

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated September 11, 2012 which found that the appellant is required to repay income assistance which the appellant received and for which she was not eligible, pursuant to Section 18 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA), as a result of having undeclared student loan income in excess of the disability assistance rate, under Section 9 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9 and 24 and Schedule B, Section 8

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 18

PART E – Summary of Facts

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

- 1) One page summary of employment by a University for the period from October 2009 through December 2011;
- 2) Direct Deposit Acknowledgement Statements from a University to the appellant for the period from December 2009 through December 2011;
- 3) Notifications of Assessment dated November 4, 2008, April 27, 2009, August 10, 2009, December 18, 2009, May 5, 2010, August 26, 2010, December 16, 2010, and July 29, 2011 indicating the total amount of loans issued to the appellant to date as \$71,753;
- 4) Bank Statements for the appellant's account for the period from September 2008 through March 2012;
- 5) Letter from the ministry to the appellant dated November 16, 2011 stating in part that her file has been selected for review and requesting documentation;
- 6) Letter from the ministry to the appellant dated December 1, 2011 stating in part that her file has been selected for review and requesting documentation;
- 7) Letter from the ministry to the appellant dated December 16, 2011 stating in part that as requested documentation has not been forthcoming, she is no longer eligible for assistance and her file will be closed on January 24, 2012;;
- 8) Letter from the ministry to the appellant dated January 11, 2012 stating in part that her file has been selected for review and requesting documentation;
- 9) Letter from the ministry to the appellant dated June 21, 2012 stating in part that a review of the appellant's assistance between December 1, 2008 and January 31, 2012 has determined that the appellant received assistance for which she was not eligible. An overpayment in the amount of \$8,308.15 has been recorded on her file, and an Overpayment Chart is attached to the letter. An appointment is scheduled for June 29, 2012 to discuss the overpayment
- 10) Unsigned Overpayment Notification dated May 30, 2011;
- 11) Letter from the ministry to the appellant dated June 29, 2012 stating in part that a review of the appellant's assistance between December 1, 2008 and January 31, 2012 has determined that the appellant received assistance for which she was not eligible. An overpayment in the amount of \$8,308.15 has been recorded on her file, and an Overpayment Chart is attached to the letter;
- 12) Undated Table- Implications of LMA Program Participation by IA Client Type; and,
- 13) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant stated that she feels the ministry's decision is flawed. In her Request for Reconsideration, the appellant stated that she is over 60 years of age with a permanent disability and a limited time span and it should not be demanded of her to pay the ministry for an amount that is part of the loan payments which will soon be made to the provincial and federal loan programs. The appellant stated that the legislation for the ministry and for the provincial student loan program is not synchronized, and the B.C. Coalition of People With Disabilities and their links did not cover this issue. The appellant stated that the issue of overpayment was not 'red-flagged' from any official source prior to or during study for the past four years. The appellant stated that she has never had an arts and crafts business, that she has a hobby of making handicrafts mainly to save money on gifts for friends and family. The appellant stated that she had a car accident on December 19, 2011 and again in June 2012. The appellant stated that her disability assistance was cut off on December 16, 2011 and the extreme stress was the primary cause of her failing a 3-hour exam in January.

The appellant stated that she was designated a Persons With Disabilities (PWD) in 2003 as she has a permanent disability that is not controllable. The appellant stated that she worked with the B.C. Coalition of People with Disabilities and decided to enter an approved training program on a full-time PWD student basis. This would later enable her to work on a part-time basis for the rest of her life. In order to go to school, money was needed not only for tuition and books, but also to cover other expenses to raise her above the PWD level so she would be able to compete at the university level. Special clothing, boots, tools, equipment, field trips,

raingear, and hats are extras that are required within the program and replaced when worn out or no longer usable. The appellant stated that technology has a strong position within this career- computer, basic programs, design programs, strong internet connections, printers and ink cartridges- these all cost money that is not available within the monthly PWD subsistence. Individual transportation is necessary and car maintenance as well as fuel are necessary and costly items.

The appellant stated that the gaps in government communication and information flow when she was deciding on a specific training program, entering school and seeking funding were misleading. The provincial student loan program offered a loan to assist with funding and no one informed her that some of the loan was not allowable. The appellant stated that, as a loan, the money has to be paid back and will be due 6 months following completion of the course. The appellant stated that because it has to be paid back, she viewed the student loan as a separate issue from disability cheques. The appellant stated that she finds the situation of an overpayment unacceptable but requests that payments be \$10 per month.

The ministry relies on its reconsideration decision, which includes evidence that the appellant's file with the ministry opened in August 1999 and that she is currently in receipt of disability assistance as a single recipient. On November 16, 2011 the ministry began a review of the appellant's file and, over the period of November 18, 2011 through April 12, 2012, there were various contacts between the ministry and the appellant and an advocate. The appellant was asked to submit various financial documents required to determine her past eligibility for assistance. The appellant has been in receipt of student loan funding since November 2008. On June 21, 2012, it was determined that the appellant had an overpayment of assistance and a letter was mailed to the appellant to discuss the matter over a telephone appointment scheduled for June 29, 2012. On June 29, 2012, the appellant discussed the overpayment with the ministry.

In calculating the appellant's net income, the ministry considered the appellant's total student loan income as listed in her Notice of Assessments and subtracted the legislated education costs. The ministry used the amounts listed on the Notice of Assessments to determine the appellant's tuition, books and exceptional education costs. Transportation costs are established by ministry policy at \$100 per month, which is in addition to the subsidized yearly bus pass for recipients with PWD designation. The exact amounts of the appellant's net income and her exempted education costs are detailed in the Overpayment Chart. The appellant was not eligible for \$8,308.15 of assistance received. The appellant's assistance rate as a single person is \$906.42 per month.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is required to repay income assistance which the appellant received and for which she was not eligible, pursuant to Section 18 of the EAPWDA, as a result of having undeclared student loan income in excess of the disability assistance rate, under Section 9 of the EAPWDR, pursuant to Section 27 of the EAA, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 9 of the EAPWDR provides:

Limits on income

- 9 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Section 24 of the EAPWDR provides:

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
- the amount determined under Schedule A, minus
 - the family unit's net income determined under Schedule B.

Section 1 of the EAPWDR provides in part:

Definitions

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- ...
- (q) education or training allowances, grants, loans, bursaries or scholarships . . .

Schedule B of the EAPWDR, Section 1 provides in part:

Net Income Calculation (section 24 (b)) Deduction and exemption rules

- 1 When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation, . . .
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Schedule B of the EAPWDR, Section 8 provides:

Minister's discretion to exempt education related unearned income

- 8 (1) In this section:
- "day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit, for a semester.
- "education costs" means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

- (2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of
- (a) a training allowance,
 - (b) student financial assistance, and
 - (c) student grants, bursaries, scholarships or disbursements from a registered education savings plan received for the semester.

Section 18 of the EAPWDA provides as follows:

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].

The ministry's position is that the appellant has been in receipt of student loan funding since November 2008, which is "unearned income" according to the definition in Section 1 of the EAPWDR. The ministry argues that Section 24 of the EAPWDR explains that a recipient's net income must be deducted from their assistance and all unearned income is included in the calculation of net income except for that listed in the deduction and exemption categories under Schedule B of the EAPWDR. The ministry argues that the only exemption that applies to student funding is in Schedule B, Section 8 which allows the ministry to exempt up to the sum of the education costs, which includes only tuition, books, compulsory student fees and reasonable transportation costs for a semester. The ministry argues that additional education-related expenses (e.g. field trips, computer programs, etc.) do not meet the definition of "education costs" under the EAPWDR. The ministry argues that the exact amounts of the appellant's net income, which was the total student loan income less the legislated education costs, is detailed in the Overpayment Chart. The ministry argues that Section 9 of the EAPWDR stipulates that a person is not eligible for assistance if their income exceeds their assistance rates which is \$906.42 per month for the appellant. The ministry argues that Section 18 of the EAPWDA states that if disability assistance is provided to a recipient who is not eligible for it, the recipient is liable to repay to the government the amount of the overpayment, and the appellant was not eligible for \$8,308.15 of assistance received by her. The ministry argues that Section 18(2) of the EAPWDA sets out that the amount a person is liable to repay is not appealable.

The appellant does not dispute that she received student loans as detailed by the ministry, but argues that the legislation for the ministry and for the provincial student loan program is not synchronized. The appellant argues that she worked with the B.C. Coalition of People with Disabilities and decided to enter an approved training program on a full-time PWD student basis. The appellant argues that money was needed not only for tuition and books, but also to cover other expenses, specifically for special clothing, boots, tools, equipment, field trips, raingear, and hats, to raise her above the PWD level so she would be able to compete at the university level. The appellant argues that technology has a strong position within this career- computer, basic programs, design programs, strong internet connections, printers and ink cartridges- these all cost money that is not available within the monthly PWD subsistence, and individual transportation is necessary and car maintenance as well as fuel are necessary and costly items. The appellant argues that the provincial student loan program offered a loan to assist with funding and no one informed her that some of the loan was not allowable. The appellant argues that the issue of overpayment was not 'red-flagged' from any official source prior to or during study for the past four years. The appellant argues that, as a loan, the money has to be paid back and will be due 6 months following completion of the course. The appellant argues that she finds the situation of an overpayment unacceptable but requests that, if she must pay back this amount, that payments be at the rate of \$10 per month.

The panel finds that it is not disputed that the appellant was in receipt of student loans as detailed by the Notifications of Assessment, however the appellant argues that she was not informed that some of these payments were not considered exempt by the ministry and she also argues that additional education costs should be deducted as being required by her program. The panel finds that the definition of "unearned income" as set out in Section 1(q) of the EAPWDR specifically includes education allowances, grants, loans, bursaries, and scholarships and that Section 1 of Schedule B of the EAPWDR stipulates that all unearned income must be included in calculating the net income of a family unit for the purposes of Section 24(b) except for income exempted under section 8. Section 8 allows the ministry to exempt up to the sum of the education costs, which is defined as meaning the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester. Although the appellant states that she was not made aware of these provisions, the panel finds that it was open to the appellant to make a direct inquiry of the ministry regarding the amounts of student loan funding that would be considered exempt prior to accepting this funding, and to report the amounts she received to the ministry on a monthly basis so that this issue would have been 'red-flagged' early on.

The ministry deducted amounts for the appellant's tuition, books, compulsory student fees and reasonable transportation costs but argues that the additional education-related costs set out by the appellant for special clothing, boots, tools, equipment, field trips, raingear, and hats, as well as computer, basic programs, design programs, strong internet connections, printers and ink cartridges, are not included in the definition of "education costs" in Section 8. The panel finds that the definition of education costs is an exhaustive list as the word "means" is used in the section rather than the word "includes." The appellant has not provided evidence to show that any of the additional education-related items, such as computer programs, boots, hats, etc. are included in this list, possibly as part of her "compulsory student fees." Therefore, the panel finds that the ministry reasonably concluded that the cost for these additional items are not exempt from the calculation of the appellant's net income pursuant to Section 8 of Schedule B of the EAPWDR.

Section 9 of the EAPWDR stipulates that a person is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A, or \$906.42 per month. The panel finds that the appellant's net income exceeded the amount of disability assistance in several months over the period from December 2008 through January 2012, as set out in the ministry's Overpayment Chart, in the total amount of \$8,308.15. Section 18 of the EAPWDA states that if disability assistance is provided to a recipient who is not eligible for it, the recipient is liable to repay to the government the amount of the overpayment. The panel finds that the ministry reasonably determined that the appellant was not eligible for \$8,308.15 of assistance received by her and that she is therefore, required to repay this amount, pursuant to Section 18 of the EAPWDA.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.