

PART C – Decision under Appeal

The appellant appeals the June 25, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry), in which the Ministry determined that the appellant received disability assistance for which he was not eligible in the amount of \$3,625.68 (due to having non-exempt asset levels) for the period from February 2014 to May 2014, pursuant to Section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), for which he is responsible to repay to the Ministry.

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, 10 and 29.

PART E – Summary of Facts

The appellant receives disability assistance as a single recipient. The evidence before the Ministry at the reconsideration consisted of:

- Overpayment notification to the appellant from the Ministry dated June 6, 2014;
- Ministry Overpayment chart for the appellant's assistance months February 2014 through May 2014, printed June 6, 2014;
- Copy of information from the appellant's bank, including a portfolio statement for the period ending March 31, 2014 (2 pages), portfolio account transaction detail for the period from January 1, 2014 through March 28, 2014 (1 page), bank statements for the appellant's savings account from October 16, 2013 through November 4, 2013 (2 pages) and from January 1, 2014 through April 16, 2014 (10 pages);
- Copy of a page from the Ministry's website "BC Employment and Assistance Rate Tables Assets" updated October 1, 2012; and
- Request for Reconsideration dated June 18, 2014.

On June 6, 2014, the Ministry determined that the appellant had been issued \$3,625.68 in disability assistance for the months of February through May 2014 for which he was not eligible. The Ministry determined that the appellant had financial assets in his bank accounts that were over the eligible asset levels for a single recipient on disability assistance. The Ministry informed the appellant that he was required to repay the \$3,625.68 amount.

At the hearing, the appellant and his father did not dispute that the appellant had cash in a tax free savings account ("TFSA") which he and his father opened for him in December 2013, as well as in his savings account. The appellant and his father contributed to the TFSA for the months of December 2013, January 2014, February 2014, March 2014, April 2014 and May 2014 and they do not dispute the amounts in the TFSA and the appellant's savings account noted by the Ministry in its investigation. The appellant's father confirmed at the hearing that he and the appellant closed the appellant's TFSA and transferred the funds to a Registered Disability Savings Plan ("RDSP") as of early June 2014 (when advised of the overpayment by the Ministry).

The appellant has recently graduated from a certificate program at a post-secondary institution for computer animation (he showed the panel his diploma). The appellant's father testified that in order to assist his son complete his post-secondary education and get started in the business of computer animation, the family helped the appellant set up an account to save money to repay his student loans and have some money to start working. The appellant's father testified that he went to the bank and set up the TFSA on the appellant's behalf. The appellant's father testified that he did not think to contact the Ministry to determine the best course of action for his son's finances and said he had no knowledge the legislation required him to set up an RDSP (as opposed to a TFSA) for his son – the appellant's father took responsibility for the error of setting up a TFSA for his son and said he had no knowledge that he was required to put funds into an RDSP otherwise his son would incur an overpayment in disability assistance. The appellant and his father told the panel that the appellant completed his Ministry monthly reports and put them into the mail slot at the Ministry office – the appellant did not discuss his monthly reporting requirements with a Ministry worker – and the appellant did not indicate on his monthly report that he had money in a TFSA. The appellant's father pointed to the Ministry's website information where an asset exemption of \$5,000.00 is listed as

“maximum for a reserve account established to meet anticipated future business expenses to be exempt.” The appellant’s father said he felt this information was vague as he felt the funds in his son’s TFSA and savings account were to meet an anticipated future business expense.

The Ministry determined that, based on the appellant’s bank records, he had the following non-exempt asset levels: \$8,482.69 on December 31, 2013; \$8,404.25 on January 31, 2014; \$9,171.25 on February 28, 2014; and \$8,922.09 on March 31, 2014. The Ministry noted that the appellant is required to report a change in his assets by the 5th day of the month following the month in which the change occurred. The Ministry applied the \$5,000.00 asset exemption to the appellant and determined that he had received \$3,625.68 in disability assistance for which he was not eligible during the months of February 2014 through May 2014 and that he is liable to repay this to the Ministry.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's June 25, 2014 reconsideration decision, in which the Ministry determined that the appellant received an overpayment of his disability assistance in the amount of \$3,625.68 for the months of February 2014 through May 2014 due to having non-exempt asset levels, pursuant to Section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Legislation

Section 18 of the EAPWDA addresses overpayments and states:

- (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].

Pursuant to Section 1 of the EAPWDR, "asset" means "cash assets" (under subsection (c) of the definition of "asset") and "cash assets" means "money standing to the credit of the person with a savings institution" (as set out in subsection (b) of the definition of "case assets"). The appellant does not dispute that the money in his TFSA at the relevant time is an asset.

Section 10 of the EAPWDR addresses asset limits and subsection 10(2)(a) of the EAPWDR provides that a family unit is not eligible for disability assistance if a sole recipient has assets with a total value of more than \$5,000.00. Subsection 10(1) lists assets that are exempt for the purposes of subs. 10(2) and includes the following:

...

(x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,

- (i) up to a maximum of \$5,000 kept by the recipient in a separate account described in section 4(2)(b)(ii) of Schedule B, and
- (ii) up to a maximum of \$50,000, or a greater amount approved by the minister, consisting of

(A) the value of assets used by the recipient in operating a small business under the self-employment program, and

(B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;

(y) assets exempted under

- (i) section 11(2) [asset development accounts],
- (ii) section 12(2) [assets held in trust for person with disabilities], or
- (iii) section 12.1 (2) [temporary exemption of assets for persons with disabilities or person receiving special care];

...

(jj) funds held in, or money withdrawn from, a registered disability savings plan.

Section 29 of the EAPWDR sets out the monthly reporting requirement for all recipients of disability assistance and states as follows:

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 one or more of the following occur:

(i) a change that is listed in paragraph (b)(i) to (v),

...

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:

(i) change in the family unit's assets;

(ii)

Submissions

The appellant and his father do not dispute that the appellant had cash assets in excess of \$5,000.00 in his bank accounts (his TFSA and his savings account) during the time period from December 2013 through May 2014. The appellant's submission is that he and his father did not know that the legislation required the appellant to deposit his money to an RDSP in order to avoid exceeding his exemption limit – that it is an honest mistake which they have now rectified by opening an RDSP and transferring the appellant's money into it. The appellant is trying to gain skills and training, through his post-secondary certificate, so that he will be employed and no longer have to receive disability assistance from the Ministry. The appellant has repaid his student loans and says that to repay the Ministry the overpayment in disability assistance at this time when he is trying to establish himself in the computer animation industry is challenging and feels like he is being penalized.

In its submissions, the Ministry explained that the appellant's cash assets over and above the \$5,000.00 were not exempt under any of the items set out in subsection 10(1) of the EAPWDR for the following reasons:

- until June 2014, the appellant's funds were not in an RDSP (the exemption set out in subs. 10(1)(jj));
- the funds were not held in a trust under s. 12(2) of the EAPWDR (the funds were saved to repay student loans and for when he started working) and the appellant was not receiving special care under s. 12.1(2) of the EAPWDR (the exemptions set out in subs. 10(1)(y)(ii) and (iii)); and
- the appellant was not participating in a self-employment program funded or established by the Ministry (the exemption set out in subs. 10(1)(x)).

The Ministry acknowledged the position of the appellant and his father that it was an honest mistake and said that if the appellant had reported the cash assets in his TFSA and his savings account on his monthly report in January or February 2014, the Ministry would have become aware of the cash assets and advised the appellant to transfer the funds to an RDSP. The Ministry said it was required to apply the legislation to the appellant's situation. The Ministry noted that the appellant had cash assets in excess of \$5,000.00 for the months of February 2014 through May 2014, during which time he received disability assistance. Accordingly, the Ministry determined that the appellant was not eligible to receive the disability assistance for February 2014 through May 2014 and, under section 18(1) of the EAPWDA, he is now required to repay the Ministry \$3,625.68 (the amount of disability

assistance which he was overpaid).

Decision

The panel accepts the evidence of the appellant and his father that the appellant did not intentionally fail to report his cash assets to the Ministry. However, the panel finds that the appellant had cash assets, as defined in s. 1 of the EAPWDR, in excess of \$5,000.00 in his TFSA and his savings account for the months of December 2013 through May 2014. The appellant does not dispute this. The panel finds that the appellant did not report the cash assets in his TFSA and his savings account to the Ministry for the months of December 2013, January 2014, February 2014 and March 2014, as required by section 29 of the EAPWDR. The appellant and his father did not dispute that the appellant did not qualify for any of the exemptions under section 10(1) of the EAPWDR, agreeing that the funds were not in an RDSP at the relevant time or held in a trust for the appellant, the appellant was not receiving special care and he was not participating in a Ministry funded or established self-employment program during the relevant time. Accordingly, the panel finds that the appellant received disability assistance for the months of February 2014, March 2014, April 2014 and May 2014 for which he was not eligible as he had cash assets in excess of \$5,000.00 in his TFSA and his savings account during the applicable reporting period for those months.

Therefore the panel finds reasonable the Ministry's determination that the appellant received disability assistance for the months of February 2014 through May 2014 for which he was not eligible due to assets in excess of \$5,000.00, and the legislation provides that the appellant is responsible to repay this overpayment. As provided by s. 18(2) of the EAPWDA, this panel cannot address the amount of overpayment that the appellant is liable to repay. Accordingly, the panel finds that the Ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the Ministry's decision.