

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated January 2, 2013 which found that the appellant is required to repay assistance which the appellant received and for which she was not eligible, pursuant to Section 18 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA), as a result of having undeclared employment income in excess of the disability assistance rate, under Section 24 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, 24 and Schedule B, Sections 1, 2, 3 and 9

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) Weekly pay records for the appellant for most of the period June 3, 2011 through July 26, 2012;
- 2) Overpayment Chart for the period August 2011 through September 2012 with an overpayment amount of \$804.07; and,
- 3) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant stated that she disagrees with the ministry's reconsideration decision because the overpayment was made by the ministry, not by her. The appellant stated that going after someone on assistance with a history of mental illness seems low. The appellant stated that she was told not to include charitable donations and stock purchases in her income.

In her Request for Reconsideration, the appellant stated that it took 18 months for the ministry to determine that there was an overpayment. The appellant pointed out that currently the earning exemption is \$800 per month and asked that the grandfather clause be considered. The appellant stated that she should not be punished for bad calculation skills. The appellant stated that in June 2011 she was dealing with some mental health issues and recovery from depression and delayed grief over the loss of both her mother and her grandmother.

At the hearing, the appellant stated that she did not ask for the additional funds that were paid to her by the ministry. The appellant stated that she always submitted her pay stubs but sometimes she received 5 pay stubs in a month instead of 4. The appellant stated that she had been told a number of times by the ministry that she did not have to include the amount on her weekly pay stub for her charitable donation to cancer research (e.g. \$1.25) and for her company stock (e.g. \$10.00) as income. The appellant stated that she should not be penalized for the ministry's misinformation. The appellant stated that it took the ministry almost 2 years to find out that these amounts should have been included in her income and she wondered why the ministry would review a file like hers. The appellant stated that given the ministry's attention to every penny on each pay cheque, it seems like the ministry would rather that she not work, that it seems like she is being penalized for working. The appellant stated that the ministry could have contacted her to let her know that a pay stub was missing and she would have provided it. The appellant stated that she does not make very much money and she is not living "in the lap of luxury." The appellant stated that those on disability are now allowed to earn up to \$800 per month and she never earned more than \$800 in a month, so this exemption should be applied to the time in question. The appellant stated that in 2011 she was having health issues and she was hospitalized for two months for depression. The appellant stated that it took about a year to recover from these issues and that she was not fully functioning in June 2011. The appellant stated that this matter of an overpayment has been very stressful for her. The appellant stated that she receives money from the ministry every month and it does not make sense for her to get funds from the ministry and then to have to pay it back to the ministry.

The ministry relied on its reconsideration decision which included evidence that the appellant is currently in receipt of disability assistance as a sole recipient. Over the period of August 2011 through September 2012, the appellant received some paychecks that were not declared to the ministry. As a result, not all of her net income was deducted from her disability assistance, as required. The specific undeclared amounts are detailed in the Overpayment Chart. Additionally, some of the appellant's income was reported inaccurately since amounts deducted from her paycheque for charitable donations and stock purchases were not included as part of her declared income. The total amount of disability assistance issued to the appellant for which she was not eligible is \$804.07, as set out in the Overpayment Chart. The earning exemption that applied at the time that the appellant earned the income was \$500 per month and this was not increased to \$800 until October 2012.

## 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 she was not eligible, pursuant to Section 18 of the EAPWDA, as a result of having undeclared employment 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 24 of the EAPWDR provides:

### **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.

Section 1 of the EAPWDR provides in part:

### **Definitions**

"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;

Schedule B of the EAPWDR, Section 1 provides in part:

### **Net Income Calculation (section 24 (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, . . .

- (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, . . .

Schedule B of the EAPWDR, Sections 2 and 3 provide:

### **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.

Schedule B of the EAPWDR, Section 9 provides:

**Application of deductions and exemptions**

- 9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:
- (a) the date the income is payable;
  - (b) the period for which the income is payable;
  - (c) the date the income is reported to the minister;
  - (d) the date the minister receives notice of the income.
- (2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

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 the appellant has been in receipt of employment income over the period August 2011 through September 2012, which is "earned income" according to the definition in Section 1 of the EAPWDR. The ministry argues that Section 24 of the EAPWDR explains that a recipient's net income must be deducted from their assistance and all earned income is included in the calculation of net income except for that listed in the deduction and exemption categories under Schedule B of the EAPWDR. The ministry argues that the deductions from earned income are set out in Section 2 of Schedule B, and this list does not include charitable donations or stock purchases. The ministry argues that the exemption from earned income set out in Section 3 of Schedule B was \$500 at the time that the appellant earned the income, prior to October 2012.

The ministry argues that the \$500 exemption has been applied and there is no legislative "grandfather clause" and the ministry does not have the authority to apply the \$800 per month exemption retroactively. The ministry argues that the exact amounts 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 \$804.07 of assistance received by her.

The appellant does not dispute that she received the employment income as detailed by the ministry but argues that she did not ask for the additional funds that were paid to her by the ministry. The appellant argues that she had been told a number of times by the ministry that she did not have to include the amount on her weekly pay stub for her charitable donation to cancer research and for her company stock as income, and she should not be penalized for the ministry's misinformation. The appellant argues that it took the ministry almost 2 years to find out that these amounts should have been included in her income and it is not fair that they are pursuing these amounts now. The appellant argues that the ministry could have contacted her to let her know that a pay stub was missing and she would have provided it. The appellant argues that in June 2011 she was having health issues and that she was not fully functioning. The appellant argues that those on disability are now allowed to earn up to \$800 per month and she never earned more than \$800, so this exemption should be applied to the time in question.

The panel finds that it is not disputed that the appellant was in receipt of employment income as detailed in the Overpayment Chart provided by the ministry, however the appellant argues that she was given misinformation from the ministry and that is the reason that she did not report amounts given by her each week as charitable donations and to purchase company stocks in her income, and that she may have inadvertently missed some pay stubs in the month but the ministry could have contacted her at the time. The panel finds that the ministry reasonably determined that the only deductions permitted from earned income, as set out in Section 2 of Schedule B of the EAPWDR, are amounts deducted at source for income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan, and union dues, and that charitable donations and stock purchases are not included as listed deductions. It is unfortunate that this information was not communicated clearly and accurately to the appellant at a time that she stated she was going through difficult personal issues, including a period of depression and grief. 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 her income, that mistakes were made by both the ministry and the appellant, but the legislation must be consistently applied nevertheless. Section 1 of Schedule B of the EAPWDR stipulates that all earned income must be included in calculating the net income of a family unit for the purposes of Section 24(b) except for earned income exempted under section 3. Section 3 provides an earned income exemption of \$500 per month and this section was in effect up to October 1, 2012. Although the appellant argues that if the new \$800 earned income exemption were applied retroactively she would not have an overpayment as she did not earn more than \$800 per month, the panel finds that the ministry reasonably applied the legislative provision in effect during the calendar months in which the appellant received the income, pursuant to Section 9 of Schedule B of the EAPWDR, and an exemption of \$500 per month was applied.

Section 24 of the EAPWDR requires that a recipient's net income be deducted from the assistance amount and all earned income is included in the calculation of net income. The panel finds that some of the appellant's net income was not deducted from her assistance in several months over the period from August 2011 through September 2012, as set out in the ministry's Overpayment Chart, in the total amount of \$804.07. 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 \$804.07 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 decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.