

APPEAL #

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated January 31, 2013, in which the Ministry determined that the appellant received an overpayment of her disability assistance in the amount of \$608.20 for the months of January 2011 and February 2011 due to undeclared employment income pursuant to Section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), for which she is responsible to repay the overpayment to the Ministry.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 18.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1 and 24 and Schedule B, sections 1, 2 and 3.

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with s. 22(3)(b) of the *Employment and Assistance Act*.

The appellant receives disability assistance as a single parent with two dependent children. Her file was opened with the Ministry prior to September 1991. The evidence before the Ministry at the reconsideration consisted of:

- Overpayment notification to the appellant from the Ministry dated December 18, 2012;
- Ministry Overpayment chart for the appellant's assistance months December 2010 through December 2012, printed December 21, 2012 (5 pages);
- Copy of the payroll spreadsheet from the appellant's employer for the period from October 2010 through October 18, 2012 (2 pages);
- Copy of a letter from the appellant's landlord dated October 4, 2012 (1 page);
- Copy of a letter from the appellant's former spouse dated September 17, 2012 (1 page); and
- Request for Reconsideration dated January 17, 2013 with attached 2-page written submission of the appellant.

The appellant filed a one-page written submission with her notice of appeal dated February 15, 2013. The Ministry filed a one-page written submission on the appeal dated March 19 2013.

On December 18, 2012, the Ministry determined that the appellant had been issued \$2,931.55 in disability assistance for which she was not eligible, due to undeclared rental income and undeclared employment income, and informed the appellant that she was required to repay this amount. The panel notes that the Ministry's reconsideration decision determined that the appellant did not receive an overpayment due to undeclared rental income (amounting to \$2,323.35) and, accordingly, this issue is not before this panel on appeal.

The appellant is employed at a fast-food restaurant and she worked at this job during the months of January and February 2011. The Ministry determined that, based on the appellant's pay records, she had received \$775.02 in employment income in January 2011 and \$833.18 in employment income in February 2011, which she did not declare, as set out in the Ministry's overpayment chart. The Ministry applied the earned income exemption of \$500 as set out in Schedule B, section 7 of the EAPWDR (which applied prior to October 2012) and determined that the appellant had received assistance overpayments of \$275.02 (for January 2011) and \$333.18 (for February 2011), totaling \$608.20, due to undeclared income.

In her written submissions on appeal, the appellant stated that her job typically has 2 pay periods per month (based on 2 work weeks), and that she is paid several days after she earns her pay. The appellant says that for the months of January and February 2011, she had 3 pay periods in each month, but that in December 2010 and March 2011, only one pay period. The appellant compared the income recorded on the Ministry's overpayment chart to what she says she earned each month as follows:

- \$469.84 in December 2010 (as opposed to \$155.02 on the Ministry's overpayment chart);
- \$460.20 in January 2011 (as opposed to \$755.02 on the Ministry's overpayment chart);
- \$433.78 in February 2011 (as opposed to \$833.18 on the Ministry's overpayment chart); and
- \$429.83 in March 2011 (as opposed to \$30.43 on the Ministry's overpayment chart).

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's January 31, 2013 reconsideration decision, in which the Ministry determined that the appellant received an overpayment of her disability assistance in the amount of \$608.20 for the months of January 2011 and February 2011 due to undeclared employment income pursuant to Section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Pursuant to Section 1 of the EAPWDR, "earned income" means "any money or value received in exchange for work or the provision of a service." The appellant does not dispute that she is employed and receives pay in exchange for her work.

Section 24 of the EAPWDR sets out the amount of disability assistance to be provided in a calendar month and states that the recipient's net income (calculated under Schedule B of the EAPWDR) must be deducted from her disability assistance (as calculated under Schedule A of the EAPWDR).

Schedule B of the EAPWDR states in section 1(c) that, when calculating the net income for the purposes of section 24(b), "all earned income must be included, except the deductions permitted under section 2 and any earned income exemptions under sections 3 and 4." Section 4 of Schedule B of the EAPWDR provides for a small business exemption, and there was no evidence before the panel that this section applies to the appellant. The applicable parts of sections 2 and 3 of Schedule B of the EAPWDR provide the following:

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;

....

Exemption – earned income

3(1) Subject to subsection (2), the amount of earned income calculated under subsection (3) is exempt for a family unit.

...

(3) The exempt amount for a family unit that qualifies under this section is to be calculated as follows:

- (a) in the case of a family unit that includes only one recipient who is designated as a person with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$500, and
 - (ii) the family unit's total earned income in the calendar month of calculation;

....

Section 18 of the EAPWDA addresses overpayments and states:

- (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].

In her written submissions on appeal, the appellant says that, based on the amount of income she *earned* in the months of December 2010 (\$469.84), January 2011 (\$460.20), February 2011 (\$433.78) and March 2011 (\$429.83) (as set out previously), her earned income for each month was within the allowed monthly amount of \$500 and therefore she has not been overpaid by the Ministry in any of these months. The appellant's submission focuses on the months in which she earned the income – as opposed to the months in which she actually received the income.

In its written submissions, the Ministry acknowledged the appellant's position regarding the exempt amount of \$500 under section 3(3)(ii) of the EAPWDR. However, the Ministry reiterated that the term "earned income" under section 1 of the EAPWDR includes "any money or value *received* for work or the provision of a service" (as emphasized by the Ministry). In its submission, the Ministry wrote that a recipient's income is calculated "based on the month in which it is received, regardless of the month in which the income was earned" which is consistent with section 29 of the EAPWDR, "which states that for the purposes of reporting obligations under section 11(1)(a) of the [EAPWDA], changes in income received by a family unit must be reported by the 5th day of each calendar month." The Ministry stands by its determination that the appellant received an overpayment.

The panel finds that the appellant *received* earned income, as defined in s. 1 of the EAPWDR, in the amount of \$775.02 January 2011 and, similarly, she *received* \$833.18 in earned income in February 2011. The panel finds that, as per section 3(3)(a)(i) of Schedule B of the EAPWDR, the appellant was entitled to the \$500 earned income exemption for each of January and February 2011 (as provided by the applicable legislation at the time). Accordingly, the panel finds that the appellant received earned income, over and above the \$500 exemption, in the amount of \$275.02 for the month of January 2011 and in the amount of \$333.18 for the month of February 2011. The Ministry's overpayment calculation chart indicates that the appellant's earned income for January and February 2011 was not declared and the panel notes that the appellant does not dispute this.

Therefore the panel finds that the appellant received an overpayment of her disability assistance for the months of January and February 2011 due to undeclared earned income, and the legislation provides that the appellant is responsible to repay this overpayment. As provided by s. 18(2) of the EAPWDA, this panel cannot address the amount of overpayment which the appellant is liable to repay. Accordingly, the panel finds that the Ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the Ministry's decision.