

PART C – Decision under Appeal

The decision under appeal is the Minister's determination that the Appellant ceased to be eligible for disability assistance in 2011 and, as a result, received an overpayment from the Ministry in the amount of \$2,714.76 as a result of his being out of British Columbia for more than 30 days. Ineligibility arises from section 15 of the Employment and Assistance for Persons with Disabilities Regulation. The appellant is liable to repay the overpayment pursuant to section 18 of the Employment and Assistance for Persons with Disabilities Act.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWD Regulation"), section 15
Employment and Assistance for Persons with Disabilities Act ("EAPWD Act"), section 18

PART E – Summary of Facts

The summary of the underlying facts are as follows:

In 2011 the Appellant was designated as a person with disabilities and was receiving support funds via direct deposit and shelter funds which were issued and mailed direct to his landlord.

By way of a letter dated April 29, 2011 to the landlord, the Appellant provided the following notice:

"Dear Sir,

Please be advised that I am vacating definitely the suite the 1st of May 2011 due to a very important matter family.

Also, I am informing the Ministry of Social Development to stop definitely to pay you any rent starting June 2011."

The Appellant, in his written submissions, stated that on April 26, 2011 he left Canada suddenly because his brothers and sisters phoned him to come see his father and his mother whom he hadn't seen for over 15 years. He further stated that his brothers and sisters decided to gather the sum necessary to send him a prepaid ticket for a departure from Canada as of May 1st to a foreign country.

The Appellant takes the position that he did the right things before his departure and in particular that he: (1) addressed a letter to the landlord advising him that he was vacating the suite and deposited the letter in the landlord's mailbox before the landlord went on vacation; and (2) he phoned the Ministry and spoke with one of the social workers there indicating that he was leaving British Columbia to a foreign country and advised her to stop any direct deposit rent to the landlord starting June 2011. He stated that "the worker to whom I spoke told me over the phone that everything is in the file."

A review was completed by a Ministry investigative officer in September 2011 at which time it was reported that the Appellant was not residing in British Columbia.

Shelter benefits for September 2011 were returned to the Ministry. The investigative officer cancelled cheque production and waited to see if the Appellant contacted the Ministry to request further income assistance.

There was no further contact and the investigative officer was unable to contact the Appellant as there was no active phone number or address for him. His file was closed on October 18, 2011.

In May 2012, the Appellant reapplied for disability assistance at which time he verified that he had been in a foreign country and left British Columbia in May 2011 and returned April 2012.

The Ministry provided new documentary evidence in connection with the Ministry's submission. This new evidence was a letter provided by a Ministry representative attaching a record of the Appellant's statement that he left British Columbia for a foreign country in June 2011 and returned on May 1, 2012 to British Columbia.

The Tribunal admits this new evidence as being in support of the evidence before the Ministry at the

time of reconsideration, pursuant to subsection 22(4) of the Employment and Assistance Act.

The Ministry conducted another file review and the Appellant provided a copy of his flight itinerary and a letter stating that he had left British Columbia on May 1, 2011 and returned April 4, 2012, together with a copy of his passport showing the exit and entry stamps.

As a result of the review, the Ministry determined that an overpayment was made to the Appellant in the amount of \$2,714.76. This overpayment which related to the time that the Appellant had been outside of the country and was still receiving income assistance.

The specific months of overpayment were in relation to June to September 2011.

On July 25, 2012 the Appellant requested a reconsideration of the decision and stated that he provided a letter to his landlord informing him that he was leaving British Columbia and informing the Ministry. The Ministry stated that it was unable to locate any verification of this claim.

PART F – Reasons for Panel Decision

The governing provisions are stated below:

The issue under appeal is whether or not the Ministry's determination that the Appellant ceased to be eligible for disability assistance in 2011 and as a result received an overpayment from the Ministry as a result of his being out of British Columbia for more than 30 days was reasonably supported by the evidence.

The position of the Appellant was that the decision was not reasonably supported by the evidence. The Appellant took the position that he did the right things before his departure and that he: (1) addressed a letter to landlord advising that he was vacating his suite; and (2) he phoned the Ministry and spoke to a social worker indicating that he was leaving British Columbia for a foreign country and advised her to stop any direct deposit rent to the landlord starting June 2011.

The Ministry takes the position that the decision was reasonably supported by the evidence.

The EAPWD Act, section 18 states 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.

EAPWD Regulation 15 states as follows:

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

Applying the provisions to the facts of this case the panel finds as follows:

1. The Appellant was outside of British Columbia from June 2011 to April 2012 but continued to receive disability assistance during that period.
2. The Appellant did not obtain prior authorization for the continuance of disability assistance or hardship assistance for the purpose of permitting him to participate in a formal education program; permitting him to obtain medical therapy as prescribed by a medical practitioner; or avoiding undue hardship.
3. The Appellant's evidence indicates that when he decided to leave the country on or about April 26, 2011, he provided a letter to his landlord advising that he was vacating his suite and that he called a social worker to advise her to stop any direct deposit rent to the landlord starting June 2011 and that the worker told him that everything was in the file.

4. The Appellant's actions were not sufficient to meet the requirement of EAPWD Regulation 15 which requires that a person obtain prior authorization for the continuance of disability assistance or hardship assistance for specified purposes when outside of British Columbia for more than 30 days. Therefore, the Ministry reasonably determined that the Appellant received an overpayment of disability assistance which he is liable to pay pursuant to section 18 of EAPWD Act.

The panel hereby finds that the Ministry's decision was reasonably supported by the evidence and should be confirmed.