

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development (the ministry) dated 20 June 2012 which found that the appellant was provided amounts of disability assistance for which he was not eligible over the period February 2009 to March 2012, and that therefore he is required to repay the total of these amounts pursuant to Section 18(1) of the Employment and Assistance for Persons with Disabilities Act. The specific reason for the ineligibility was income in excess of the \$500 monthly earnings exemption provided by the Employment and Assistance for Persons with Disabilities Regulation, Schedule B, section 3(2)(a). The decision reduced the amount of overpayment owing, as a result of a review of earlier calculations. The ministry determined that the appellant was liable to repay \$1,454.87

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 11, 18, 19
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 24, 29,
Schedule B, sections 3(2)(a) and 9.

PART E – Summary of Facts

At the outset of the hearing, the appellant expressed his disagreement with the hearing being held by teleconference rather than in person, as he had requested. The Tribunal's *Practices and Procedures*, section 4.1(e), states that a request for a change in the type of hearing will only be considered in exceptional circumstances. Requests to change the type of hearing must be made in writing as soon as possible and indicate the reason for the request. The decision whether to allow the change will be made by the Tribunal Chair and the Tribunal will notify the parties in writing accordingly. As no request in writing for a change in the type of hearing had been received, the hearing proceeded as planned.

The evidence before the ministry at reconsideration included the following:

- A print-out from the appellant's bank showing deposit and withdrawal activity for his bank account from January 2008 to February 2012. The print-out shows regular monthly deposits from the Province of BC, representing the disability assistance provided to the appellant. The print-out also shows regular deposits from his employer. These bi-weekly deposits were made every other Tuesday, changing to every other Wednesday in December 2012. These amounts vary, but most are in the range of \$210 - \$240, though some are higher, once up to \$304 (05 January 2012). The panel notes that as a result of being paid every other week he was occasionally paid 3 times in one month. The panel also notes that the deposits made are never the same, paycheque to paycheque, but vary in a range of a few dollars to \$40, but sometimes more.
- A ministry overpayment chart printed 20 March 2012 for the appellant covering the period July 2009 to March 2012. The chart shows for each month the overpayment reason (income [earned]), the income type/source (the name of his employer), the actual income (from the bank print-out), declared income (\$0.00 reported every month), his exemption (\$500 for PWD single person), the disability assistance paid, the eligible amount (taking into account his earned income and his exemption) and the resulting overpayment amount.
- For example, for the benefit month of May 2011, the appellant was provided disability assistance of \$906.42 (\$532.42 support + \$375 shelter, PWD single person). In March 2011, he was paid \$220.51 on the 1st, \$223.96 on the 15th, and \$222.27 on the 29th, for a total of \$666.74.
This amount of net earnings was to have been reported in April, and factored into the calculation of his May disability assistance.
As the earnings were above his \$500 exemption, the ministry calculated there was an overpayment (amount not eligible) of \$166.74 (\$668.74 - \$500).
- The appellant's Request for Reconsideration dated 22 May 2012:
In the "Decision to be Reconsidered" section, the ministry wrote that the appellant had stated that he was aware that he had failed to declare all of his income clearly and accurately on his monthly report card during the time period. He felt that his income did not exceed the \$500 PWD monthly exemption.

The appellant's Reasons went to argument. The appellant also objected to a \$75 non-reporting sanction and the \$20 monthly repayment amount that has been assessed. He also

alleged targeting by a ministry worker because of his criminal history and high profile background. The panel finds these latter issues not relevant to the decision under appeal.

In his Notice of Appeal dated 03 July 2012 the appellant gave as Reasons that he was targeted because of his criminal background.

At the hearing, the appellant explained that his job was delivering newspapers on four different routes. Sometimes when he was ill or in inclement weather, his mother or someone else in his family helped. He stated that his employer would deposit his earnings into whatever bank account he specified. He stated that he should have taken the advice of his accountant and had his employer deposit the proceeds from one of his routes into an account in the name of his mother. This would solve the overpayment problem. He said that he felt that since his average monthly earnings were less than \$500, it was his understanding that he did not have to fill out and return the monthly report card. The balance of the appellant's presentation addressed issues not relevant to his appeal of the reconsideration decision.

The ministry stood by its position at reconsideration. The ministry representative noted that his paycheques are never of the same amount. This results in a change in income month-to-month that must be reported.

The panel finds that the new information provided by the appellant 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 nature of the appellant's employment clarifies the reasons for the variability of the appellant's income. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel finds as fact that the appellant did not report any of his earned income during the period under consideration and that this income varied bi-weekly and therefore changed monthly.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was provided amounts of disability assistance for which he was not eligible over the period February 2009 to March 2012, and therefore that he is required to repay the total of those amounts pursuant to Section 18(1) of the Employment and Assistance for Persons with Disabilities Act.

The relevant legislation is as follows:
From the EAPWDA:

Section 11 states that to be eligible for disability assistance, a recipient must comply with prescribed reporting requirements:

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) 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.

Section 18 sets out repayment liability for any overpayment and that the actual amount is not appealable:

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*].

Section 19 provides that overpayments may be recovered through deductions from any subsequent disability assistance:

Liability for and recovery of debts under Act

19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

- (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.

And from the EAPWDR:

Section 29 sets out monthly reporting requirements:

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.

Section 24 provides for the deduction of net income from the amount set out in the table in Schedule A:

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.

From Schedule B:

Section 9 requires that deductions and exemptions apply only to the calendar month that income is received.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

The position of the ministry is that, as per section 11 of the EAPWDA and section 29 of the EAPWDR, recipients of disability assistance are required to report monthly when there are any changes that may affect their assistance. The ministry reporting cycle requires that recipients report changes by the 5th of the following month, affecting the next month's assistance. E.g. May income is reported in June and affects July's assistance. The ministry further notes that as provided in

EAPWDR Schedule B section 9, deductions and exemptions apply only in the calendar month in which the income is actually received. The ministry currently has no ability within the legislation to apply an annual exemption on earnings, as assistance is currently determined monthly based on the required legislated monthly reporting cycle. As a result the appellant is eligible for a \$500 per month earnings exemption and any excess income received is required to be deducted from assistance. Based on the overpayment chart, and corrections made to it, the ministry calculated that there was a total overpayment of \$1454.37. In accordance with section 18 of the EAPWDA, if disability assistance is provided to or for a family unit that is not eligible for it, the recipient is liable to repay the value of the overpayment provided for that period. The ministry therefore determined that, as the appellant has incurred an overpayment of assistance, he is required to repay that amount.

The position of the appellant is that any overpayment requirement greater than \$0 is excessive. He did not submit monthly reports because he understood that he was not required to do so, since he believed his monthly earned income was always less than the \$500 exemption, at least on average. If he had known that he had to report his income every month and this might result in an overpayment, and as he often has the help of his family on his newspaper delivery routes, he would have taken steps to avoid any overpayment by directing his employer to direct some of the earnings to a bank account in the name of a family member who helps him.

The starting point for the panel is that the appellant failed to report his earned income during the period under review. As his income varied on a bi-weekly basis and therefore month-to-month, this resulted in a "change in income received by the family unit" [section 29(b)(ii)] requiring the submission of a monthly report. The panel considers it reasonable that when, upon investigation, the appellant's bank records displayed the varying and unreported deposits, the ministry would prepare an overpayment chart that calculated, month by month, whether and by how much the disability assistance provided to the appellant exceeded the eligible amount (taking into account his earned income and his exemption) and the resulting overpayment amount. After reviewing the methodology used in preparing the overpayment chart and finding it consistent with the legislation, the panel finds that the ministry reasonably determined that the appellant was provided amounts of disability assistance for which he was not eligible over the period February 2009 to March 2012, and therefore that he is required to repay the total of those amounts. Pursuant to section 18(2) of the EAPWDA, the panel does not have the jurisdiction to review the actual amount of the overpayment that the appellant is liable to repay.

Accordingly, the panel finds that the ministry's decision was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.