

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of January 13, 2013 wherein the ministry determined that the appellant incurred an overpayment of assistance of \$12,836.57. The ministry found that the overpayment was caused by income defined in the Employment and Assistance for Persons with Disabilities Act (EAPWD), section 1 and that these funds must be repaid as required by EAPWD sections 18 and 19.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 1, 5, 18, 19
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 9, 24, 74, schedules A and B

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An overpayment notification letter dated November 19, 2012. The letter reads that the appellant received an overpayment of \$12,415.57.
- A letter dated November 19, 2012 addressed to the appellant from the ministry stating that the ministry has determined that the appellant received an overpayment due to inaccurate or incomplete reporting of her employment income and her tax refund and that a sanction will be applied to her assistance of \$25 for three months beginning January 2013.
- A statement of account for the appellant from the Canada Revenue Agency dated July 30, 2012 showing that she received a tax refund on March 28, 2011 in the amount of \$302.59.
- Three confirmation of earnings statements completed by the appellant's employer for the years 2010, 2011, and 2012.
- A ministry overpayment chart detailing the appellant's assistance and income from November 2010 to October 2012.
- A letter addressed to the appellant dated November 13, 2012 from the ministry. The letter requests that the appellant attend a telephone interview November 20, 2012 to discuss her eligibility for assistance.
- A letter addressed to the appellant dated October 29, 2012 from the ministry. The letter requests that the appellant contact the ministry to schedule a telephone interview to discuss an overpayment on her file.
- A letter addressed to the appellant dated October 4, 2012 from the ministry. The letter requests that the appellant submit her EI claim details, employment information, tax return for 2010, phone number, and employment details for 2012.
- A letter addressed to the appellant dated September 10, 2012 from the ministry. The letter requests that the appellant submit her current utility bills, pay stubs, record of employment for 2009-2012, bank statements, statement for all investments, and income tax notice of assessment for 2008-2011.
- A letter written by the appellant dated January 2, 2013 addressed to whom it may concern. In the letter the appellant writes that she doesn't think that she should be penalized for not understanding what she is allowed to make, she has a disability including an anxiety disorder, she cannot afford to pay back the overpayment, she has had no help from her advocate, she is too sick and distraught to fight, she has no support, she is the sole provider for her family, she has been preoccupied with assisting her daughter, and that she did not intentionally defraud anyone.
- A letter written by the appellant dated December 17, 2012 addressed to whom it may concern. In the letter the appellant writes that she needs an extension on her reconsideration because she is not well and she is trying to get help. She adds that she cannot afford to have the sanction applied to her assistance right now since she is on sick leave from her work.

Prior to the hearing the appellant submitted a new piece of evidence to the appeal panel for consideration. The ministry did not object to the admissibility of this evidence. The document submitted was accepted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the document is in support of evidence that was before the ministry at the time of the reconsideration because it offers details about how her disability may be affected by the ministry reconsideration decision. The evidence is:

- A letter written by the appellant's psychiatrist dated February 8, 2013. The letter reads that the appellant suffers from depression and anxiety and that she has been through some significant losses in her life over the past year. She continues to have ongoing mental health issues that significantly interfere with her day-to-day functioning. The psychiatrist adds that the appellant cannot be employed and that she requires some meaningful financial assistance or else she will undergo further mental deterioration.

In her Notice of Appeal, the appellant stated that she was not aware of how the ministry's \$500 earning exemption worked, she thought the ministry knew about the money she earned from her employer, and that she is only able to repay \$50 per month. She wrote that she is afraid that she will be put out on the streets because of this situation. She added that she has a learning disability and she was preoccupied with caring for her daughter that was in an accident where she was burned in a car fire. Her daughter subsequently committed suicide and the appellant writes that she has had a very difficult time dealing with the loss of her daughter. In the notice of appeal the appellant attached photographs and newspaper articles regarding a car fire leaving a woman burned and reporting the death of a young woman who appears to have taken her own life.

At the hearing the appellant told the panel that when she started working she was under the impression that the ministry would add \$500 per month to whatever she made from her employer. She added that she was under the impression that the ministry was aware of any income she made since they already knew about her widows pension. She explained that she has a grade 8 education and that she also has a learning disability. She said that she has a difficult time understanding the ministry rules and that she needs to have them explained to her in simple language.

The ministry told the panel that the appellant's file was flagged for investigation when the ministry became aware that she was receiving Employment Insurance. The ministry requested several documents from the appellant and she provided most of what was asked for. Since the appellant could not provide all the requested paystubs, the ministry sent a request for her employer to confirm her income. The investigation resulted in the determination that the appellant received an overpayment. The ministry added that the appellant was required to submit any change in her financial situation including declaring any income she earns. The ministry told the panel that each month the appellant was sent a deposit statement for her assistance that included a form that explained the reporting requirements for additional income. The ministry added that according to the appellant's file she had reported income in the past so the ministry was confident that the appellant understood the reporting requirements. The ministry clarified that the sum of \$20 per month is deducted from the assistance cheque each month in order to satisfy the overpayment amount over time.

The panel finds:

- The appellant was employed during the years 2010, 2011, and 2012 at the same time she was receiving assistance from the ministry.
- The appellant cooperated with the ministry's investigation by providing documents as requested.
- The appellant's earned and unearned income during the years of 2010, 2011, and 2012 resulted in an overpayment as defined by the legislation.

The appellant has been through some significant losses in her life over the past year and she has ongoing mental health issues that significantly interfere with her day-to-day functioning.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant had received an overpayment and was therefore required to repay the ministry \$12,836.57.

The relevant legislation is as follows:

Employment and Assistance for Persons with Disabilities Act

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.

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.

Employment and Assistance for Persons with Disabilities Regulation

Section 1

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) tax refunds,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"unearned income" means 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).

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.

Deductions for debts owed

74 For the purposes of section 19 (1) (b) [*liability for and recovery of debts under the Act*] of the Act, the minimum amount that may be deducted is \$10 each calendar month.

The argument of the appellant is that she was not aware that she was required to declare the money she received while she was receiving benefits from the ministry. The appellant argues that she thought that the ministry was aware of all the money she received from her employer and the funds from her tax return from Canada Revenue Agency.

The argument of the ministry is that the appellant did not make the requisite declaration of income that she received as required. The ministry argues that due to the appellant's non-declaration she received an overpayment of \$12,836.57 that she is obligated to repay.

In coming to its decision the panel reviewed all the evidence in the appeal package. The panel reviewed the ministry's calculation that showed the appellant received \$12, 836.57 and was satisfied with the ministry's determination that the money falls within the definition of "earned income" (employment income and tax refund) or "unearned income" (employment insurance) as defined by EAPWDR section 1, and the appellant did not dispute receiving these amounts.

The panel considered the appellant's argument that she was not aware of her obligation to report any income that she receives however the legislation is unambiguous in the requirement for the appellant to report any change in circumstance that may affect the eligibility of the family unit. The panel accepts that the appellant was under stress due to supporting her family and dealing with the loss of a child and the panel understands that the appellant has a difficult time understanding due to her learning disability. However the panel finds that the ministry has no discretion in applying the legislated obligation for the appellant to report her income and therefore the panel finds that the ministry was reasonable in expecting that the appellant would report her income as required.

Section 24 of the EAPWDR requires that a recipient's net income be deducted from the assistance amount and all earned and unearned income is included in the calculation of net income unless specifically exempted. The panel finds that the appellant's net income was not deducted from her assistance in several months over the period from November 2010 to October 2012, as set out in the ministry's Overpayment Chart, in the total amount of \$12,836.57. 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 \$12,836.57 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's decision was a reasonable application of the legislation and therefore confirms the ministry's decision.