

**PART C – Decision under Appeal**

The decision under appeal is the ministry's May 1, 2013 reconsideration decision that pursuant to section 18(1) of the Employment and Assistance for Persons with Disabilities Act, the appellant must repay \$906.42 disability assistance received. The ministry held the \$2500 death benefit received by the appellant was an inheritance, meeting the definition of "unearned income" and not deductible or exempt under Schedule B of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 18 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24 and Schedule B

**PART E – Summary of Facts**

The appellant's mental health case manager attended the hearing with the appellant.

The evidence before the ministry at reconsideration was

^ The appellant is a person with disabilities, age 65, currently in receipt of a pension, with a Medical Services Only file with the ministry. In 2011 the appellant was in receipt of disability assistance as a sole recipient.

^ A letter dated February 26, 2013 from an employees retirement association to the Ministry of Social Development stating the appellant, as a named beneficiary, was eligible to receive 50% of a \$5000 death benefit, and was issued a cheque on March 2, 2011 for the death benefit.

^ An overpayment notification dated March 26, 2013 from the ministry advising the appellant she received \$906.42 for which she was ineligible and liable to repay.

^ An Employment and Assistance Request for Reconsideration form in which the ministry stated in January 2013 a tax screen review showed \$2,472 declared to Canada Revenue Agency as "Other pension or superannuation" not shown as income declared to the ministry. The appellant was asked to and provided verification of the source of this income. In March 2013 the ministry determined, based on a fax from the employees retirement association, that the appellant had received a \$2500 death benefit in March 2011 following her mother's passing, that this income met the definition of "unearned income", that it should have been declared to the ministry by April 4, 2011 and would have been deducted from the appellant's May 2011 assistance. A debt of \$906.42 was placed on the case.

^ An April 22, 2013 letter from the appellant to the ministry stating repayment would be a hardship as she was collecting only her old age security pension and was barely able to pay rent, utilities and groceries, that she understood she had declared the \$2000 she had received from her mother's retirement fund and no one at the ministry said there would be a penalty, that she would have made a different decision had she known about a penalty, that she has tried to the best of her ability to report any funds she received for the past sixteen years, and that a ministry worker knows her situation and can verify her story.

Upon appeal the appellant provided March to September 2011 credit union statement of accounts and a June 3, 2011 listing from a credit counselling agency.

The appellant also provided a letter dated June 24, 2013 from her mental health case manager, who stated she was a trained nurse in the mental health field and worked with the appellant for the past twelve years. The case manager reported the appellant has a history of schizoaffective disorder of the bipolar type, and described several personal tragedies and serious physical and mental health issues suffered by the appellant during 2010 and 2011. The case manager asked that the appellant be forgiven the overpayment due to her unbalanced mental state, and commented that even repaying the overpayment in monthly installments would put the appellant over the edge psychiatrically and would be an undue hardship. The case manager submitted her client's chaotic life during the time period in question, her inability to think herself through the numerous hurdles she was facing, and her inability to effectively advocate on her own behalf, should be taken into consideration.

At the hearing the appellant explained she didn't realize she needed to declare the death benefit cheque she received. She pointed out that while a \$5000 death benefit was split with her sister, after

deductions and fees she received a cheque for a net amount of \$2169. She received financial advice recommending she use the money to pay off credit card debts, which she did. She also purchased some clothing, paid her eye doctor, dentist, and veterinarian, and paid for gasoline to a friend who drove her to out of town medical treatment appointments.

The appellant said she talked to the ministry three times about the inheritance. She said if she had known about the penalty she would have taken the assistance cheque over the death benefit. She said by arranging her own transportation to medical appointments, she saved the ministry money, and that she had not been advised by the ministry that at age 85 she would no longer receive disability cheques. She feels she should not have to repay \$906.42.

The case manager described the appellant as having been under extreme stress due to difficult life events, not seeing her psychiatrist who had retired, and sometimes having confused and chaotic thought processes. The appellant failed to consult her for financial advice, but relied on church members who did not know the ministry's reporting requirements. She believes the appellant did advise someone at the ministry, but did not formally report the income. The appellant had experienced serious health problems and the deaths of members of her family. The appellant does not dispute receipt of the funds, but was not well enough to appropriately deal with it. She had no other income and did not receive funds from the estate.

The ministry representative reiterated the reasons for the ministry's decision, referring to the legislation. She acknowledged the appellant's extenuating circumstances, and the payment of \$2169, noting their documents had not shown a sum different from \$2500. She confirmed the lower amount would have made no difference to the position of the ministry.

The panel determined the additional oral and documentary evidence was admissible under section 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration.

The panel finds in March 2011 the appellant received a cheque in payment of a death benefit in the net amount of \$2169, and that the appellant's assistance rate was \$906.42.

**PART F – Reasons for Panel Decision**

The issue is the reasonableness of the ministry's decision that the appellant is liable to repay \$906.42 disability income assistance, as a result of having received a death benefit of \$2169.

**Relevant Legislation****Employment and Assistance for Persons with Disabilities Act****(i) 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].*

**Employment and Assistance for Persons with Disabilities Regulation****(ii) 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.*

**(iii) 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.*

**(iv) Definitions****(v) 1 (1) In this regulation:**

*"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;*
- (a-k, m-w not shown)

**Schedule B****Net Income Calculation (section 24 (b) )****(vi) Deduction and exemption rules**

**(vii) 1 When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,**

**(a) the following are exempt from income:**

- (i) any income earned by a dependent child attending school on a full-time basis;**
- (ii) the basic family care rate paid for foster homes;**
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]**
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;**
- (v) the basic child tax benefit;**
- (vi) a goods and services tax credit under the Income Tax Act (Canada);**
- (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);**
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;**
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;**
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;**
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;**
- (xii) money that is**
  - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or**
  - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;**
- (xiii) the BC earned income benefit;**
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;**
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;**
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]**
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;**
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;**
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;**
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;**
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]**
- (xxii) payments granted by the government of British Columbia under section 8 [agreement with**

child's kin and others] of the Child, Family and Community Service Act;

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child;

(xxvi) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 – 18 Program;

(xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the Mental Health Act, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the Income Tax Act (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the Income Tax Act;

(xxxviii) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,

(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, 3.1 and 4, and

(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*

### **Parties' Positions**

The ministry argues the appellant failed to notify it of a death benefit cheque received, that as an inheritance it constituted 'unearned income' for which there is no deduction or exemption, and that the disability assistance must be repaid.

The appellant argues she did discuss inheritance issues with the ministry, that she did not know she was obliged to report the death benefit payment, that at the time she had serious mental, physical and emotional health issues. She further argues as her only income now is the Old Age Supplement she cannot afford to make any repayment, and should not be required to do so.

### **Panel's Decision**

The *Employment and Assistance for Persons with Disabilities Act* section 18 states if an overpayment was made the recipient is liable to repay the overpayment to the government.

The *Employment and Assistance for Persons with Disabilities Regulation* section 9 states there is not eligibility for disability assistance if the net income equals or exceeds the amount of disability assistance, unless the income is of an exempt category.

The appellant does not dispute the death benefit she received was reportable income. She failed to report having received payment of a death benefit in the net amount of \$2169, and as a result received an overpayment of \$906.42. The panel finds the appellant did not deliberately omit to report the payment to the ministry, but that under mental, physical and emotional stress she failed to meet her obligation to report income to the ministry.

The death benefit exceeded the amount of the appellant's disability assistance. Death benefits are not among the deductions or exemptions listed in Schedule B of the EAPWDR, and it follows that the \$906.42 disability assistance received was an overpayment and therefore repayable.

The panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.