

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 7, 2013 which held that under section 18(1) of the Employment and Assistance for Persons with Disabilities Act, the appellant had received an overpayment of disability assistance in the amount of \$9,365 that she was not entitled to receive and which must be repaid.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 11 and 18.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1 ("unearned income"), 9, 12, 24 and 29.

Schedules A and B

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included:

- (a) a Trust Agreement dated December 23, 2008 for the appellant;
- b) copies of personal e-mails from the appellant's sister to a ministry case worker;
- (c) a Consent to Disclosure of Information dated November 24, 2012 from appellant to her sister;
- (d) an overpayment chart indicating an overpayment to the appellant of \$9,365 between November 2011 – December 2012;
- (e) a summary of Tax Information Slips for 2011 identifying the appellant's annual provincial social assistance to be \$10,672.04 and her annual municipal pension to be \$4,406.99;
- (f) a letter dated January 30, 2012 from the appellant's municipal pension plan indicating that a monthly payment of \$641.32 will be deposited directly to her financial institution;
- (g) statement from the appellant's financial trust account for the period of January – December 2011;
- (h) statement from the appellant's financial trust account for the period of January – October 21, 2012;
- (i) an Overpayment Notification to the appellant dated December 7, 2012; and
- (j) the appellant's Request For Reconsideration dated February 20, 2013.

In the Request For Reconsideration the appellant's sister, on behalf of the appellant writes: that because the appellant's disability assistance does not come close to covering the cost of living, the appellant was requested by her sister who manages her trust account to apply for her municipal pension; that the pension funds are held in trust for plan members and are deposited directly into the appellant's trust account, therefore, the funds are always in a trust account; that the appellant does not have access to this trust account and she did not receive any of her pension funds; that the appellant can only get by on her PWD, if her sister is able to have funds in the trust; and that the trust account will soon be deleted, if the municipal pension is deductible.

A letter dated October 4, 2012 to the appellant from the ministry noted that she was receiving assistance through the BC Employment and Assistance Program and that under section 10 of the EAPWDA, information may be requested from a person for the purpose of determining current, or auditing past eligibility for assistance. The appellant's file had been selected for review.

A letter dated November 20, 2012 to the appellant from the ministry noted that she was receiving a municipal monthly pension of \$641.32 and that this income would be deducted from future assistance. Also, it was determined that there is insufficient remaining eligibility to continue paying the appellant's rent directly to the landlord and that she will need to make arrangements to pay the rent.

A letter dated December 7, 2012 to the appellant from the ministry that while noting that she did not attend a meeting to discuss her file, indicated that a review of her assistance between January 1 and December 7, 2012 had been completed and as a result an overpayment in the amount of \$9,365 had been recorded on her file.

The ministry's reconsideration decision noted that after the appellant applied for and was determined eligible to receive it, the appellant's municipal pension was deposited directly into her trust account and the ministry was not advised of this income. Under EAPWDR section 1(1), superannuation benefits are considered "unearned income". The appellant's eligibility was recalculated with the income factored in and it was determined that the appellant had received disability assistance for which she was not eligible from October 2011 to December 2012. The ministry found that the appellant received disability assistance of \$9,365.00 for which she was not eligible, which resulted in an overpayment.

The ministry stood by their record and testified that a Municipal Pension falls under the definition in the Act of "unearned income" and must be reported monthly by the recipients. It was added that no matter where money comes from, it must be reported. When asked about whether the Ministry's policy and procedure was followed in the circumstances of the appellant, the ministry representative responded that the appellant's pension income was fairly and appropriately dealt with pursuant to the legislation.

Finding of Facts

- The appellant has Persons With Disabilities designation and received disability assistance.
- In August 2008, a discretionary trust was set up in the appellant's name.
- The appellant was found eligible for a municipal pension which began in August 2011 with monthly payments of \$641.32 deposited directly into the trust account.
- The amount of the overpayment as determined by the ministry is \$9,365.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated March 7, 2013 which held that the appellant had received an overpayment of income assistance in the amount of \$9,365 that she was not entitled to receive and must repay, pursuant to section 18 of the Employment and Assistance for Persons with Disabilities Act.

Relevant Legislation

Definition

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties; (b) cooperative associations as defined in the Real Estate Development Marketing Act; (c) war disability pensions, military pensions and war veterans' allowances; (d) insurance benefits, except insurance paid as compensation for a destroyed asset; (e) superannuation benefits; (f) any type or class of Canada Pension Plan benefits; (g) employment insurance; (h) union or lodge benefits; (i) financial assistance provided under the Employment and Assistance Act or provided by another province or jurisdiction; (j) workers' compensation benefits and disability payments or pensions; (k) surviving spouses' or orphans' allowances; (l) a trust or inheritance; (m) rental of tools, vehicles or equipment; (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient; (o) interest earned on a mortgage or agreement for sale; (p) maintenance under a court order, a separation agreement or other agreement; (q) education or training allowances, grants, loans, bursaries or scholarships; (r) a lottery or a game of chance; (s) awards of compensation under the Criminal Injury Compensation Act or awards of benefits under the Crime Victim Assistance Act, other than an award paid for repair or replacement of damaged or destroyed property; (t) any other financial awards or compensation; (u) Federal Old Age Security and Guaranteed Income Supplement payments; (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the Immigration and Refugee Protection Act (Canada) or the Immigration Act (Canada); (w) tax refunds.

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.

Assets held in trust for person with disabilities

12 (1) In this section, "disability-related cost" means the cost of providing to a person with disabilities or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre, (a) devices, or medical aids, related to improving the person's health or well-being, (b) caregiver services or other services related to the person's disability, (c) education or training, (d) any other item or service that promotes the person's independence, and (e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital, (i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and (ii) necessary maintenance for that place of residence.

(2) If a person referred to in subsection (1) complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows: (a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus (b) any capital subsequently contributed to a trust referred to in paragraph (a), is exempt for the purposes of section 10 (2) [asset limits].

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 Reporting requirement.

Reporting requirement

29. For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act, (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005: (i) change in the family unit's assets; (ii) change in income received by the family unit and the source of that income; (iii) change in the employment and educational circumstances of recipients in the family unit; (iv) change in family unit membership or the marital status of a recipient.

In this Act: Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must (a) submit to the minister a report that (i) is in the form prescribed by the minister, and (ii) contains the prescribed information, and (B.C. Reg. 265/2002) (b) notify the minister of any change in circumstances or information that (i) may affect the eligibility of the family unit, and (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

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 appellant's position is that the payments in question have wrongly been characterized as non-exempt "superannuation benefits" and should be considered as "a payment from a trust" which is directly deposited in to the appellant's discretionary trust fund and therefore exempt. The appellant argues that the ministry failed to consider evidence such as e-mails and information about the Municipal Pension Plan as well as argument that the payments from the Plan are payments from a trust that was provided. Also, the appellant argues that the ministry failed to follow its own procedures for assessing the validity of the claimed trust. The appellant indicates that the trust account will soon be deleted if the municipal pension is deductible and the alleged overpayment be repaid.

At the hearing the appellant's advocate made the following submissions:

- The payments in question have wrongly been characterized as "superannuation benefits" thus non-exempt and should be properly be considered as "a payment from a trust" and therefore exempt pursuant to Section 7, Schedule B of the Regulations;
- The ministry failed to consider evidence such as e-mails and information about the Municipal Pension Plan (the Plan) as well as argument that the payments from the Plan are payments from a trust that was provided by the appellant, and failed to follow its own procedures for assessing the validity of the claimed trust;
- The pension funds were directly deposited in the appellant's discretionary trust fund, so the appellant did not receive her pension funds;
- As the funds are held in trust for the Plan members and were directly deposited into the appellant's trust account, they are always held in a trust account;

- There is no indication in the record that the information regarding the Plan was forwarded to the Ministry's Legislation, Litigation and Appeals Branch (LLAB) to obtain a legal opinion of whether it constitutes a trust in accordance with the ministry's policy and procedures;
- The Municipal Pension Plan constitutes a trust based on the structure and administration of the Plan which contain implied and express intention to settle property by way of a trust for its members and the Plan has been characterized as a trust in past judicial considerations by the Supreme Court of B.C.;
- The Joint Trust Agreement is the official document that outlines the governance of the Plan which is administered by the Municipal Pension Board of Trustees, as constituted in the agreement;
- Resolving any ambiguity requires an examination of the relevant Principles of Statutory Interpretation notably Section 8 of the BC Interpretation Act, *Hudson v. EAAT*; and Principles of Fairness.

The ministry's position is that the appellant received disability assistance of \$9,365 for which she was not eligible which resulted in an overpayment. The calculation of eligibility as set out in sections 9 and 24 of the EAPWD Regulation is based on the net income of the family unit and the support and shelter rates set out in Schedule A for a family unit that matches the family unit. If a person receives earned income or unearned income it is considered income in the month it is received even if the income is redirected, or received and transferred, into a trust. The appellant's net income includes the superannuation benefits she is eligible for and that are issued to her. As defined, superannuation and other pensions are money or value received and thus unearned income. This income is not exempt in Schedule B. As such, the appellant received unearned income from August 2011 to October 2012 that was not factored into the calculation of the disability assistance she was eligible for and as a result she received income assistance she was not eligible for and in accordance with section 18 EAPWD Act, she is required to repay that amount that was overpaid to her.

At issue is whether the ministry was reasonable in characterizing the monthly payments from the Municipal Pension Plan as unearned income in the form of superannuation benefits and treating the payments as non-exempt unearned income under the legislation.

In this case, the payments are clearly identified as municipal pension payments on both taxation documents and correspondence from the Municipal Pension Plan itself. The term superannuation is commonly accepted as referring to a pension granted upon retirement. There can be no doubt that these payments represent pension/superannuation benefits derived from the appellant's former employment. The panel finds that the true nature of these payments, that of superannuation benefits, is not altered because the Municipal Pension Plan is administered as a trust with a board of trustees. Having determined that the payments were superannuation benefits, the ministry was not obligated to apply its policy with respect to the validity of the claimed trust. Additionally, the panel concludes that the payment of income, whether earned or unearned, directly into the appellant's trust fund does not change the nature of the income. It is still the appellant's superannuation income which she has opted to add to the capital in the trust fund.

With respect to the application of the legislation, the panel finds that section 1 of the EAPWDR expressly defines money received from "superannuation benefits" and "a trust or inheritance" as types of unearned income. In accordance with the basic principles of statutory interpretation, the panel finds that the legislators have intended that each of those terms has a distinct meaning; to find otherwise, would render one of the terms meaningless and of no legislative value. Merely because arguments ascribing different meanings for a piece of legislation can be raised doesn't mean that the legislation is ambiguous. As the court said in *Bell ExpressVu Partnership v. Rex* [2002] 2 S.C.R. 559, 2003 SCC 42, (para. 30) "... it is not appropriate to take as one's starting point the premise that differing interpretations reveal an ambiguity." Legislation can really only be said to be ambiguous if, after the application of statutory interpretation principles, it can still fairly be said that the legislation is capable of bearing two or more equally valid meanings. In the current case, the panel has applied the principles of statutory interpretation and determined that the disputed payments are captured by the term "superannuation benefits." There is no ambiguity that remains to be resolved in the appellant's favour.

Based on the panel's finding that the Municipal Pension Plan payments are properly characterized as superannuation benefits, and that the definition of "unearned income" includes (e) "superannuation benefits", the panel finds that the ministry reasonably concluded the appellant received unearned income from August 2011 to October 2012 which was not factored into the calculation of the disability assistance as set out in sections 9 and 24 of the EAPWDR and as this unearned income is not exempt in Schedule B of the EAPWDR, the appellant received disability assistance she was not eligible for. Section 18(1) EAPWD Act states that a family unit that receives disability assistance it is not eligible for is liable to repay it to the government.

The panel determined the ministry's decision that the appellant received disability assistance she was not eligible for from October 2011 to December 2012 and is liable to repay that assistance was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.