

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 2, 2013 which held that the appellant is required to repay assistance which the appellant received in January 2013 and for which he was not eligible as a result of having undeclared inheritance money that his wife received in November 2012. The inheritance was treated by the ministry as unearned income as defined in section 1 of the Employment and Assistance for persons with Disabilities Regulation (EAPWDR) in excess of the disability assistance rate, under section 24 of the EAPWDR.

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, 12.1, 24 and Schedule B.

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

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

- October 23, 2012 ministry records indicate the appellant's advocate contacted the ministry and was advised on declaration requirements and expectations and advised the ministry she would relay this information to the appellant and his spouse.
- October 30, 2012 the appellant's spouse attended the ministry office and was advised on how to accurately complete the appellant's monthly declaration stub.
- Bank statements of the appellant for the period November 30, 2012-December 31, 2012 and October 31, 2012-November 30, 2012. The latter statement indicates a deposit of \$ 84,779.07 on November 9, 2012.
- June 13, 2013 a letter from the ministry to the appellant indicating their review of the assistance received by the appellant between January 2009 and June 2013. The letter indicates and attaches an overpayment chart that sets out the amount of assistance the appellant received that the ministry believed he was not eligible. The letter also advises the appellant of an appointment scheduled for June 28, 2013. Also attached was an overpayment chart completed and signed by the ministry stating that the appellant received an inheritance in the amount of \$ 84,779.07 in November 2012 that he failed to declare and was over the asset level for January 2013 that caused an overpayment in the amount of \$459.82. The chart also indicates the appellant was over the asset level in December 2012 and January 2013 that affected the appellant's assistance also for February and March 2013 which he did not receive so the overpayment applied only to January 2013.
- June 26, 2013 the appellant's advocate contacted the ministry to advise that the appellant was unable to attend the appointment for June 28, 2013.
- July 3, 2013 the appellant's advocate reschedules a time to review and discuss the overpayment and an appointment is set for July 9, 2013.
- July 9, 2013 request for reconsideration form section 3 completed by the appellant that includes a letter from his advocate dated July 15, 2013 and a personal letter (undated) from the appellant. The appellant's advocate writes that the appellant advises them that his spouse asked the ministry in October 2012 about declaring income and was advised that she had 3 months to dispose of the inheritance monies that she received. The letter indicates that the appellant and his spouse used the monies to pay a bill which is not in dispute, but that the overpayment was due to incorrect information. The advocate argues that the appellant advised the ministry of his inheritance once and was given incorrect information, and then was still given an assistance cheque for January 2013 and believed he was not required to declare the inheritance. He also noted on a separate matter that he was informed that any monies received from the federal government are recorded also in the provincial government systems and that he would not need

to report any monies received from the federal government. The appellant also reports that he is not aware of changes until it is brought to his attention when he gets his monthly bank statements. The appellant writes that he is "not able to see or read his bank statements very well because of my limited eyesight" He also states "I only check the backs of my statements to see if the cheques I wrote have gone through my account. When I need a balance I go to the bank and ask for a balance. I am not able to read the print out. I ask them to please write the balance on the slip so I am able to read the balance."The appellant believed he had 3 months to declare the income from the inheritance. The appellant was told he had 3 months to decide what he was going to do with the inheritance and that he told the ministry he was going to pay off debts and did so before the 3 months expired.

In his Notice of Appeal (NOA) dated August 20, 2013 the appellant in response to why he disagrees with the ministry's reconsideration decision states "Did not take into consideration my legal blindness to see papers properly. Because of my poor eyesight, I needed assistance completing these forms". This NOA was admitted into evidence under section 22(4) of the Employment and Assistance Act as written testimony in support of the information and record before the ministry at reconsideration.

At the hearing, the ministry stood by the record. The ministry noted the record and explained that with respect to the inheritance monies received by the appellant's family in November 2012 there is a provision that if such monies are going to be transferred into a RDSP or trust there has to be verification submitted to confirm this process and allow the ministry to exempt the asset up to 3 months. Following this and if a person does not intend to contribute any portion of the asset to an RDSP or Trust the exemption ceases to apply. It also reported and added that on December 7, 2012 the appellant had submitted a January 2013 declaration report that was not signed and, therefore, not legal. Subsequently, the ministry met with both the appellant and his spouse to discuss reporting requirement and explained to them they must report all income. On December 28, 2012 the appellant signed a declaration stub, but did not declare the inheritance monies received by him and his spouse.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably concluded in its reconsideration decision dated August 2, 2013 that the appellant is required to repay assistance which the appellant received in January 2013 and for which he was not eligible as a result of having undeclared inheritance money that his wife received in November 2012. The inheritance was treated by the ministry as unearned income as defined in section 1 of the Employment and Assistance for persons with Disabilities Regulation (EAPWDR) in excess of the disability assistance rate, under section 24 of the EAPWDR.

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*].

Section 1(1) of the EAPWDR provides that "**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

Section 9(2) of the EAPWDR provides that 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 12.1 of the EAPWDR provides the following:

Temporary exemption of assets for person with disabilities or person receiving special care

In this section, "**person receiving special care**" means a person who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre.

(2) During the exemption period described in subsection (3), an asset received by a person with disabilities or by a person receiving special care is exempt for the purposes of section 10 (2) [*asset limits*] if the minister is satisfied that the person intends to

(a) establish a registered disability savings plan or trust, and

(b) contribute some or all of the asset to the registered disability savings plan or trust.

(3) The exemption under subsection (2) starts on the date the person receives the asset and ends 3 months after

that date unless

(a) the exemption period is extended to a later date under subsection (4), or

(b) the exemption ceases to apply under subsection (5).

(4) The minister may extend the exemption period to a specified date if the minister is satisfied that the person is making reasonable efforts to establish a registered disability savings plan or trust.

(5) The exemption under subsection (2) ceases to apply if

(a) the person contributes all of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date of the contribution,

(b) the person contributes a portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to that portion on the date of the contribution, or

(c) the minister becomes aware of information that, in the minister's opinion, indicates that

(i) the person does not intend to contribute any portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date specified by the minister, or

(ii) the person has contributed some of the asset to a registered disability savings plan or trust but does not intend to contribute any remaining portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the remaining portion on the date specified by the minister.

(6) Amounts expended from an asset to which the exemption under subsection (2) applies are deemed to be money or value received from a trust within the meaning of paragraph (1) of the definition of "unearned income" in section 1 (1).

Section 24 of the EAPWDR states that disability assistance is to be provided in an amount that is determined by subtracting net income as calculated under Schedule B from the amount of disability assistance determined under Schedule A.

Schedule B of the EAPWDR provides the rules respecting the calculation of net income and lists the types of unearned income that are exempt from considerations as income when calculating the amount of disability assistance payable as follows:

Exemptions — unearned income

7 (0.1) In this section:

"**disability-related cost**" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

(i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or

(iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

= (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;

(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity

contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence

The ministry argues the legislation states the recipient of disability assistance is liable to repay the amount of an overpayment due to excess income received by the appellant.

The appellant does not dispute that he received the inheritance funds on November 9, 2012, but argues he was told he had 3 months to dispose of the funds and, therefore, was not required to declare the funds for this period of time and should not be penalized for the misinformation he received. Further, due to his poor eyesight he does not see properly and requires assistance to complete forms.

The panel finds that the ministry's overpayment calculation chart indicates that the appellant unearned income for November in the form of inheritance funds was not declared in December 2012 that caused an overpayment in the appellant's January 2013 disability assistance. It further finds the inheritance fund received by the appellant is unearned income as defined in section 1(1) of the EAPWDR as "*a trust or inheritance*". As a result, the panel finds that the inheritance funds received by the appellant must be treated in accordance with Schedule B of the EAPWDR where none of the exemptions under section 7 apply to the appellant. Therefore, the panel finds the appellant received an overpayment of his disability assistance for the month of January 2013 due to undeclared unearned income and the legislation provides that the appellant is responsible to repay this overpayment. As provided by section 18 (2) of the EAPWDA, the panel cannot address the amount of the overpayment which the appellant is liable to repay. Notwithstanding the appellant's visual disability, the panel further finds the ministry was reasonable in its application of the applicable legislation and that it has no discretion to treat the appellant's inheritance funds otherwise.

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