

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (Ministry) dated the 25 March 2013, that the Appellant incurred a \$7189.08 overpayment of assistance for the review period of September 2010 – December 2012 due to unreported employment income, WCB income, loans, grants and a tax refund.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 5, 18, 19
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) –
Sections 1, 9, 24, 74
Schedule A & B

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. Letter dated the 25 March 2013 from the Reconsideration Office, advising the Appellant that the decision of the Reconsideration Adjudicator did 'find that you had incurred an overpayment of assistance and are required to repay the Ministry.'
2. The Reconsideration Decision dated the 25 March 2013 with attached Appendix A- Reasons for Decision; Appendix B – Applicable Legislation.
3. Application for Reconsideration dated the 13 February 2013, signed by the Appellant.
4. Application for extension dated the 28 February 2013, to obtain further supporting documentation.
5. Dated the 13 March 2013, the submission of 2 supporting documents to be considered at time of Reconsideration, with the dates of 26 February 2013 and 13 March 2013.
6. Letter dated the 10 January 2013 from the Ministry with attachment documents of:
 - Confirmation of Earnings for the years of 2010 and 2011 from the Appellant's employer.
 - Payroll Calculations from the Appellant's employer between September 12, 2010 to May 27, 2011.
 - Notification of Assessment dated the 2 November 2011 from Student Aid BC.
 - Letter from an Educational Institute dated December 6, 2012, concerning education funding.
 - Copies of bank statements dated August 31, 2012 to November 30, 2012 of the Appellant.
 - Record of employment between September 16, 2012 to October 13, 2012.
 - Overpayment Chart referencing the months of September 2010 to December 2012 produced by Ministry with attached Legislation.

At the hearing the Ministry stood by the record stating that the appellant had incurred \$7189.06 overpayment for the review period of September 2010 – December 2012. The Ministry stated that the appellant failed to disclose income which was deprived from employment, US loans, Canadian grants and Canadian student loans in accordance with the Legislation. The ministry also stated that effective October 1, 2012, unearned income also includes tax refunds which become fully exempt.

The appellant presented argument as to why she believed the ministry should have considered her US loans as student loans, rather than an asset, and stated that she did not dispute any of the other overpayments reported by the Ministry.

The Ministry stated that the letter from the Appellant's educational institute lists all loans received on the Appellant's behalf from US and Canadian resources but does not show the disbursement other than 'has not returned any funds to the above providers on the students behalf'. Therefore the Ministry is not satisfied that all funds were fully utilized for education tuition, purchase of books and other items directly required for the course(s) taken. The Ministry stated that the Appellant had used some of the funds for personal living expenses therefore this was considered income. The Ministry refers to the document dated 2011 November 02 – Notification of Assessment indicating that the total education costs were \$8005.00 and that the Canada and BC Loans authorized to the amount of \$8836.00 were received.

The Ministry refers to the Overpayment Chart entry of 12 January, showing the amount of \$6243.50 as 'Actual Asset' which is over the Legislated allowable amount of \$3000.00, therefore as per

EAPWD Regulations, Section 10 the Appellant has exceeded her allowable asset limit. The Ministry stated that the evidence before the Ministry at time of reconsideration was accurate and supportive of the findings, that the Appellant had been overpaid in assistance benefits for the period of September 2010 to December 2012 in the amount of \$7189.00.

The Appellant does not dispute that she has been overpaid during that period but argue that all educational costs should be exempt including living expenses. She acknowledges that she received Canadian Student Loans, Canadian Grants and US Loans for her education which were deposited with the Educational institute between the period of May 2011 to December 2012. The Appellant also states that amount of the overpayment should be \$906.42 not the amount of \$7189.00 that has been calculated by the Ministry.

PART F – Reasons for Panel Decision

The issue before the Panel is the reasonableness of the Ministry's decision which held that the Appellant received an overpayment during the period of September 2010 to December 2012 due to unreported employment income, WCB Income, loans grants and tax refunds, which she is liable to repay.

EAPWDA

Section 1 Interpretation

"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;

"earned Income" means

- (a) Any money or value received in exchange for work or the provisions 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

"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
- (t) any other financial awards or compensation

Section 10 (2) – Asset Limits- 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 or more than \$3000;
- (b) An applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5000

Sections 18 and 19

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].

(A) Liability for and recovery of debts under Act

19 (1) An amount that a person is liable to repay under this Act or the regulations 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.

Schedule B

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.

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.

The Appellant in her Notice of Appeal states that "Under legislation, Schedule B net Income Calculation states the Minister can use their discretion to *exempt education related unearned income, 8(2)(b) the Minister may authorize an exemption for a student up to the sum of the student's education costs and daycare costs from the total amount of student financial assistance.* The Appellant argues that the education and tuition amounts were not deducted from total overpayment amount's. The Appellant does agree that there was an overpayment for the period but disputes the amount as set out by the Ministry. The Appellant contends that education costs also refers to living expenses while enrolled in the education facility and that the Minister should authorize an exemption for this educational expense. She also states that all Loans and Grants were being administered by the Educational facility and she does not know what the distribution of those funds was.

The Appellant 's position is that she received all the Canada and BC Loans on the same day. The ministry argues that if that was the case they would all be attributed to the same month and it would not impact the outcome because the appellant had earned over the allowable amount in wages and a tax refund for the two months that had the BC and Canada student Loans and grants attributed to them.

The Appellant also argued that the US Direct loans were student loans. The appellant pointed to the letter from the University that stated "Our office confirms that the following student loans and grants were distributed to the above student as follows: ". The Appellant states that the US Direct Loans were sent to the University and she received some residue funds after the tuition and other educational expenses were paid. The Panel was not provided with information on the distribution details of the funds that were spent on tuition, educational expenses and residue funds by the Appellant. The panel notes that some of this information was set out in a letter from Student Aid with respect to the appellant's BC and Canada student loans and grants.

The Appellant contends that she was given some misinformation by a Ministry representative at the

time of receiving these loans about how education exemptions were applied, therefore she did not fully understand what was considered income or unearned income, assets and exemptions. The Appellant also states according to the Legislation that the Minister has the discretion under Schedule B to exempt education related expense, these expenses should include living expenses. The Appellant states that US Loans should be considered as student educational loans although the legislation does not address foreign loans as being student loans for educational purposes. Upon questioning, she indicated that she had received some excess funds from the Loans which were utilized for living expenses during this period but was unable to advise the Panel on the amount received.

The Ministry states that they have taken into account all educational expenses as allowed by the Legislation at the time of calculation of the overpayment amount. That the appellant received Loans and Grants from Canadian and USA sources as indicated by the educational facility on their letter dated December 6, 2012 to the Ministry and according to the facility ' has not returned any funds to the above providers on the student's behalf. The Ministry argues that the Ministry's Notification of Assessment dated 2011 November 02 correctly states the Appellants educational costs from September 07, 2011 to December 2011 and amount of Loan authorized to date for that education period. The Ministry also states that the amount of educational costs does not exceed the amount received through Loans and Grants for the period, therefore the difference is unaccounted for. The Ministry maintained their position that the US Direct loans were loans and not student loans.

At the hearing the Appellant did not dispute that an overpayment reported by the Ministry between September 2010 – December 2012, however she did argue that the four US loans she received were in fact student loans, were dispersed on her behalf by the University and should be treated as an educational cost not as an asset.

The Panel finds the US Direct loans to be student loans and that the University has characterized them as a student loan and also confirmed that the funds were disbursed through the University in relation to educational cost.

The Panel concludes based on the evidence, it is unable to determine the portion of the funds from the Loans and Grants received by the Appellant were used for educational costs or living expenses. That there is no evidence before the Panel of the distribution of the amount of funds that were attributed to tuition, books, student fees and reasonable transportation, the Panel finds that the ministry's calculations to be reasonable in the circumstances. The Panel finds that the undisputed evidence establishes that the Appellant received a non-exempt income tax refund as well as non-exempt employment income during the period in question which she did not report to the Ministry.

Therefore the Panel finds that the Ministry's reconsideration decision that the Appellant received an overpayment which she is liable to repay is reasonable and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.