

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 5, 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 student grant income in excess of the disability assistance rate, under Section 9 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR); and,
- undeclared family maintenance income that was not deducted from her disability assistance, pursuant to Section 24 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9 and 24 and Schedule B, Section 8

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) Undated letter from the ministry to the appellant stating in part that she may have been paid assistance in the amount of \$1,242.08 between October 1, 2011 and November 30, 2011 for which she was not eligible, as set out in the enclosed Overpayment Chart;
- 2) Undated letter from the ministry to the appellant stating in part that on April 18, 2012 the appellant was provided notification that an overpayment occurred on her file and the ministry reviewed this with her and considered all the information that the appellant submitted. Following the review, it was determined that the appellant received disability assistance for which she was ineligible, or an overpayment;
- 3) Bank Statements for two accounts for the periods July 30, 2010 through August 31, 2011 and January 5, 2010 through April 26, 2010;
- 4) Transaction History for a bank account for the periods May 4, 2011 through September 6, 2011 and September 6, 2011 through November 9, 2011;
- 5) Copy of a cheque dated August 1, 2011 payable to the appellant in the sum of \$977.00, copy of a cheque dated September 1, 2011 payable to the appellant for the sum of \$977.00 accompanied by a handwritten note that the bank cannot accept the cheque for deposit due to an error on the signature line, and copy of a cheque dated October 1, 2011 payable to the appellant in the sum of \$977.00;
- 6) Revised Notification of Assessment dated August 24, 2011 indicating that the appellant is eligible to receive \$4,600, that her total education costs are \$12,218, that the minimum expected contribution is \$5,338, funding through Student Aid BC of \$4,600 and an unmet need of \$2,280;
- 7) Verification of Enrolment dated September 6, 2011 and setting out that the appellant is registered in the semester from September 6, 2011 to December 18, 2011 with total fees paid for the semester of \$1,866.85;
- 8) Fax dated September 7, 2011 from a social worker to the ministry forwarding various documents on behalf of the appellant;
- 9) Letter dated September 8, 2011 from the National Student Loans Services Centre to the appellant stating in part that the funding approved included grants from the Canada Student Grant Program which does not have to be repaid and consisted of \$391.95 sent to the appellant and \$1,408.05 sent to her school, for a total of \$1,800;
- 10) Letter dated September 15, 2011 from the educational institution to the appellant stating in part that the funding approved by Student Aid BC for the Fall semester of 2011 is \$4,600 and the funding was provided to cover educational expenses including tuition of \$1,746, books and supplies of \$805, and transportation and/or miscellaneous allowance of \$391 for a total of \$2,942;
- 11) Letter dated September 22, 2011 from the National Student Loans Services Centre to the appellant stating in part that the funding approved included grants from the Canada Student Grant Program which does not have to be repaid and consisted of \$2,800 sent to the appellant;
- 12) Copy of a cheque dated December 8, 2011 to an educational institution for \$5,300 as a tuition fee deposit;
- 13) Receipt dated January 10, 2012 from an educational institution for the appellant's tuition fee;
- 14) Letter from educational institution 'To Whom It May Concern' dated February 7, 2012 stating in part that the appellant is currently enrolled in their 19 month full-time dental hygiene program which commenced January 23, 2012;
- 15) Unsigned Overpayment Notification dated April 18, 2012 and Overpayment Chart;
- 16) Fax dated December 14, 2012 from an advocate to the ministry attaching the Request for Reconsideration and stating in part that the appellant was out of the country until October and did not receive the EIA100 (reconsideration documents) until November 30, 2012 (note added: December 14, 2012);
- 17) Request for Reconsideration dated December 14, 2012; and,
- 18) Employment and Assistance Appeal Tribunal decision dated February 12, 2013 which rescinded the ministry's decision that there is no right to reconsideration and found that the appellant is entitled to have her request for reconsideration proceed to reconsideration.

The appellant consented to the attendance of a ministry observer at the hearing. The appellant stated that the advocate was not able to attend the hearing and that she was prepared to represent herself and to proceed

with the hearing, with the accommodation of short recesses as needed.

Prior to the hearing, the appellant's advocate provided additional documents, namely:

- 1) Written submission on behalf of the appellant;
- 2) Copies of the front of cheques payable to the appellant in the sum of \$997 dated July 1, August 1, September 1, October 1, November 1 and December 1 of 2011 described as monthly family maintenance payments; and,
- 3) Copy of the front of a cheque dated October 26, 2011 payable to the appellant from the ministry for assistance in the amount of \$225.08.

At the hearing, the appellant provided additional documents, namely:

- 1) Written summary of her evidence, dated May 17, 2013; and,
- 2) Letter dated May 2013 from the appellant's friend enclosing 3 receipts for transportation costs.

The ministry did not object to admission of the written submissions, the copies of cheques or the letter and receipts.

At the hearing, the ministry provided print-outs of the ministry cheque history pages for the benefit months of September, October and November 2011. The appellant objected to admission of these documents as she stated that the corresponding reporting stubs were not available to show the income that she reported. The panel reviewed the documents and admitted the appellant's written summary as providing further details of the sequence of events leading to the appellant's Request for Reconsideration, the letter and receipts as evidence of the appellant's transportation costs, and the cheque history pages as evidence of assistance received by the appellant, and all of these documents being in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In the Notice of Appeal, the appellant wrote that she reported her child support and she was deducted the child support in August and, therefore, the ministry is attempting to 'ding' her a second time in September 2012 (sic.) In her Request for Reconsideration, the appellant wrote that she paid \$5,300 to the educational institution for her tuition and she attached the cheque dated December 8, 2011. The appellant wrote that the amount of \$1,658 went for tuition and should be exempt under Section 8 of Schedule B of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). She attached a copy of the letter dated February 7, 2012 from the educational institution confirming the appellant's enrolment in a program which commenced January 23, 2012.

At the hearing, the appellant stated that she believes that the overpayment was created in error by the ministry due to misunderstandings. The appellant stated the following chronology:

- on August 29, 2011 she received \$1,800 for BC student loans grant and she received \$225.08 for social assistance in August 2011 since her child support monies were deducted from her cheque.
- on September 22, 2011 she received \$2,800 for BC student loans grant and did not receive child support monies for the month of September 2011. The appellant stated that the bank refused to accept the child support cheque for September 2011 since the signature on the cheque did not match with their records. The appellant stated that a letter was sent directly from the bank to confirm that the September cheque was not accepted. The appellant stated that she advised the ministry that she did not receive child support in September 2011. The appellant received \$1,222 in social assistance payments in September 2011 and, on September 15, 2011, she paid \$2,942 in tuition fees for the Fall semester at the educational institution.
- in October 2011, she received \$271.20 in social assistance payments as the \$997 child support monies were deducted.
- in November 2011 she received \$225.08 in social assistance as \$997 child support monies were deducted from the cheque. The appellant stated that she received \$4,600 for BC student loans grant on November 25, 2011. On November 25, 2011 she received \$1,000 grant monies from the educational institution.
- on January 10, 2012, she paid a total of \$5,300 to obtain admission for January 2012 at another educational institution.

The appellant stated that she has incurred additional commuting, traveling, and other education-related costs such as photocopying and child care/ child activity-related expenses during that period for which she does not have receipts. The appellant stated that she was not expecting to have to keep all the receipts, but her son's day care provider has driven her various places and she provided the receipts for gas purchased in November 2011 to show these costs, which total \$70. The appellant stated that she was not left with any extra monies.

The appellant stated that she has been cooperative and has provided copies of all child support cheques to the ministry. The appellant explained that she has a restraining order against her previous spouse and all the cheques come to her through her lawyer. The appellant stated that the transaction history for her bank account showing a deposit of \$997 on August 3, 2011 does not prove that she got a child support payment for August 2011 as she may have deposited the July payment at that time.

The appellant stated that since her return to Canada in October 2012 when she found out about the overpayment, she has been contacting the ministry and getting conflicting information. At first the ministry said there was an error in the calculation of the overpayment, and then they said that it was accurate. The appellant stated that although the ministry originally stated that a sanction would be applied to her file for inaccurate or incomplete reporting, she was later told that it would not apply because she had been properly reporting. The appellant stated that dealing with this issue has been a source of discomfort, stress, and anxiety for her at a time when she needs support and help to heal. The appellant stated that she had to go on assistance because she was homeless and a victim of domestic violence and abuse. There was a serious incident of violence from which she and her son have suffered severe emotional and post-traumatic symptoms. The appellant stated that she also has pain from the physical injuries inflicted.

The ministry relied on its reconsideration decision and confirmed that the appellant is in receipt of disability assistance as a single parent with one dependent child, at a rate of \$1,242.08 per month. At the hearing, the ministry stated that it is important to consider the ministry 3-month reporting cycle that applies with respect to the timing, whereby income received in one month must be declared by the 5th day of the following month and is deducted from the assistance payment made for the following month. The ministry also clarified that the cheque for assistance is issued a few days in advance of the month, at the end of the preceding month. The ministry stated that no deductions were made for day care costs from the student grant monies received by the appellant since no information was provided by the appellant in support of a request for this deduction. The ministry stated that even if the deductions were made from the student grant income for the additional transportation costs submitted by the appellant, the net income would still exceed the assistance payable. The ministry stated that even if the ministry has made an error in not deducting amounts declared as income, if it is discovered that the appellant received assistance for which she was not eligible, the ministry is obliged to pursue the overpayment. The ministry clarified that, as a Person With Disabilities (PWD), the appellant is not required to submit a monthly report, but must report any changes in her monthly income or circumstances.

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 student grant income in excess of the disability assistance rate, under Section 9 of the EAPWDR, and undeclared family maintenance income that was not deducted from her disability assistance pursuant to Section 24 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 9 of the EAPWDR provides:

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.

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

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- ...
- (q) education or training allowances, grants, loans, bursaries or scholarships . . .

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, . . .
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

Schedule B of the EAPWDR, Section 8 provides:

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit, for a semester.

"education costs" means the amount required by a student for tuition, books, compulsory student fees

and reasonable transportation costs for a semester;

- (2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of
- (a) a training allowance,
 - (b) student financial assistance, and
 - (c) student grants, bursaries, scholarships or disbursements from a registered education savings plan received for the semester.

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].

Student grant income

The ministry's position is that the appellant was in receipt of student grants totaling \$4,600 in September 2011, which is "unearned income" according to the definition in Section 1 of the EAPWDR. Although \$1,408.05 of this amount was sent directly to the educational institution, the ministry argued that Section 1(b) of Schedule B of the EAPWDR provides that any amount garnished, attached, seized, deducted or set off from income is considered to be income. The ministry argued that Section 24 of the EAPWDR explains that a recipient's net income must be deducted from their assistance and all unearned 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 argued that where net income exceeds the assistance rate, Section 9 of the EAPWDA stipulates that the family unit is not eligible for assistance.

The ministry argued that the only exemption that applies to student funding is in Schedule B, Section 8 which allows the ministry to exempt up to the sum of the education costs, which includes tuition, books, compulsory student fees and reasonable transportation costs for a semester. The ministry argued that according to the Verification of Enrolment from the educational institution dated September 6, 2011, the appellant's total costs for tuition, student fees and transportation were \$1,866.85 plus \$805 for books, for a total of \$2,671.85 in applicable deductions. The ministry argued at the hearing that if the additional \$70 in transportation costs were also exempted, the appellant's total net income would remain in excess of the appellant's disability assistance rate. The ministry argued that while the appellant paid \$5,300 for a program that commenced in January 2012, Section 8 of Schedule B states that the exemptions only apply to the semester in which the funding is received.

The ministry argued that the appellant's net income for September 2011 is the remaining amount of \$1,928.15 in unearned income, which is the total student grant income less the legislated education costs. The ministry argued that the appellant's September 2011 net income of \$1,928.15 exceeded her assistance rate of \$1,242.08 and, in accordance with Section 9 of the EAPWDR, the appellant was not eligible for assistance in November 2011. The ministry argued 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. As the income received in September was to be reported by October 5 and would apply to the following month's assistance, being November 2011, the appellant was not eligible for the \$245.08 of assistance received by her for November 2011 benefits.

The appellant clarified that while her advocate stated in the written submission that she does not dispute the overpayment amount of \$245.08 for November 2011, this was only because the appellant did not have receipts available at the time to confirm her additional education costs. The appellant argued that she has

incurred additional commuting, traveling, and other education-related costs such as photocopying and child care/ child activity-related expenses during that period for which she does not have receipts. The appellant argued that her son's day care provider has driven her various places and she provided the receipts for gas purchased in November 2011 that were available to show these costs, which total \$70. The appellant argued that she was not left with any extra monies after paying for her education-related costs. In her Request for Reconsideration, the appellant argued that she paid \$5,300 in December 2011 to the educational institution for her tuition.

The panel finds that it is not disputed that the appellant was in receipt of student grants totaling \$4,600 for the Fall semester 2011, as detailed by the letter dated September 15, 2011 from the educational institution, including \$2,800 payable for students with permanent disabilities and \$1,800 for students from low income families and with dependents. The panel finds that the definition of "unearned income" as set out in Section 1(q) of the EAPWDR specifically includes education allowances, grants, loans, bursaries, and scholarships and that Section 1 of Schedule B of the EAPWDR stipulates that all unearned income must be included in calculating the net income of a family unit for the purposes of Section 24(b) except for income exempted under section 8. Section 8 allows the ministry to exempt up to the sum of the education costs, which is defined as meaning the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester. Although the appellant argued in her Request for Reconsideration that the sum of \$5,300 was paid in December 2011 for tuition, she acknowledged that this tuition was paid for a semester starting in January 2012. The panel finds that Section 8 of Schedule B of the EAPWDR requires that the education costs are incurred in the semester for which the student grants are applicable, regardless of when the grant monies are actually received. The appellant's student grants were applicable to the fall semester covering the months of September through December 2011 whereas the tuition of \$5,300 was payable for a semester commencing in January 2012 and is, therefore, not an applicable exemption under Section 8.

The ministry deducted an amount of \$1,866.85 for the appellant's tuition and other compulsory student fees as set out in the Verification of Enrolment dated September 6, 2011 from the educational institution plus \$805 for books as set out in the letter dated September 15, 2011, for a total exemption of \$2,671.85. However, on the Overpayment Chart printed April 18, 2012, the ministry set out total actual income received by the appellant on September 22, 2011 as \$2,800, that these amounts were declared by the appellant, with no applicable exemptions listed. A note to the statement sets out that the total funding was \$4,600, that \$2,942 was for tuition, books and transportation and the remainder of \$1,658 is taken as unearned income. The panel finds that the information in the Overpayment Chart and in the accompanying note is not consistent and does not correspond to the ministry position in its reconsideration decision. The ministry argued at the hearing that even if the appellant declared the income she received and she was paid assistance due to the ministry error, the ministry is entitled and obliged to pursue the overpayment pursuant to Section 18 of the EAPWDA. The appellant argued that the letter dated September 15, 2011 from the educational institution confirmed total education costs for the semester of \$2,942 and she had additional transportation costs for which she produced receipts of \$70, for a total cost of \$3,012.

The panel finds that even taking into account these additional exemptions as argued by the appellant, her net income for September 2011 would be \$1,588 which remains in excess of her assistance rate of \$1,242.08 and, pursuant to Section 9 of the EAPWDR, the appellant is not eligible for assistance for the month of November 2011. 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 \$245.08 of assistance received by her and that she is, therefore, required to repay this amount pursuant to Section 18 of the EAPWDA.

Family maintenance income

The ministry's position is that in determining net income under Schedule B of the EAPWDR, all unearned income must be included, which has been defined in Section 1(p) of the EAPWDR to include, without

limitation, money or value received from maintenance under a court order, a separation agreement or other agreement. The ministry argued that although the appellant stated that she was unable to cash her August 2011 maintenance cheque because of a faulty signature, her bank statement indicated a deposit of \$997 on August 3, 2011 and the letter from the bank stated that it was the September 2011 family maintenance cheque which could not be deposited. The ministry argued that the appellant received \$997 of family maintenance in August 2011 which is unearned income and for which there are no exemptions or deductions that apply under Schedule B of the EAPWDR. The ministry argued that the amount of a maintenance payment received by the appellant in August 2011 must be deducted from appellant's assistance for the month of October 2011, since her net income determined under Schedule B of the EAPWDR must be deducted from the amount of disability assistance determined under Schedule A for a family unit matching her family unit, pursuant to Section 24 of the EAPWDR.

The ministry pointed out that the appellant is eligible for a maximum total monthly allowance of \$1,242.08 which was paid in October 2011 whereas \$997 should have been deducted pursuant to Section 24 of the EAPWDR and the appellant was therefore issued \$997 of assistance for which she was not eligible. At the hearing, the ministry pointed to the print out of the cheque history for the benefit month of October 2011 which showed a cheque for \$1,222.08 payable to the appellant and the status indicated cashed. The ministry explained at the hearing that \$20 has been deducted from the appellant's cheque for a security deposit that must be repaid. Section 18 of the EAPWDA states that if disability assistance is provided to a recipient who is not eligible for it, the recipient is required to repay the amount of the overpayment and the ministry argued that the appellant has an overpayment of \$997 which she is required to repay.

The appellant acknowledges that she was in receipt of family maintenance in the amount of \$997 per month as she properly reported these payments to the ministry, and it is also not disputed that she is eligible for the amount of \$1,242.08 in disability assistance each month. The appellant's position is that the bank refused to accept the child support cheque for September 2011 since the signature on the cheque did not match with their records and a letter was sent directly from the bank to confirm for the ministry that the September cheque was not accepted. The appellant argued that she advised the ministry that she did not receive child support in September 2011 and yet the sum of \$997 was still deducted from her disability assistance. The appellant argued that the transaction history for her bank account showing a deposit of \$997 on August 3, 2011 does not prove that she got a family maintenance payment for August 2011 as she may have deposited the July maintenance payment at that time. In the written submission, the advocate argued further that the ministry failed to provide disclosure to prove that the appellant was issued full benefits on September 24, 2011 for the month of October 2011.

The panel finds that the appellant received a family maintenance payment of \$997 for the month of August 2011, as she provided a copy of the cheque dated August 1, 2011 payable to her and she did not argue that there had been a problem with cashing the August cheque, contrary to statements to that effect in the ministry's reconsideration decision. The transaction history for one of the appellant's bank accounts showed a deposit of \$997 on August 3, 2011 and the appellant did not offer a reasonable explanation for why she would delay depositing a cheque payable July 1, 2011 for over a month when she stated that she is in need of these funds. Rather, the appellant has shown that the bank refused to accept the September 1, 2011 maintenance payment due to a problem with the signature, as set out in the note from the bank. Although the appellant argued that she advised the ministry that she did not receive the amount of \$997 in September 2011 and that this amount should not have been deducted from her assistance, the end result of this would not be a benefit to her; the overpayment for November 2011 would thereby be increased to the full assistance amount of \$1,242.08 rather than just the \$245.08 that the appellant received. As previously detailed, the amount of the net student grant monies received in September 2011 was in excess of the appellant's disability assistance rate so that the appellant was not eligible for any assistance in the month of November 2011.

Under Section 1 of Schedule B of the EAPWDR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 1 of the EAPWDR, "unearned income" is

defined to mean any income that is not earned income and includes, without limitation, money or value received from any of the following: "...maintenance under a court order, a separation agreement or other agreement." The panel finds that the ministry reasonably determined that the amount of the appellant's maintenance payment for August 2011 (\$997) must be included in the calculation of her income received under Schedule B of the EAPWDR and must be deducted from the amount of assistance determined under Schedule A (\$1,242.08) so that the appellant was entitled to \$245.08 in assistance for October 2011. Although the advocate argued in the written submission that the ministry did not provide evidence that the appellant was issued full benefits for October, the panel finds that the print-out of the cheque history shows that the appellant cashed a cheque in the amount of \$1,222.08, being the total assistance of \$1,242.08 less a \$20 deduction which the ministry explained is for a security deposit. 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 \$997 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 reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.