

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (Ministry) reconsideration decision dated January 3, 2013 which found that the appellant was ineligible for disability assistance pursuant to section 10 of the Employment and Assistance for Persons with Disabilities Regulation as he had assets in excess of \$3,000 from March through July 2012 and assets in excess of \$5,000 in October and November 2012. The reconsideration decision also states that as the appellant was found to be ineligible for \$5,724.94, he is required to repay it, pursuant to section 18 of the Employment and Assistance for Persons with Disabilities Act.

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 10

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration dated December 16, 2012 in which the appellant states that when he signed the income assistance application he was in the hospital under a psychosis and was not informed of an asset limit. The appellant also states that if he had known of the asset limit, he would have given \$3,000 to his parents for the 2010 year that he spent with them in a city which would have resulted in him being under the asset limit
- 2) Letter from the Ministry to the appellant dated November 6, 2012 requesting a variety of documentation including rent receipt, utility bills, bank profile, income tax information, identification, record of employment, and employment insurance statement of benefit
- 3) Confirmation of Earnings dated November 7, 2012 confirming the appellant's income from May 24 through July 9, 2011
- 4) Record of Employment dated September 27, 2012
- 5) Confirmation of Earnings dated November 15, 2012 showing the appellant's net earnings from January 13 to November 2, 2012
- 6) Confirmation of Earnings dated November 15, 2012 showing the appellant's earnings from August 27 through December 30, 2012
- 7) Printout of the appellant's earnings from September 9, 2011 through November 16, 2012
- 8) Bank Profile dated November 14, 2012
- 9) Printout of the appellant's chequing/savings account from November 25, 2011 to October 30, 2012 and savings account from May 2, 2012 through September 30, 2012 (20 pages)
- 10) Ministry fax sheet dated November 22, 2012 requesting the appellant's bank statements
- 11) Printout of the appellant's savings account for the period February 1 to May 10, 2012 and September 30 to November 22, 2012 (13 pages)
- 12) Letter from the Ministry to the appellant dated November 27, 2012 regarding the appellant's file review and advising the appellant that he is no longer eligible for assistance as his income and assets are in excess of the limit for persons with disabilities (PWD)
- 13) Ministry's overpayment chart (4 pages)
- 14) Appellant's application for disability assistance dated March 8, 2011

In his Notice of Appeal, the appellant states that the Ministry's decision doesn't take into account his mental health condition at the time, which significantly impacted his decision to make financial decisions, particularly as it pertains to asset limits and his large family debt. The appellant also states that the Ministry's decision does not take into account the long-term negative impact the debt will

have on his mental health recovery, financial independence and future education goals.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

The Ministry relied on its reconsideration decision, stating that the appellant was found ineligible for disability assistance and assessment an overpayment as he had assets in excess of the legislated limit. The Ministry representative confirmed that from March through July 2012 the appellant had assets in excess of \$3,000 for each of those months and was assessed an overpayment amount of \$906.42 for each of these five months.

The Ministry representative stated that for August and September 2012 the appellant did not have assets in excess of the legislated amount, so no overpayment was assessed. The Ministry stated that in October 2012 the asset limit increased to \$5,000 but the Ministry mistakenly assessed the appellant's assets of \$4,815.36 to be in excess of the legislated amount, as they calculated the overpayment based on the prior legislated amount of \$3,000. The Ministry representative stated that as the asset limit had increased to \$5,000 as of October 2012 the appellant did not have assets in excess of the legislated amount in October 2012 and that part of the Ministry's calculation was not correct and that the overpayment amount needed to be reduced by \$906.42.

The Ministry found that as the appellant had assets of \$5,217.65 in November 2012, he had assets above the legislated amount and was assessed an overpayment of \$286.42.

After deducting the \$906.42 overpayment that was incorrectly assessed for October 2012 the Ministry representative stated that the appellant's overpayment amount is \$4,818.52 rather than the amount of \$5,724.94 stated in the reconsideration decision.

The panel makes the following findings of fact:

- 1) The appellant is a sole recipient of disability assistance;
- 2) From March through July 2012 the appellant had assets of \$4,431.85, \$4,419.34, \$5,541.26, \$4,425.50 and \$3,623.41 respectively;
- 3) In August and September 2012 the appellant did not have any assets; and
- 4) In October and November 2012 the appellant had assets of \$4,815.36 and \$5,217.65 respectively.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry reasonably concluded that the appellant is not eligible for disability assistance under section 10(2) of the EAPWDR on the basis that he had assets in excess of the allowable limit, which was \$3,000 from March through September 2012 and \$5,000 as of October 2012.

The panel notes that although the reconsideration decision states that the appellant was found to have income and assets in excess of the legislated amount, the appellant only requested a reconsideration of the overpayment attributed to assets in excess of the legislated amount, so this decision will only deal with that issue.

Section 18 of the EAPWDA states 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 relevant sections of the EAPWDR are as follows:

Section 1 - Definitions

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

Section 10 (2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$5 000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5 000.

The panel notes that Section 10(2)(a) is effective as of October 2012 whereas prior to October 1, 2012 the limit was \$3,000.

The appellant's position, as set out in his request for reconsideration and notice of appeal, is that when he signed the disability assistance application he was in the hospital under a psychosis and was not informed of an asset limit. His position is that if he had known of the asset limit he would have given \$3,000 to his parents so he would have been under the asset limit or made the overpayment less. The appellant's position is that the reconsideration decision does not take into account his mental health condition at the time or the significant impact that the overpayment will have on his mental health recovery, financial independence or education goals.

The Ministry's position is that the appellant's bank statements demonstrate that the appellant had assets in excess of \$3,000 for the months of March through July 2012 and assets in excess of \$5,000 for the month of November 2012 making him ineligible for disability assistance pursuant to Section 10(2)(a) of the EAPWDR. The Ministry's position is that as the appellant has an overpayment of \$4,818.52 he is required to repay that amount pursuant to Section 18 of the EAPWDA.

The Ministry's position is that when the appellant completed the income assistance application he was made aware of his reporting obligations and that the reporting obligations are ongoing. Disability assistance recipients have to complete a short report each month advising of any changes to his or her status and reporting any income that is earned. The Ministry's position is that the appellant had reported changes to his phone number and had reported earning income in the past which demonstrates that he was aware of his reporting obligations, but that he did not report his income and assets as required despite having many chances to do so. The Ministry's position is that the appellant had assets in excess of the legislated limits and the Ministry's decision should stand.

The panel finds that the appellant had cash assets as defined in section 1 of the EAPWDR in that he had money standing to his credit in a savings institution. The panel also finds that the appellant's cash assets were in excess of the \$3,000 exemption set out in section 10(2) of the EAPWDR from March through July 2012 as his bank balances were \$4,431.85, \$4,419.34, \$5,541.26, \$4,425.50 and \$3,623.41 respectively.

Although the reconsideration decision included an overpayment for October 2012, at appeal the ministry representative confirmed that the assessed overpayment for October 2012 was an error, so the panel finds that there was no overpayment for October 2012.

The panel also finds that the appellant had cash assets in excess of the \$5,000 exemption set out in section 10(2) of the EAPWDR in November 2012 as his bank balance was \$5,217.65.

Although the appellant states that he was not informed of the asset limit and although his application does indicate that he was currently in hospital at the time he completed the application, the appellant failed to disclose any assets at the time of his application and in the section to provide his bank account number and stated that his bank account was closed. The appellant also signed the application form declaring that the information provided was correct.

Although the panel appreciates that the appellant may have been struggling with mental health issues and been in the hospital at the time of his disability assistance application, it is clear that he did not

disclose his bank account information as required on the application. The panel also finds that although section 10(1) of the EAPWDR sets out a variety of assets that are exempt for the purposes of section 10(2), the appellant did not assert that any of the listed exemptions applied to his situation and the panel does not find any evidence to indicate that any of the listed exemptions would apply to the appellant's situation.

Although the requirement to repay the overpayment may be difficult for the appellant, the panel finds that as the appellant had assets in excess of the legislated amount set out in section 10(2) of the EAPWDR, the Ministry's decision that the appellant was ineligible for disability assistance was reasonable based on the evidence and is a reasonable application of the legislation in the appellant's circumstances.

As the panel finds that there was an overpayment for the months of March through July 2012 and November 2012, the ministry's decision that an overpayment had occurred during those months was reasonable based on the evidence and is a reasonable application of the legislation in the appellant's circumstances.

The panel also finds that, pursuant to section 18 of the EAPWDA, the Ministry's decision that the appellant must repay the overpayment was reasonable and is a reasonable application of the legislation in the appellant's circumstances.

While the ministry representative stated that the amount of the overpayment would now be reduced after the error with respect to the October 2012 overpayment assessment would be corrected, the amount of the overpayment is outside the panel's jurisdiction, pursuant to section 18(2) of the EAPWDA.

In conclusion, the panel confirms the Ministry's decision.