

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) decision of December 4, 2012, which held that the appellant was not entitled to reconsideration of the ministry's earlier decision not to reimburse the appellant for several months of deductions which it acknowledged it had made in error from the appellant's disability assistance. The ministry determined that s. 16 of the *Employment and Assistance for Persons with Disabilities Act* does not provide a right of appeal for these "administrative underpayments".

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), s. 16

## PART E – Summary of Facts

The appellant is a recipient of disability assistance as a single parent with a dependent child. The appellant also receives a benefit from the Canada Pension Plan (CPP), consisting of a disability amount and a “child of a disabled contributor” amount. The CPP benefit is deducted from the appellant’s monthly disability assistance amount. However, the ministry in error deducted the “child of a disabled contributor” amount twice each month during the 17-month period March 2011 to July 2012, which resulted in an underpayment of disability assistance to the appellant each month. In August 2012 the error was discovered and corrected. The ministry conducted a review and approved a one-time payment to the appellant that, by ministry policy, was limited to covering only 12 months of the underpayment.

The appellant requested reconsideration of this decision to only repay 12 months of the 17 months of underpayment. In its decision of December 4, 2012 the ministry refused reconsideration saying that administrative underpayments are not defined in legislation and do not constitute disability assistance or a supplement which are the bases of the statutory right of appeal granted by s. 16 of the EAPWDA.

Prior to the appeal hearing the appellant provided a two-page written submission. The panel has accepted the written submission as argument as it does not introduce new evidence.

The ministry relied on its reconsideration decision and did not introduce any new evidence.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision of December 4, 2012 not to provide the appellant with a reconsideration of its earlier decision not to reimburse the appellant for several months of deductions which it acknowledged it had made in error from the appellant's disability assistance.

The relevant legislation is as follows:

### EAPWDA

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
  - (i) the maximum amount of the supplement under the regulations, and
  - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

The appellant advanced three arguments: first, she said that reconsideration of administrative underpayments are not barred by s. 16 of the EAPWDA, so denying appeal rights as a matter of policy is contrary to the principles of procedural fairness. Second, in the alternative the appellant argued that the ministry's decision resulted in a reduction of disability benefits which provides her with a right of reconsideration as set out in s. 16(1)(c) of the EAPWDR. Finally, the appellant said that the ministry policy limiting repayments to 12 months is unfair since the ministry does not limit itself to a 12 month period when it is seeking repayment from recipients who have been overpaid.

The ministry stood by its decision and said that administrative underpayments simply don't appear under s. 16. The ministry said that both the ministry and the appellant have the responsibility to ensure that assistance payments are accurate.

*Panel Decision*

The appellant's first argument cannot stand. Rights of reconsideration and appeal from administrative decisions must arise expressly from the enabling legislation.

However, it is the panel's finding that the appellant does have the right to reconsideration in this case under s. 16(1)(c) of the EAPWDA. The ministry has clearly made a decision which resulted in the appellant receiving an amount of disability assistance less than that to which she was otherwise entitled. By the plain wording of the legislation this constitutes a reduction in disability assistance. The fact that the reduction occurred in the past, in increments over a period of time does not change its nature from being a reduction of disability assistance to being "administrative underpayments."

In light of the panel's finding, it is not necessary for us to address the appellant's third argument.

Section 16(3) of the EAPWDA provides that, subject to certain exceptions, a person who is dissatisfied with the "outcome of a request for reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal." In this case, the ministry's determination that there is no right of reconsideration was the "outcome" of the appellant's request. The panel finds that the ministry's determination that the appellant did not have a right to reconsideration is not reasonable application of the applicable enactment in the appellant's circumstances under s. 24(1)(b) of the EAA for the reasons outlined above. In view of this finding, the panel rescinds under s. 24(2) of the EAA the ministry's decision that there is no right to reconsideration. It follows that the appellant is entitled to have the request for reconsideration proceed to reconsideration.