not familiar with the SEP and could not provide her with details. She adds that the application process for SEP consists of a 'Questionnaire of Acceptance of Terms' and there is no actual question about a business plan. The appellant argues that she did declare her self employment earnings as well as those from the language school however; she used net practice earnings and lumped them together. The appellant notes that she will not be able to pay back the assessed debt over her life time should she remain on disability assistance. Should she not continue to receive disability assistance, she states that she would be saddled with a debt of nearly \$16,000 which would be untenable and might force her into another bankruptcy. She adds that her current bankruptcy is preventing her from growing her business as she does not qualify for credit. The appellant states that she is not a deceitful person trying to take advantage of government handouts but a serious professional trying her best to live under unfortunate circumstances. The appellant requests to have retro-active approval into the SEP.

The panel accepts the information from the Notice of Appeal dated March 16, 2012 as being related to the evidence that was before the ministry at the time of reconsideration and admits it as evidence pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the appellant's advocate submitted that the appellant's net income rather than gross income should be used to calculate her monthly earnings for the period in question. The advocate indicates that the appellant needs disability assistance to pay for basic living expenses such as food and clothing as she rarely earns more than \$500 per month while self employed and also the appellant needs to provide for her daughter.

At the hearing the appellant stated that her assistance was discontinued after she received a child support payment of over \$4,000 in February 2012 and that she had been admitted to the SEP but by then she was no longer receiving assistance, therefore could not participate.

The ministry stood by their record.

### **Finding of Facts**

- The appellant has been in receipt of income assistance as a single parent since November, 2010.
- The appellant was designated a Person With Disability status on February 1, 2011.
- The appellant was not approved to participate in the SEP at the time the income was earned.
- The appellant's gross earning as reported in her T2032 tax statements are reflected in the ministry's overpayment chart.
- The amount of the overpayment as determined by the ministry is \$16,555.55.

## PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision dated March 12, 2012 which held that the appellant had received an overpayment of income assistance in the amount of \$16,555.55 that she was not entitled to receive pursuant to section 18 of the Employment and Assistance for Persons with Disabilities Act which must be repaid.

### Relevant Legislation

#### Definitions: 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;

##### 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 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.

#### In this Act: Reporting obligations

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.

### **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 appellant's position is that she reported her income based on her net earnings as one would for regular tax purposes. Due to the expenses associated to her self employment, the appellant indicates that without the disability assistance she could not support herself and her daughter. The appellant also admits that she was informed that she could make up to \$500 per month in addition to her disability payment. She reports that she has had difficulties obtaining information about the SEP despite speaking with several ministry workers and would like to be retroactively accepted into the program. The appellant also submits that she has no way of repaying the overpayment.

The ministry argues that the appellant was not eligible to participate in the SEP prior to February 1, 2011, the effective date of the appellant's PWD status and that the appellant did not apply for approval to participate after PWD had been approved. The ministry states that the SEP had been discussed with the appellant in November 2010. However as she had not reported further self employment earnings, the ministry did not revisit the program with the appellant.

The panel notes that recipients of assistance have reporting obligations pursuant to section 11 of EAPWDA and section 29 of EAPWDR as requested in the monthly report form. Additionally, the panel acknowledges that BC Employment and Assistance is an income and asset-based program and clients with the Persons With Disabilities designation must report any change in income or assets and/or changes in circumstances that may affect their continued eligibility for assistance. The panel also notes that the ministry has no legislated ability to backdate the SEP approval.

The panel finds that the ministry reasonably determined that the appellant failed to declare her gross income by only reporting the net income as earned income from her self employment and the language school pursuant to section 11(1) of the EAPWDA and section 29 of the EAPWDR. The panel also finds that employment earnings is defined as "earned income" under section 1 and should have been included in the calculation of disability assistance for the appellant under Section 24 of the EAPWDR. No other exemptions were allowed except for \$500 of earned income per month which the ministry allowed pursuant to Schedule B section 3(a). Therefore, the panel finds that the ministry reasonably determined that the appellant received an overpayment which she is liable to repay

pursuant to section 18(1) of the EAPWDA.

Pursuant to section 18 (2) of the EAPWDA, the amount a person is liable to repay is not appealable.

Thus, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.