

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated January 4, 2013 which found that the appellant is required to repay assistance that the appellant received and for which he was not eligible, pursuant to Section 18 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA), as a result of having unearned income in the form of workers' compensation benefits 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 Schedules A and B

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 included:

- 1) Statement of Benefits (T5007) for workers' compensation benefits in the 2011 taxation year;
- 2) Notice of Assessment dated April 19, 2012 for the appellant for the 2011 taxation year;
- 3) Letter from Work Safe to the ministry dated November 21, 2012 enclosing a Statement for wage loss payments made from March 22, 2011 through June 5, 2011;
- 4) Overpayment Notification dated November 22, 2012 for the amount of \$1,437.84;
- 5) Overpayment Chart for the period May 2011 through August 2011 with an overpayment amount of \$1,437.84; and,
- 6) Request for Reconsideration- Reasons.

In his Request for Reconsideration, the appellant stated that he met with the ministry on November 30, 2012 and there was no explanation provided about how the overpayment was calculated. The appellant was only asked what he did not understand since the ministry is "...two months ahead." The appellant stated that the ministry is not willing to listen or to take his story into consideration.

In his Notice of Appeal, the appellant stated that the ministry is ignoring the fact that he had gone off of assistance at the time and was not getting stubs to report his income.

At the hearing, the appellant stated he believes this matter could have been solved if the ministry had been willing to listen during their meeting. The appellant stated that he had an accident at work in 2009 and had been hoping that his injuries would heal up, but they did not. He applied for Persons With Disabilities (PWD) designation in December 2010 and had surgery on his back on March 16, 2011. There was a period of time that his workers' compensation benefits were cut off, but then they started paying him again. The appellant stated that when he received the workers' compensation benefits, he reported this and advised the ministry that he would not require assistance. He did not receive further stubs from the ministry to report his income after that. The appellant stated that he believed the surgery would repair his injury and that he could go back to work, but that has not been the case. The appellant stated that he also experiences cognitive problems because of the chronic pain in his back. The appellant stated that he got his last cheque for workers' compensation benefits on June 5, 2011 and he returned to the ministry in August 2011 to go back on assistance as he was in need at the time. He has borrowed money from his family and also has to pay back these amounts. The appellant stated that he was upfront with the ministry about the amounts he had received and he was issued a cheque for about \$1,400, although he did not understand why he was receiving the extra \$531.42. The ministry told him at the time not to worry and to take the money.

The ministry relied on the facts as set out in its reconsideration decision. At the hearing it was clarified that the model for reporting income as set out in the legislation is that income received in one month is reported by the 5th day of the following month and that the income will impact the assistance paid to the appellant in the next month. The ministry acknowledged that the appellant had correctly reported his income from workers' compensation benefits received in 2011. According to the reporting model, the benefits received in May 2011 (\$2,005.92) and in June 2011 (\$1,002.96) would be required to be reported by June 5 and July 5, 2011, respectively, and would impact the assistance payable for July and August 2011. However, when the appellant returned to the ministry in August 2011 to request that he receive assistance, the ministry file notes indicate that the appellant was incorrectly issued an amount for July support (\$531.42) and his full assistance for August (\$906.42), or a total of \$1,437.84. The total amount of disability assistance issued to the appellant for which he was not eligible is set out in the Overpayment Chart. The appellant was not eligible for disability assistance due to the workers' compensation benefits he received in May and June 2011, but the ministry representative issued a cheque to the appellant nevertheless by way of an override on the system. The ministry stated that the file notes also indicate that the sanction normally associated with failure to report income was not applied in the appellant's case as there is a recognition that the appellant was doing his best to comply with his reporting requirements.

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 assistance which the appellant received and for which he was not eligible, pursuant to Section 18 of the EAPWDA, as a result of having unearned income in excess of the disability assistance rate, 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 that:

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.

Schedule A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation, ...

- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Section 1 of the EAPWDR defines "unearned income" to mean:

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) widows' or orphans' allowances;

- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*.;
- (w) tax refunds.

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 Section 9(2) of the EAPWDR states that a family unit is not eligible for disability assistance if the 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. The ministry points out that as a sole recipient of disability assistance, the appellant would be eligible for total disability assistance of \$906.42, as per Schedule A of the EAPWDR. The ministry argues that in determining net income under Schedule B, all unearned income must be included, which has been defined in Section 1 of the EAPWDR to include workers' compensation benefits. The ministry argues that the appellant's income from workers' compensation benefits in May and June 2011 exceeded his assistance rates and, therefore, he is not eligible for assistance for the months of July and August 2011, pursuant to sections 9 of the EAPWDR. The ministry argues that the exact amount of the appellant's net income is detailed in the Overpayment Chart. 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 \$1,437.84 of assistance received by him. The ministry points out that Section 18 of the EAPWDA does not distinguish between assistance provided to the family unit as a result of an error made by the family unit or through an error made by the ministry, but just that the family unit is found not to have been eligible for it.

The appellant does not dispute that he received the workers' compensation benefits as detailed by the ministry but argues that he reported to the ministry that he was receiving this income. It is also not disputed that he is eligible for the amount of \$906.42 in disability assistance each month as a single recipient. However, the appellant argues that when he went to the ministry in August 2011 he was forthright about the workers' compensation benefits he had received but the ministry insisted that he take the cheque for \$1,437.84. The

appellant argues that his last cheque for workers' compensation benefits was June 5, 2011 and by August 2011, he was in need of the assistance.

The panel finds that it is not disputed that the appellant was in receipt of workers' compensation benefits as detailed in the Overpayment Chart provided by the ministry, however the appellant argues that he was upfront with the ministry that he was receiving these benefits and he was still issued a cheque from the ministry. The ministry clarified at the hearing that there was no finding of an intention on the part of the appellant to fail to declare all of his income, that mistakes were made by the ministry, but the legislation must be consistently applied. 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. According to Section 1(j) of the EAPWDR, "unearned income" is defined to mean any income that is not earned income and includes, without limitation, money or value received from any of the following: "... workers' compensation benefits and disability payments or pensions." The panel finds that the ministry reasonably concluded that the appellant's income from workers' compensation benefits received in May 2011 (\$2,005.92) and June 2011 (\$1002.96) exceeded his assistance rates and, therefore, he is not eligible for assistance for the months of July and August 2011, pursuant to sections 9 of the EAPWDR, and as detailed in the Overpayment Chart. It is unfortunate that the model for accounting for income received two months later, as set out in the legislation, was not clearly communicated to the appellant when he met with the ministry prior to proceeding to reconsideration, particularly in light of the cognitive difficulties that the appellant states he experiences as a result of his chronic pain. 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 \$1,437.84 of assistance received by him and that he 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 pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.