

**PART C – Decision under Appeal**

The decision under the appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 23, 2012, which determined that the appellant was not eligible for disability assistance from May 2010 through November 2011 and that the appellant is required to pay back the assistance she received during this period pursuant to Sections 18 and 19 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and Sections 1 and 10 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry held that from May 2010 through November 2011 the appellant had cash in her bank accounts that exceeded \$3000.

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act – EAPWDA – Section 18*  
*Employment and Assistance for Persons with Disabilities Act – EAPWDA – Section 19*  
*Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 1*  
*Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 10*  
*Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 29*

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- Application for Income Assistance dated January 5, 2010;
- Information brochures for Persons With Disabilities (PWD);
- Copies of the appellant's bank statement dated November 30, 2011;
- A letter from the ministry's investigative officer to the appellant dated December 15, 2011 informing her that based on the file review she is no longer eligible for assistance because she had cash asset of \$16,368.14 in her bank account;
- A letter from the ministry's investigative officer to the appellant dated December 15, 2011 informing her that based on a review of her receipt of assistance between January 5, 2010 and November 30, 2011 she was paid \$14,431.08 between April 1, 2010 and November 30, 2011 for which she was not eligible;
- A letter from the appellant's lawyer to the ministry dated January 26, 2012;
- The appellant's Trust Agreement dated January 25, 2012;
- Copies of paystubs from December 2010 to March 2011 and copies of receipt of payments signed by the appellant;
- A request for reconsideration submitted by the appellant's mother that was received by the ministry on January 19, 2012;
- An overpayment chart for \$14,431.08 for assistance months May 2010 to November 2011;
- Request for Reconsideration dated January 25, 2012;
- Reconsideration decision dated February 2, 2012 in which the ministry determined that the appellant was not eligible for disability assistance due to having assets in excess of income assistance rates;
- A letter from the ministry to the appellant dated April 23, 2012. The ministry determined that the appellant received disability assistance for which she was not eligible. The ministry determined that the appellant is liable to repay \$1, 4431.08 based on the overpayment chart.

The appellant's mother in the request for reconsideration stated that the appellant applied and was qualified for disability benefits in January 2010. The appellant was told to pay \$400.00 rent per month to her mother as she was living with her. The appellant reported her income on her report cards as instructed and the cheques issued reflect her income declared and income deducted and that the appellant was open and honest with all her dealings with the ministry. The appellant did not know about the financial eligibility and that she could not have more than \$3000 asset until her file was audited. The appellant's mother stated that she decided to deposit the rent she received from the appellant in their joint account (20 months @ \$400=\$8000). The appellant's mother submitted that the appellant currently is enrolled in a university and is living independently.

The appellant's lawyer in a letter dated January 26, 2012 stated that as the appellant's counsel, he assisted her in establishing a non-discretionary trust utilizing approximately \$16,000.00 in funds received from the appellant's savings. The appellant's lawyer stated that while the appellant did attempt to get proper direction from the ministry, she was not given proper advice. The lawyer submitted that if the appellant had been advised by the ministry of the permitted use of a trust when the issue arose, as is her right, the over-payment issue would have never arisen.

The appellant in a "supplementary complementary to reconsideration facts" submitted that she has Cerebral Palsy, Spastic Diplegia and walks using Sidestix forearm crutches. The appellant submitted that she worked as a volunteer and achieved Honor Roll status in high school. The appellant stated that she began working summer jobs beginning in 2002 and saved the majority of her earnings in preparation for attending post-secondary school. The appellant submitted that when she applied for disability assistance in 2010, the appellant made it clear that she was living at home and planning to attend post-secondary during the following year. The appellant submitted that she was instructed to pay her mother \$400 in rent per month and to report any additional income she received on the monthly remittance card. The appellant submitted that she was unaware of the policy that she could not have more than \$3000.00 asset. The appellant stated that she had done everything in her power to comply with ministry demands but her dealings with the ministry have been

overwhelmingly negative. The appellant submitted that had she been made aware of the existing policies and procedures at the time of her enrollment, her eligibility would have not been in question and the alleged overpayment would not exist.

The appellant in the Notice of Appeal dated June 7, 2012 submitted that despite the fact that she made it clear to the ministry that her intention was to save money in order to pursue post-secondary education, the ministry did not inform her of the applicable legislations regarding PWD asset limits. The appellant submitted that from January 2010 to November 2011, while attending university and working part time, she collected benefits and saved approximately \$6,000.00. The appellant stated that on the advice of the ministry, she contacted a lawyer and set up a Trust Fund, with the understanding that this would resolve the issue of eligibility, the alleged overpayment and subsequent repayment of approximately \$14,000.00 in benefits. The appellant submitted that the ministry failed in its duty to make available to her all the necessary information in a clear and understandable way, in plain language.

In the reconsideration decision dated February 2, 2012, the ministry acknowledged receipt of the letter from the appellant's lawyer regarding her trust fund and that the appellant's funds have been placed into a trust. The ministry advised the appellant that as her circumstances have changed and that she may re-apply for assistance if she is still in need of assistance.

At the hearing, the mother of the appellant requested to testify at the beginning of the hearing in order to be able to remain in the hearing with her daughter as her assistant. The ministry did not object to the witness testifying prior to the testimony of the appellant.

The ministry provided a copy of the monthly report and the appellant's pay stub for the month of September 2010. The appellant did not object to the information regarding the payment and her monthly report. The panel accepted the document as being in support of the information before the ministry under Section 22(4) of the Employment and Assistance Act (EAA) and therefore admitted the document into evidence

The ministry stated that the appellant failed to declare receipt of Canada Pension Plan (CPP). The ministry said that the appellant also failed to report her income from an employment and that the appellant did not report that she converted \$6000.00 from her account to her RDSP account.

The appellant's mother testified that the appellant was living with her at the time she applied for disability assistance. She said that the ministry never told them anything about the asset limitation. The appellant's mother stated that the ministry was aware that her daughter was working and that she was going to save her money in order to pursue higher education. The witness stated that the appellant believed that she was receiving disability benefit because she was disabled and was never informed that she could have not have more than \$3000.00 in asset. The appellant's mother said that she first found out about the ministry's program through some of her friends whose children have disabilities.

The appellant's advocate provided a written submission. He stated that the appellant applied for PWD when she was only 18 years old. As a young person, she relied on the ministry to explain the policies and procedures in a plain language. The appellant's advocate submitted that the reconsideration decision of May 23, 2012 is unreasonable because the ministry failed to exercise discretion allowed under the EAPWDA when it was decided that the appellant was ineligible for assistance and must repay the benefits she received between May 2010 and November 2011. The advocate further stated that the ministry failed to use discretion under Section 18 and 19 of the EAPWDA. The advocate submitted that the appellant consistently maintained that she was unaware of the asset limitation and noted that the appellant in her request for reconsideration indicated that she advised the ministry worker that she had a plan to save money and no one told her that this might affect her eligibility in any way. The advocate submitted that as soon as the appellant was made aware that her asset level exceeded the limit she consulted a lawyer and set up a Trust Fund. The advocate further

stated that according to the overpayment chart, the maximum value of the appellant's asset was \$10,008.96, which is less than the amount of assistance received during the same time. The advocate submitted that the ministry did not take into account the special circumstances of this case.

The appellant stated that she was not aware of the asset limitation. She reported all her income and for the first 4 months, she submitted her pay stub and monthly report in person. The appellant submitted that the ministry was aware that she was planning to save money and no one told her anything about the asset limitation. The appellant said that she asked a ministry worker whether she should submit her bank statement and was told that was not needed.

The ministry submitted that the ministry does not have any discretion as to the amount of the overpayment. The overpayment is the lesser of the maximum value of the asset during the overpayment period or the sum of assistance received during the overpayment period. The ministry submitted that in the case the lesser amount is the maximum amount that the appellant had in her account which was \$14,363.34. The ministry submitted that the responsibility is on the client to ask questions and to report correctly. The ministry relies on the reports submitted.

The panel makes the following findings of fact:

- The appellant was in receipt of disability assistance under the EAPWDR as a single recipient;
- The money held in the bank accounts of the appellant are assets as defined by Section 1 of the EAPWDR;
- The total value of the appellant's assets from May 2010 through November 2011 was \$14,363.34 which exceeded \$3000.00 as defined in Section 10(2) of the EAPWDR.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is not eligible for income assistance from May 2010 through November 2011 and that she requires repaying disability assistance she received during that time.

Section 1 of the EAPWDR *states asset means:*

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets.

Cash assets means:

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
  - (i) a savings institution, or
  - (ii) a third party
 that must pay it to the person or the dependant on demand,
- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Section 10(1) of the EAPWDR states: The following assets are exempt for the purposes of subsection (2):

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;
- (c) a family unit's place of residence;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
  - (i) applied to the amount owing on the family unit's current place of residence, or
  - (ii) used to pay rent for the family unit's current place of residence;
- (e) a child tax benefit under the *Income Tax Act (Canada)*;
- (f) a goods and services tax credit under the *Income Tax Act (Canada)*;
- (g) 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)*;
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for disability assistance (part 2) form, and female stock held for stock replacement;
- (l) essential equipment and supplies for farming and commercial fishing;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;
- (n) prepaid funeral costs;
- (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
- (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (s) money that is
  - (i) 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
  - (ii) 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;

(t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

(u) 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;

(v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;

(w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,

(i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and

(ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of

(A) the value of assets used by the recipient in operating a small business under the self-employment program, and

(B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;

(y) assets exempted under section 11 (2) [*asset development accounts*] or 12 (2) [*assets held in trust for person with disabilities*];

(z) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;

(aa) 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*];

(bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(cc) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;

(dd) 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;

(ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(i) Autism Funding: Under Age 6 Program, or

(ii) Autism Funding: Ages 6 – 18 Program;

(ff) funds held in a registered education savings plan;

(gg) 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;

(hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(ii) 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;

(jj) funds held in a registered disability savings plan;

(kk) a working income tax benefit provided under the *Income Tax Act* (Canada);

(ll) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(mm) the climate action dividend under section 13.02 of the *Income Tax Act*;

(nn) 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.

(oo) 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.

(1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m).

Pursuant to Section 10(2) of the EAPWDR a family unit is not eligible for disability assistance if any of the following apply: (a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3 000.

Pursuant to Section 11 (1) of the EAPWDA, 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) 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.

Pursuant to Section 18 (1) of the EAPWDA, 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.

Section 19 of the EAPWDA states that

(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.

(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.

Section 29 of the EAPWDR states that 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 in receipt of income assistance as a single person. At the time of the application, the appellant declared her assets to be \$50.00 cash on hand and \$1,137.00 in her bank account. The ministry stated that during the annual financial review meeting, the appellant declared having \$40.00 cash on hand, \$21,442.00 in a Registered Disability Saving Program (RDSP) and two bank accounts with balances of \$2,503.43 and \$14,363.34 for the total of \$16,893.77. The ministry further stated that the appellant failed to declare her assets as required by the legislation. The ministry stated that the appellant

failed to declare receipt of Canada Pension Plan (CPP). The ministry stated that the appellant by signing the application for PWD acknowledged that she must report all money and assets that she received each month. The ministry submitted that the appellant did not report receiving CPP benefit. The ministry discovered the payment as they have data match with the CPP and deducted the amount from the appellant's benefit. The ministry stated that the appellant responded "no" to the question about whether she has received or disposed of any assets in her monthly report. The ministry said that the appellant also failed to report her income from an employment and that the appellant did not report that she converted \$6000.00 from her account to her RDSP account. The ministry stated that the appellant was aware that she had to report her income and asset on a monthly basis and failed to do so.

The appellant stated that she is not disputing that she had assets more than the allowable limit in her account; however, she stated that the ministry failed to inform her of the asset limitation. The appellant said the reason she did not report one of her income from a part time employment was that the ministry told her not to report the income if it is lower than \$500.00 a month. Regarding reporting the CPP, the appellant said that she was not aware that she has to report receiving the pension as she noticed that the amount was deducted from her monthly assistance.

The advocate submitted that the appellant was right to say no to the question of whether she has received or disposed of any assets. The appellant did not dispose or receive assets; she was simply saving her reported employment income and part of her assistance for her education.

With respect to Section 29 of the EAPWDR, the report regarding change in family unit asset, income received, the source of that income and change in the employment must be submitted by the 5<sup>th</sup> day of the calendar month following the calendar month in which there is a change.

Pursuant to Section 10(2) of the EAPWDR, in order to receive disability assistance, a single recipient with no dependent should not have assets in excess of \$3000.00.

*With respect to Section 1 of the EAPWDR money in the possession of the person or money standing to the credit of the person with a savings institution is a cash asset.*

The panel accepts the appellant's submission that she did her best in reporting her monthly income and that she did not receive information from the ministry regarding the applicable legislation. The panel notes that the appellant does not dispute the fact that during May 2010 to November 2011 she had in excess of \$3000.00 in her bank account. Section 18 of the EAPWDA states that if disability assistance is provided to a family unit that is not eligible for it, the recipient is liable to repay to the government the amount of the overpayment provided for that period and the decision about the amount a person is liable to repay is not appealable.

The Panel finds that although the appellant may have not been aware of the applicable legislation and may have held an honest belief that she was within the legislative limit of assets for a single person with no dependants, she did not, as required, disclose her assets (savings in her bank account) to the ministry on a monthly basis. The ministry therefore had no means to determine that the appellant was receiving disability assistance to which she was not eligible. Accordingly, the panel finds that the ministry was reasonable in concluding that the evidence established that the appellant had assets in excess of allowable legislative asset limit of \$3000.00.

The panel determines that the ministry's reconsideration decision dated May 23, 2012 was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the reconsideration decision under Section 24(2)(a) of the Employment and Assistance Act.