

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 6, 2013 which held that the appellant received disability assistance she was not eligible for and must repay pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) because she received non-exempt earned income in the amount of \$142.89 in June 2012 which was not reported and therefore not included as net income when determining the amount of disability assistance in accordance with section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA)

sections 11, 18 and 19

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

sections 1(1) – “earned income”, 24, and Schedule A and Schedule B

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration is that the appellant received employment income in the month of June 2012 which was not reported in July 2012 and therefore not deducted from her August 2012 disability assistance. Documentation before the ministry included:

- An Employee Cheque History Report showing that the appellant received three(3) cheques in June 2012 on the 1st, 12th, and 26th. After EI and CPP deductions, the net amount for one of the cheques was 224.43 and the amount for each of the other two cheques was \$209.23. The total net amount of the three cheques received in June 2012 was \$642.89.
- An Employee Cheque History Report showing the amounts received as "comfort cheques" in 2012, with no cheque indicated for June 2012.
- A ministry Overpayment Chart showing the appellant's actual income for assistance month August 2012 as \$642.89, the declared income as \$0.00, the exemption amount as \$500.00, and an overpayment of \$142.89.

No additional evidence was provided on appeal.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant received an overpayment of disability assistance of \$142.89 due to unreported non-exempt earned income is reasonably supported by the evidence or a reasonable application of the legislation.

The relevant sections of the EAPWDA and EAPWDR are set out below.

EAPWDA

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 change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

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*].

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.

EAPWDR

1(1) In this regulation:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service

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.

29 For the purposes of section 11(1)(a) of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and
 (b) the information required is all of the following, as requested in the monthly report for prescribed under the Forms Regulation:
 (i) change in the family unit's assets;
 (ii) change in income received by the family unit and the source of that income;
 (iii) change in the employment and educational circumstances of recipients in the family unit;
 (iv) change in family unit membership or the marital status of a recipient.

Schedule A

1 Subject to sections 3 and 6 to 9 of Schedule A, the amount of disability assistance referred to in section 24(a) of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit
 of the applicant or recipient, plus
 (c) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Schedule 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,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia).....

Deductions from earned income

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

- (i) income tax,
- (ii) employment insurance,
- (iii) medical insurance,
- (iv) Canada Pension Plan,
- (v) superannuation,
- (vi) company pension plan, and
- (vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent

received from the rental of the rooms.

Exemption — earned income

3 (1) The amount of earned income calculated under subsection (2) is exempt for a family unit if

(a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed

- (i) disability assistance under the Act,
- (ii) income assistance under the *Employment and Assistance Act*,
- (iii) disability assistance or income assistance under a former Act,
- (iv) a youth allowance under the *BC Benefits (Youth Works) Act*, or
- (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv).

(b) Repealed. [B.C. Reg. 369/2002.]

(2) The exempt amount for a family unit that qualifies under subsection (1),

(a) in the case of a family unit that is composed of one recipient who is designated as a person with disabilities, is calculated as the lesser of

- (i) \$500, and
- (ii) the family unit's total earned income in the calendar month of calculation, or

(b) in the case of a family unit that is composed of two recipients, both of whom are designated as persons with disabilities, is calculated as the lesser of

- (i) \$750, and
- (ii) the family unit's total earned income in the calendar month of calculation.

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a

person in the operation of a small business, under a self-employment program in which the person is participating, for the following.....

The appellant's position, as stated in her Request for Reconsideration, is that she typically receives two (2) employment cheques per month and was unaware that she would receive three (3) cheques in June 2012. She states that due to her disability she is unable to increase her earnings to repay the \$142.89 and that her ability to buy groceries will be compromised which will result in further complications as she has diabetes.

The ministry's position is that the appellant received net earned income of \$642.89 in June 2012 which exceeded the allowable exemption of \$500.00 under the legislation. As the earned income was not reported in July 2012, the appellant received an overpayment of disability assistance in August 2012 in the amount of \$142.89 which she is liable to repay.

There is no dispute that the appellant received three (3) cheques in June 2012 as payment for her employment or that the appellant did not report the employment earnings in July 2012 as required by section 29 of the EAPWDR.

The panel finds that the employment earnings received in June 2012 is earned income as defined in section 1 of the EAPWDR. Deductions and exemptions for earned income are set out in sections 1 through 4 of Schedule B of the EAPWDR. Applicable to the appellant's circumstances is the deduction of EI and CPP deducted at source under section 2 of Schedule B which the ministry applied and which results in total net earned income received in June 2012 of 642.89. Also applicable to the appellant's circumstances, and applied by the ministry, is the \$500.00 earned income exemption set out in section 3(2) of Schedule B for recipients who are designated as a person with disabilities. 642.89. The panel finds that there are no other applicable deductions or exemptions set out in the legislation. Accordingly, the panel finds that the ministry reasonably determined that the appellant received earned income in the amount of \$142.89 in June 2012 which should have been included in the calculation of her net income and disability assistance for assistance month August 2012 as required by section 24 of the EAPWDR.

As the \$142.89 of net income was not deducted from the appellant's disability assistance for August 2012, the panel finds that the ministry reasonably determined that the appellant received disability assistance for she was not eligible and which she must repay pursuant to sections 18 and 19 of the EAPWDA.

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