

PART C – Decision under Appeal

The decision being appealed is the Ministry's December 13, 2012 reconsideration decision in which the Ministry determined that the Appellant, who has Person with Disabilities designation, was overpaid disability assistance from January 2011 to November 2012 because he did not report unearned income in the form of Workers Compensation Board benefits received by his wife, as required by section 11 of the Employment and Assistance for Persons with Disabilities Act. The Ministry also determined that the Appellant must repay that overpayment as required by section 18 of that Act.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA") Sections 5, 11, 18 and 19.

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Sections 1, 9 and 24, and Schedules A and B.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that:

- The Appellant's family unit has been receiving income assistance since January 2010. The Appellant received his Persons with Disabilities ("PWD") designation in March 2010 and his wife received hers in September 2010. Since September 2010, the Appellant has been receiving disability assistance as a family unit with two adults with PWD designation.
- Based on a family unit with two persons with PWD designation, the Appellant is eligible for disability assistance of about \$1482 (\$533 shelter and \$949 support).
- Since January 2012, the Appellant has been receiving a \$40 diet supplement.
- The Appellant receives Canada Pension Plan Disability ("CPPD") benefits of about \$796, which is deducted every month from his PWD assistance.
- On November 26, 2012, the Appellant submitted a monthly report declaring his CPPD income and also a \$314.41 Workers Compensation Board ("WCB") payment received by his wife.
- The Appellant was advised that the WCB payment would be deducted dollar for dollar because it was considered unearned income and there were no exemptions for WCB income.
- The Appellant also was advised that he needed to submit income records as verification for the WCB payments. Copies of the WCB benefit payments to his wife are in the record.
- On November 27, 2012, the Ministry wrote to the Appellant stating that it determined that there had been an overpayment of disability assistance benefits to him because he did not declare past WCB payments to the Ministry.
- During its review of the Appellant's file, the Ministry confirmed that the WCB payments were for his wife for monthly personal care and home maintenance.
- The Ministry had overpayment charts indicating an overpayment period from January 2011 to November 2012.
- On November 28, 2012, the Ministry sent the Appellant and his wife an overpayment notification indicating that \$5,938.77 was the amount of the overpayment.

2. Appellant's request for reconsideration with a written statement dated November 28, 2012 and documents indicating that:

- The Appellant's wife now receives a Personal Care Allowance of \$105.82 and a Home Maintenance Allowance of \$209.54 from the Workers Compensation Board in another province.
- The Personal Care Allowance is needed to help his wife with daily living. The Home Maintenance Allowance provides for help with outside work that they are unable to do.
- They are receiving the benefits because his wife was injured while working and she demonstrated a need for extra care.
- Their WCB claim history in the other province started with the wife's injury in 2005, followed by various medical assessments and appeals to that WCB.
- They attached letters from that WCB dated May 23, 2012 and May 25, 2012 confirming eligibility for Personal Care Allowance and Home Maintenance Allowance to be paid retroactively from November 1, 2011.
- The Appellant's wife had medical tests and assessments through November 2012.
- They wrote that they still have ongoing appeals with the WCB, including one to make sure his wife gets necessary treatment for her medical conditions.
- The allowance benefits from the WCB are for hygiene, sanitary and safety needs, not for

shelter or support, so they feel that the Ministry is withholding benefits that they need for their physical needs.

- They attached an occupational therapy personal care assessment for the wife, dated May 8, 2012 and another occupational therapist's report for the wife

For this appeal, the Appellant submitted the statement and attachments that he submitted with his request for reconsideration. At the hearing the Appellant and his wife reviewed her history of claims with the WCB in another province. They provided the same information as set out in their reconsideration submission. In addition the Appellant's wife stated that she is still appealing her case to the WCB in that province and hopes to receive disability payments from that board, which would be in addition to the allowances she currently receives. The Appellant argued that the personal care allowance and home maintenance allowance is not income and therefore should not be deducted from the Appellant's disability allowance. That argument is set out in Part F of this decision. The Appellant also submitted portions of the Workers Compensation Act for BC, sections from a Worksafe BC guidance document, a copy of the 1995 BC Supreme Court decision in *Morris v. Income Assistance Tribunal* and a copy of a previous decision by this tribunal. The Panel finds that these documents are submissions supporting the Appellant's oral argument and accepts them as such.

The Ministry provided a written submission and at the hearing, the Ministry reviewed that submission, as well as sections of the EAPWDR. The Panel accepts the written and oral submissions as argument by the Ministry. The Ministry's argument is set out in Section F of this decision.

The Panel makes the following findings of fact:

1. The Appellant and his wife both have PWD designation under the EAPWDA.
2. Since September 2010, the Appellant's family unit for disability assistance consists of two adults with PWD designation, himself and his wife.
3. The Appellant's family unit was eligible for and received disability assistance payments from January 2011 through November 2012.
4. The Appellant's wife received WCB payments from another province for the disability assistance payment period of January 2011 through November 2012.
5. The Appellant did not report those WCB payments until November 2012.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was overpaid disability assistance from January 2011 to November 2012 because he did not report unearned income in the form of WCB payments received by his wife, as required by section 11 of the EAPWDA and that the Appellant must repay that overpayment as required by section 18 of that Act.

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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 changes in circumstances or information that (i) may affect the eligibility of the family unit, and (ii) was previously provided to the minister.

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*].

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

- (a) recovered in a court that has jurisdiction, or
 - (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.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

Definitions

1(1) In this regulation:

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

- (f) any type or class of Canada Pension Plan benefits;
- (j) workers' compensation benefits and disability payments or pensions;
- (t) any other financial awards or compensation.

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.

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.

Schedule A – Disability Assistance Rates***Schedule B - Net Income Calculation******The Position of the Parties***

The Ministry's position is that the WCB payments that the Appellant's wife received for January 2011 to November 2012 are considered unearned income as defined by section 1 of the EAPWDR. During that period there were no legislative exemptions for such WCB unearned income. Therefore, the Ministry submitted that it has no discretion to exempt these WCB payments from its calculations of the Appellant's net income for those months.

The Ministry also submitted that, because the Appellant did not notify the Ministry of the change in his family unit's circumstances until November 2012; that is, the WCB payments to his wife, he received disability assistance amounts for which he was not eligible. The Ministry pointed out that it must deduct the WCB payments as unearned income dollar for dollar from the disability assistance that the Appellant was eligible for each month from January 2011 to November 2012. The Ministry also argued that the Appellant must repay all of the resulting overpayment of assistance. The Ministry acknowledged that the Appellant did not intentionally omit the WCB payments from his reports.

In its reconsideration decision, the Ministry pointed out that amendments were made to the EAPWDR which are effective October 2012. Those amendments provide exemptions for some WCB benefits. However, the Ministry also pointed out that these amendments were not applicable to the January 2011 to November 2012 payment period at issue in this appeal.

The Appellant provided extensive arguments and documents to support his position. The Panel has considered all of these and summarizes them as follows. The Appellant's position is that the Personal Care Allowance and Home Maintenance Allowance that his wife receives from the WCB from another province should not be considered as "income". Both payments are allowances to help with their health and personal care needs. Those WCB payments are not meant to compensate for lost wages or earnings. Therefore, the Appellant submitted the WCB payments are not "income" and

are not "unearned income" as the Ministry argued. To support his position, the Appellant read from a policy document from the WCB of the province, which makes the payments to his wife. In that WCB policy, the Appellant argued, there are allowances and income exemptions for persons with disabilities and therefore there should be such exemptions applicable to his situation.

The Appellant stated that he had no reason to believe that there would be any differences between provinces regarding disability assistance, WCB benefits and income exemptions. The Appellant also submitted that he and his wife need the full disability allowance for their shelter and other living costs. If the WCB payments are deducted by the Ministry, they will have to use the WCB payments for their living costs, and not for the personal care and home maintenance the allowances are intended for.

The Panel's Findings

The Panel finds that the facts are not in dispute. Since September 2010, the Appellant has been receiving disability assistance based on his family unit having two adults with PWD designation. Also, for the disability assistance payment period January 2011 through November 2012 the Appellant's wife received WCB payments from another province. The Appellant did not report those WCB payments until November 2012.

The Panel will first consider the legislation applicable to the Appellant's circumstances. The Appellant's family unit receives disability assistance because he and his wife have PWD designation under British Columbia's EAPWDA and the EAPWDR; that is, the legislation in this province. Therefore, it is that act and that regulation that apply to the Appellant's circumstances. The Panel finds nothing in the EAPWDA or in the EAPWDR that incorporates or references any legislation from the other province, making the WCB payments or that applies legislation or policies from that other province to someone in the Appellant's circumstances.

Section 24 of EAPWDR sets out how the Ministry determines how much disability assistance a family unit is eligible for. Simply put, a family unit's net income as determined by the provisions in Schedule B is deducted from the assistance rates in Schedule A. In this case, there is no dispute that the Appellant's family unit is eligible for the support and shelter allowances in Schedule A for a family unit with two adults with PWD designation. Schedule B sets out what types of income or assets must be included or excluded in the calculation of a family unit's net income. Certain types of unearned income are excluded or exempt from a family unit's net income, but many are not.

Section 1 of the EAPWDR defines "*unearned income*" to include money received from "(j) workers' compensation benefits and disability payments or pensions". The Panel finds that this definition makes no distinction between allowances, earnings or any other types of workers' compensation benefits. There is also nothing in this definition or elsewhere in the EAPWDA or the EAPWDR that states that personal care allowances or home maintenance payments made by a WCB are not included in or are different from other workers' compensation benefits. Therefore, the Panel finds that based on this definition, the Ministry reasonably determined that the Personal Care Allowance and Home Maintenance Allowance payments received by the Appellant's wife from the WCB are included in the definition of "*unearned income*" in section 1(j) of the EAPWDR.

The Panel finds that during the payment period of January 2011 to November 2012 there were no provisions in the EAPWDR exempting any WCB benefits from the calculation of net income.

Therefore, the Panel further finds that the Ministry reasonably considered the WCB benefits to be part of the Appellant's family unit's net income that had to be deducted from the disability assistance the Appellant was eligible for. The Panel also notes that the Ministry has no discretion when making assistance calculations. It must apply the regulations in effect and applicable for each month that it calculates the net assistance that the Appellant is eligible for and then paid.

Section 11 of the EAPWDA requires recipients of disability assistance to notify the Ministry of any change in circumstances. Based on the Panel's finding that the Ministry reasonably determined that the WCB benefits were non-exempt unearned income, that Panel further finds that the Ministry reasonably determined that the Appellant had to report his wife's WCB benefits as income. Then because those WCB payments reduced the amount of assistance the Appellant was eligible for in the payment period of January 2011 to November 2012, the Panel also finds that the Ministry reasonably determined that the Appellant received overpayments of disability assistance during those months.

Section 18 of the EAPWDA states that if disability assistance is provided to or for a family unit that is not eligible for it, recipients of that family unit, during the period of the overpayment, are liable to repay such overpayment. Based on this legislated requirement, the Panel finds that the Ministry reasonably determined it has to collect any overpayment it made to the Appellant. The Panel also notes that under section 18(2) of the EAPWDA, the Ministry's decision about the amount that must be repaid is not appealable. Therefore, the Panel has no jurisdiction to review that part of the reconsideration decision. If the Appellant has questions about the amount he must repay, he must address those directly to the Ministry.

Conclusion

After considering all of the parties' submissions and the applicable legislation, the Panel confirms the Ministry's reconsideration decision because, in the Appellant's circumstances, the Ministry reasonably considered and applied the applicable sections of the EAPWDA and the EAPWDR in effect during the disability assistance payment period of January 2011 to November 2012.