

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated 13 May 2013 in which the Ministry determined that the appellant received an overpayment of disability assistance in the amount of \$1,854.28 because he had received earned and unearned income that were not deducted from his assistance and that he was liable to repay that amount to the ministry under 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), sections 18 and 19.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1(1) (2011), 9 and 24.
EAPWDR, Schedule A, sections 1, 2 and 4 (2011 and 2012 versions).
EAPWDR, Schedule B, sections 1 (2011 and 2012 versions), 2, 3, 3.1 and 2011 versions of sections 6, 7 and 8.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

- The appellant is a single parent who, at the time, was a recipient of disability assistance.
- A Fax Transmittal Sheet dated 11 March 2013 from the appellant's legal counsel indicating he received \$437.71 (less \$12.00 wiring fees) from their trust account to his bank account on 1 June 2011, representing a final share of his father's estate and that no other monies have been paid by this lawyer to the appellant since 2008 in respect of this estate.
- A Confirmation of Earnings form dated 18 February 2013, signed by the ministry on what appears to be 1 March 2013, and indicating the appellant had received \$544.87 in June 2012 from an employer for the period between 11 February and 8 June 2012.
- A 3-page Record of Employment dated 22 November 2012 indicating the appellant had worked between 6 and 20 November 2012 and earned a total net income of \$3,332.32. Page 1 of these documents being stamped "Scanned and Batched Dec -5 2012 Office XXX", page 2 "Province of British Columbia Dec 10 2012 [number] Avenue-XXX" and page 3 has a similar stamp as the previous plus another one stating "Office XXX DEC 10 2012 Scanned".
- A 3-page Overpayment Chart by the ministry dated and signed on 19 March 2013 showing an overpayment of \$1,854.28.
 - With respect to the undeclared estate of \$437.71, it was not deducted from the appellant's August 2011 assistance and since this is unearned income, there is no exemption applied.
 - With respect to the undeclared earnings of \$544.87 (February – June 2012) an exemption of \$500 is applied as per the legislation in force at the time and the overpayment for the month of August 2012 is determined at \$44.87.
 - With respect to the declared earnings of \$3,332.32, it was not applied against January 2013 assistance and the appellant received income assistance benefits of \$1,371.70 after applying the shelter rates (\$700) and earning exemption of \$800.
- A letter dated 18 March 2013 by the ministry to the appellant stating that their records "indicate you provided verification of your last pay from [an employer] to the Ministry on December 10, 2012 however these earnings were not correctly deducted from your January entitlement. The undeclared and incorrectly deducted income resulted in an overpayment of \$1,854.28."
- An Overpayment Notification form dated 19 March 2013, signed by the appellant, advising him he had received an overpayment of \$1,854.28 of assistance.
- A letter from an advocate dated 6 January 2012 (date incorrect as most of the issues arose after that date) and faxed on 9 May 2013 states the appellant does not dispute the earnings of \$544.87 from an employer but disputes the overpayment in respect of the two other income funds. In terms of the estate funds, the appellant states he was not aware of this amount of money being due to him and he was surprised when he received it. With respect to the other earnings, he declared this income on 10 December 2012 as shown by his paystubs stamped by the ministry and he "expected that these funds would be taken from his cheque" and as a result he received an overpayment. The appellant has his children in his care and paying this overpayment would be a severe hardship to himself and his family.

In his Notice of Appeal dated 23 May 2013, the appellant states that he submitted the required documents and that he expected the ministry to deduce this amount from his assistance cheque.

At the hearing the appellant did not take any issue with the facts and the amount of overpayment. He

indicated that he was receiving Employment Insurance (EI) and that he expected that to last approximately another 8 weeks. He stated having to repay the overpayment would be a real hardship for his 3 children and himself. He testified that he had declared his earnings on December 10th, 2012 and expected the proper amount would be taken from his disability payment. The payment was not directly deposited in his bank account as usual but, instead, was sent by mail and that delayed his receiving it. He indicated that when he received the cheque, he thought that the ministry had taken into account his earnings that he had disclosed and that the amount he received was correct.

The ministry indicated that recovery in the overpayment would be kept on the appellant's file and recouped in the future, by taking \$20 monthly from future disability assistance payments. The ministry would not request payment while the appellant is receiving EI or other source of income unless he becomes ineligible for disability assistance in the future. The ministry also indicated that the legislation did not give them any discretion to recover overpayments and in all cases the ministry initiated recovery actions.

The panel determined that the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration, providing clarification on those issues.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant received an overpayment of disability assistance in the amount of \$1,854.28 because he had received earned and unearned income that were not deducted from his assistance and that he was liable to repay that amount to the ministry under section 18 of the EAPWDA, was either a reasonable application of the legislation or reasonably supported by the evidence.

The legislation with respect to overpayment and liability to repay to the ministry can be found at sections 18 and 19 of the EAPWDA:

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*].

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...

(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.

In respect of the income, the applicable legislation is:

S. 1 (1) of the EAPWDR: "**earned income**" means

(a) any money or value received in exchange for work or the provision of a service,...

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

(l) a trust or inheritance;

S. 9 (2) of the EAPWDR:

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.

S. 24 determines the 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.

Schedule A determines disability assistance rates as follows:

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability

assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

The monthly support allowance is determined at s. 2:

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

And for the appellant:

2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08
---	---	---	----------

The monthly shelter allowance is determined at s. 4:

4 (2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

4	4 persons	\$700
---	-----------	-------

Schedule B of the EAPWDR provides for the exemptions and the only one applicable in the present matter for work-related income can be found. For the work done in November 2012, the legislation states at s. 3(3):

3 (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) \$800, and
 - (ii) the family unit's total earned income in the calendar month of calculation;

For the work done in June 2012, the then exemption was \$500 under the legislation applicable at the time and was increased to \$800 by amendments coming into force in October 2012.

For the inheritance received by the appellant in 2011, the then legislation applies and no exemption applied at the time for such unearned income.

The ministry argues that the appellant failed to disclose his earnings on two occasions that contributed to overpayment of his disability assistance and further argues that on a third occasion despite the fact that the appellant did disclose his earnings, through an administrative error he received an overpayment and the ministry has no choice under s. 18 of the EAPWDA even if it is its own error or for compassionate grounds, under legislation must endeavour to recover those overpayments in the amount of \$1,854.28. The amount to recover was calculated on the basis of the

legislation that applied at the time for each of the overpayments and that there is no discretion in terms of the amount to be recovered. In terms of the amount of the exemption between the two work-related earnings, the ministry indicates the first one was in June 2012 and the legislation at the time allowed a \$500 exemption while in October 2012, it had changed and the new exemption was \$800.

The appellant acknowledges that he received disability assistance overpayments and that the amount to recover established by the ministry is correct but argues that since he voluntarily disclosed his earnings related to his work in November 2012, because it was an administrative error by the ministry, and because repayment would cause hardship to his family, he should not have to pay it back.

There is no dispute in terms of the evidence presented to the reconsideration officer and to the panel in terms of earnings that the appellant received and the ensuing overpayments by the ministry. The panel finds there were indeed three instances where the appellant benefitted from overpayments because of earned and unearned income. The panel also finds the ministry reasonably applied the legislation in calculating the amount of overpayments the appellant had received, applying Schedules A and B of the EAPWDR to the circumstances of the appellant. Sections 18 and 19 of the EAPWDA clearly provide the ministry with the authority to recover the amounts paid to a recipient of disability assistance for which he or she is not eligible for and the panel finds it was reasonable for the ministry to determine that despite its own administrative error, it had to recover such an overpayment. No legislative authority was provided allowing the ministry to reduce the overpayment for compassionate grounds and thus, the panel finally finds that it was reasonable for the ministry to determine there is no authority in the legislation that would allow reducing or cancelling the overpayment on compassionate grounds.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.