



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) Reconsideration Decision of August 6, 2014 in which the ministry determined that the appellant had received disability assistance (“DA”) for which he was not eligible and is liable to repay because he had been provided the full support allowance of \$531.42 when as a resident of a care facility he was only eligible for a \$95 comforts allowance under Schedule A section 8 (1) of the Employment and Assistance for Persons with Disabilities Regulation (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), Schedule A, Section 8

PART E – Summary of Facts

The appellant is a single recipient of Disability Assistance (DA) with no dependants.

The evidence before the ministry at the time of reconsideration is as follows:

- Request for Reconsideration dated July 21, 2014 in which the appellant wrote that while he resided in the care facility (CF) his monthly support and shelter benefits were paid directly to the CF, and that in January 2013 the ministry apparently overpaid him \$438.42, but he had never seen the cheque and had only received his comforts allowance of \$90. The appellant added that if there had been an overpayment of his DA the CF would have received it directly.
- untitled ministry cheque history document dated July 17, 2014 verifying that a support cheque in the amount of \$531.42 was issued to the appellant and mailed to the address of the CF, date of cheque not specified;
- letter from the appellant addressed "To whom it may concern" stating that he will be leaving the CF on April 24, 2013 and will be returning to his mobile home;
- ministry overpayment chart printed June 23, 2014 stating that for the period January 2013 the appellant had been overpaid \$436.42 ($\$531.42 - \$95.00 = \436.42) due to administrative error.

In his Notice of Appeal dated August 20, 2014 the appellant stated that he didn't see how the ministry could have overpaid him because he was living in the CF and receiving \$90 per month comforts allowance, but if a cheque had been issued it might have been for payment of his mobile pad rental. The appellant added that he had once caught a CF staff nurse practising the appellant's signature and as a result wanted the cheque to be verified.

At the hearing the appellant reiterated the evidence contained in his request for reconsideration and notice of appeal. He added that during the time he was living at the CF the ministry paid his mobile home pad rent of approximately \$425 per month directly to the owner of the mobile home park. He stated that he checked his bank account at Bank A and no deposit had been made. He cashed his comforts cheque at Bank A. The appellant denied having a bank account in any bank other than Bank A at the time the cheque was cashed. He acknowledged that in October 2013 he opened an account in Bank B. When asked if he had reported the missing cheque to the police he replied: "Yes. Immediately".

The panel admitted the appellant's oral testimony under EAA Section 22 (4) as evidence in support of the information and records before the ministry at reconsideration because it provided additional information surrounding his banking practices and his assertion that he had filed a police report.

The ministry relied on the evidence contained in its reconsideration decision, which can be summarized as follows:

- under EAPWDR Schedule A Section 8 (1) the amount of the appellant's DA was the actual cost of his accommodation and care plus a comforts allowance of \$95 because he was a resident of a CF;
- on December 19, 2012 a cheque was issued to the appellant as payee for \$531.42 and was mailed to the appellant's address at the CF;
- the cheque was cashed on December 27, 2012 at "the bank";
- on January 9, 2013 the appellant advised the ministry that he planned to move out of the care facility and return to his mobile home;

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- on January 10, 2013 the ministry issued a full supports payment to the CF, but the appellant was entitled only to his \$95 comforts allowance;
 - on April 23, 2013 the appellant advised the ministry that he was moving out of the CF;
 - on April 25, 2015 the CF confirmed that the appellant had moved out;
 - on June 23, 2014 the ministry assessed the appellant's payment history and determined that the appellant had been overpaid \$436.42 ($\$531.42 - \95.00 comforts allowance = $\$436.42$) by the ministry for the month of January 2013.

At the hearing the ministry representative stated that she had searched the financial institutions utilized by the appellant and found only an account at Bank B. Ministry records do not indicate that the appellant had an account at Bank A during the period in question. The ministry representative explained further that the ministry is not able to commence an investigation or examine the cheque endorsement specifics unless a police report of fraud is made; therefore the ministry was not able to ascertain in which bank the cheque was cashed. The ministry added that the appellant had not come to the ministry office to make a fraud claim and there is no note on the file to indicate that a police report had been made.

The panel admitted the ministry representative's oral testimony under EAA Section 22 (4) as evidence in support of the information and records before the ministry at reconsideration because it addressed the issue of more than one bank being used by the appellant and it confirmed that the ministry had no record of a police report or fraud allegation having been made by the appellant.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of August 6, 2014 in which the ministry determined that the appellant had received disability assistance (“DA”) for which he was not eligible and is liable to repay because he had been provided the full support allowance of \$531.42 when as a resident of a care facility he was only eligible for a \$95 comforts allowance under Schedule A section 8 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The relevant legislation is as follows:

EAPWDA:

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*].

EAPWDR:

Schedule A

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus

(b) a comforts allowance of \$95 for each person for each calendar month.

The appellant argues that he never received the support cheque that the ministry issued on December 19, 2012 and did not cash any cheque other than his January 2013 comforts cheque, which he cashed at Bank A, and that he did not have an account at Bank B until October 2013. He believes that any additional cheque issued by the ministry during that time might have been sent to his landlord as rent for his mobile home pad. He also argues that the cheque may have been stolen by another person because he saw a nurse who worked at the CF practising his signature. The appellant added that upon learning that an additional cheque had been issued to him for the period January 2013 he reported the incident to the police.

The ministry argues that under EAPWDR Schedule A Section 8 (1) the amount of DA payable to a person with disabilities who receives accommodation and care in a special care facility is the sum of the actual cost of the accommodation and care at the rate approved by the minister plus a comforts



allowance of \$95 per month. That amount was paid to the CF for the month of January 2013. The ministry also issued a support cheque payable to the appellant for the month of January 2013 in the amount of \$531.42, which is an overpayment of \$436.42 (\$531.42 - \$95.00). That cheque was cashed on December 27, 2012.

The ministry argues further that under EAPWDA Section 18(1) if DA is provided to a family unit that is not eligible for it, recipients who were members of the family unit during the period in which the overpayment is provided are liable to repay to the government the amount or value of the overpayment.

Disputed Evidence

There are two areas of dispute in the evidence provided to this panel:

1. The appellant denies that he received the cheque for \$531.42 issued December 19, 2012 and cashed December 27, 2012, and asserts that he made a police report alleging fraudulent misappropriation of the cheque by another person ;
2. The appellant also denies that he had an account at Bank B prior to October 2013.

The Supreme Court of Canada case *Faryna v. Chorny*, [1952] D.L.R.354 states that the real test of the truth is whether it is in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Using this test, the panel finds as follows:

1. The cheque was issued to the appellant as payee and mailed to the appellant's address. Ministry records show that it was cashed on December 27, 2012. The appellant did not provide bank statements or other information to rebut the *prima facie* presumption that he received and cashed the cheque. Although the appellant also asserts that he immediately filed a police report alleging that someone from the CF might have misappropriated his overpayment cheque he has not provided any documentation supporting his statement, or even a police file number. The ministry received no report from the police, and has no record that the appellant made a fraud claim to the ministry. If the appellant filed a police report alleging fraud we find it reasonable that the ministry would have evidence of either the police report or the appellant's allegation of fraud in its records.

We therefore find on a preponderance of probabilities that the \$531.42 cheque was received by the appellant.

2. The ministry conducted a search of the appellant's banking activity going back as far as December 2012 and found no evidence of a bank account held by the appellant other than the one in Bank B. For the purpose of deciding this appeal it is not necessary to make a ruling on this contradiction because this panel has already found that the \$531.42 cheque was received by the appellant.



Decision of the Panel

The panel finds that the ministry reasonably determined that the appellant received support for the period January 2013 in the amount of \$531.42, which exceeds the amount of support of \$95 for which he was eligible under EAPWDR Schedule A Section 8 (1). The panel also finds that the ministry reasonably determined that pursuant to EAPWDA Section 18 (1) the appellant is liable to repay to the government assistance for which he was not eligible.

In conclusion, the panel finds that the ministry's decision to establish an overpayment of the appellant's disability support allowance for the period January 2013 was reasonably supported by the evidence, and confirms the decision.