

### PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated August 15<sup>th</sup> 2012 in which the Ministry determined that the appellant received an overpayment of her disability assistance of \$791 for the benefit month of May 2012, pursuant to Section 18 and 19 of Employment and Assistance for Persons with Disabilities Act (EAPWDA) which the appellant is responsible to repay to government.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 18 & 19  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1 and 24  
and Schedules A and B

## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- Appellant's deposit account history for months of February, March, April, and May 2012.
- Family Maintenance Enforcement Program payment summary to the appellant for December 2011 to September 2012
- Cheque history of the appellant March 6, 2102, May 3, 2012, July12, 2012.
- Cheque history of the appellant January to May 2012.
- Overpayment notification to appellant from Ministry dated July 4, 2012.
- Request for Reconsideration dated July 26, 2012.

The appellant submitted evidence after the reconsideration decision but before the date of hearing which consisted of:

- Family Maintenance Enforcement Program statement of payments disbursed to the appellant from January 2011, to September 2012.
- Account summary showing arrears from ongoing maintenance and interest on arrears and a total owing to the appellant.
- Deposit account history of appellant ( emailed to panel before date of hearing )

The Ministry did not object to the admission of the appellant's documents and agreed that the information in the documents was before the minister when the decision being appealed was made. The panel admitted this additional evidence under 22(4)(a) of the Employment and Assistance Act as information and records that were before the minister when the decision being appealed was made.

The Ministry submitted the following additional documents to the panel at the hearing:

- Ministry cheque history for the appellant for the benefit months of March and April 2012 (2 pages).
- Monthly Ministry benefit report forms submitted by the appellant for the benefit months of March, April and May 2012 (3 pages).

The appellant did not object to the admission of these documents by the Ministry and agreed that they were copies of the Monthly Ministry benefit forms she submitted. The panel admitted this evidence under section 22 (4)(a) of the Employment and Assistance Act as information that was before the minister when the decision being appealed was made.

The appellant is a single parent with three dependent children who started receiving disability assistance in November 2008. As a single parent with three dependent children Schedule A of the EAPWD regulation stipulates the appellant is eligible for \$1372.08 of disability assistance (\$672.08 support and \$700 shelter). In addition the appellant receives \$165 and \$40 per month for nutritional supplements and vitamins. In total, the appellant is eligible to receive \$1782.08 of assistance and supplements each month for herself and one child.

The Ministry received confirmation from the Family Maintenance Enforcement Program (overpayment notification July 4, 2012) that the appellant received \$341 of family maintenance payments toward the benefit month of May 2012.

On June 14, 2012 the Ministry determined that the appellant had been issued \$791 in error and informed the appellant that she was required to repay this amount due to \$341 the appellant received

for family maintenance payments toward the benefit month of May 2012.

The appellant has a \$20 repayment to the Ministry for a past, unrelated debt. Therefore the calculation of the appellant's eligible amount of assistance and supplements for May 2012 is: \$1782.08 - \$341 maintenance - \$20 repayment = \$1421.08. The appellant received a total of \$2212.08 for the benefit month of May, which is \$791 over what the appellant was eligible to receive. The Ministry told the panel that the Ministry issued the appellant three cheques for the month of May 2012: \$425 issued April 25, \$996 issued April 23, and an additional cheque issued May 4 for \$791. The Ministry confirmed that the May 4 2012 cheque was issued in error by the Ministry and thus resulted in the overpayment to the appellant of \$791. An overpayment notification letter dated June 14, 2012 was sent to the appellant and the appellant contacted the Ministry on July 3 2012 requesting a reconsideration of the overpayment.

At the hearing, the appellant went through her records of Ministry payment and admitted she was confused on the amounts of the cheques and the timing of the cheques that appeared in her account. She said that cheques that were supposed to come to her one month were not showing in her records for that month. The appellant stated that she would go to the Ministry office to meet with a Ministry worker to get some help so she could try to understand the cheque records but the worker would say that they needed to review the file.

The evidence of the appellant at the hearing was that she received a message from the Ministry on May 3, 2012 that a cheque would be ready to be picked up the next day. The appellant said that she went to the Ministry office the next day but could not get into the office. She waited in a long line up in the rain and then went home. She did not return to the Ministry office the next day as she did not want to go through the same experience and she received the cheque for \$791 later in the month of May, which she cashed. The appellant said that after going through her records, she did not think she was overpaid for the month of May. She also stated she got confused with the cheque amounts from the Family Maintenance Enforcement Program as they were not consistent in the cheque amounts they issued to her each month.

At the hearing the Ministry representative stated that other than cashing a \$791 cheque sent to the appellant in error the appellant has done nothing wrong. The cheque for \$791 was issued on May 3, 2012, it should have been cancelled as it was an overpayment error on the part of the Ministry, but it remained in the Ministry office for three weeks until it was mailed out to the appellant on May 31, 2012 and cashed by the appellant on June 5, 2012.

The panel makes the following finds of facts:

- The appellant is a person with disabilities who receives \$1782.08 per month in disability assistance and supplements.
- The appellant received \$341 family maintenance payment for the benefit month of May 2012.
- The appellant is eligible to receive \$2212.08 for disability assistance for the benefit month of May 2012.

## PART F – Reasons for Panel Decision

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated August 15, 2012 in which the Ministry determined that the appellant received an overpayment of her disability assistance of \$791 for the month of May 2012, which the appellant is responsible to repay to government.

Pursuant to Section 1(p) of the Employment and Assistance with Persons with Disabilities Regulation (EAPWDR), "unearned income" includes "maintenance under a court order, a separation agreement or other agreement."

Section 24 of the EAPWDR states that a recipient's net income (calculated under Schedule B of the EAPWDR) must be deducted from their assistance as calculated under Schedule A. Schedule B states all unearned income must be included in the calculation of net income except for that which is exempted under Schedule B sections 1, 6 and 7. Family maintenance payments are not included in the deduction or exemption categories.

### Section 24, 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

Section 18 of the EAPWDR addresses overpayments and states:

(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.

The appellant told the panel that the bank statement amounts have been confusing to her as the amounts entered into her bank account from the Ministry and from the Family Maintenance Enforcement Program each month were not always consistent with the same amounts of money entering her account each month. She did not think there was an overpayment to her account for the benefit month of May 2012.

The Ministry told the panel that the \$791 cheque for the benefit month of May was an overpayment to the appellant as it was based on a miscalculation of the unearned income of \$341 which she received in family maintenance and issued in error by the Ministry. The Ministry says that as there is a \$791 overpayment, under section 18 of the EAPWDR, the appellant is responsible to repay the \$791 to government.

The panel finds that appellant received \$341 of family maintenance payments toward the benefit month of May 2012, which is unearned income under section 1 of the EAPWDR. The appellant is eligible for \$1782.08 of assistance and nutritional supplement each month. As per Schedule B of the EAPWDR, the \$341 family maintenance payment must be deducted from the appellant's assistance. The appellant had a \$20 repayment to the Ministry for a past, unrelated debt. Thus the calculation of the appellant's eligible amount of disability assistance and supplements for May 2012 is: \$1782.08 - \$341 maintenance - \$20 repayment of past debt to ministry = \$1421.08.

Since the appellant received a total of \$2212.08 through the Ministry's error for the benefit month of May 2012, which was \$791 over what the appellant was eligible to receive, the panel finds that the appellant has a \$791 overpayment which is owing to the Ministry as per section 18 of the EAPWDR.

Therefore the panel finds that the appellant received an overpayment of \$791 of her disability assistance for the benefit month of May 2012, based on Ministry error, and the legislation provides that the appellant is responsible to repay to government. Accordingly, the panel finds that the Ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the Ministry's decision.