



**PART C – Decision under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated July 15, 2014, in which the ministry determined that although the appellant's inheritance cheque in the amount of \$18,964.91 was dated November 1, 2013, and is defined as "unearned income" under s.1(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), she did not receive and deposit the cheque in her bank account until December 22, 2013, and therefore did not receive an overpayment for the month of January 2014. However, as this income was received December 22, 2013, and not reported to the ministry until January 20, 2014, the appellant failed to meet the regulatory requirements for reporting income as set out in s.29 of the EAPWDR which stipulates that a person is required to report income by the 5<sup>th</sup> day of the month following the month income is received. Furthermore, under s.(2) of the EAPWDR a family unit is not eligible to receive disability assistance if the amount of income, which in the appellant's case was \$18,964.91, exceeds the total monthly support and shelter allowance, which was \$861.42. As the appellant failed to report her inheritance by January 5, 2014, as required under s.29 of the EAPWDR, the correct calculation was not made resulting in her receiving an overpayment of \$861.42 for February 2014, and under s.18 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), she is now liable to repay this amount to government.

**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(2) and 29.



## PART E – Summary of Facts

Evidence before the ministry at the time of Reconsideration includes the following:

- A copy of a letter to the appellant from the ministry dated June 10, 2014, which reports among other things that a review of her disability assistance file from December 1, 2013, to June 1, 2014, has been completed. As a result the ministry determined that the appellant received assistance for which she was not eligible in both January and February 2014, for a total overpayment of \$1722.84, on her file. The overpayment occurred as a result of a failure on the appellant's part to accurately declare her income from the inheritance she received in November 2013. The ministry obtained documents to show that during this time the appellant received \$18,964. 91 from the inheritance. Ministry records show that the appellant declared \$0.00 for this time period. The undeclared income resulted in an \$861.42 overpayment for January 2014 and \$861.42 for February 2014.
- A copy of a ministry Overpayment Chart for the months of January and February 2014. Among other things, this chart shows that in January 2014, the appellant had unearned income (an inheritance) of \$18,964. 91, and her declared income reported was \$0.00. Cheque number 1317911 was issued to the appellant for February 2014, in the amount of \$861.42; the amount the appellant was eligible to receive for February 2014 was reported as \$0.00; and the overpayment amount for February 2014 is reported as \$861.42.
- A copy of the ministry Overpayment Notification signed by the appellant June 24, 2014.
- A copy of a letter to the appellant from a company dated November 15, 2013, informing her that a cheque was enclosed in the amount of \$18,964.91, a disbursement from an inheritance.
- Copies of the appellant's Banking Statements.
- A copy of the appellant's Request for Reconsideration signed by the appellant July 3, 2014. In Section 3 of this document the appellant presents arguments as to why she believes the ministry's decision is unreasonable which will be dealt with later, in the Reasons section of this decision.

After the reconsideration decision and prior to the hearing the appellant submitted a Notice of Appeal in which she requested that her appeal hearing be in writing. The appellant also included additional argument as to why she believes the ministry's reconsideration decision to be unreasonable which will be dealt with later in the Reasons section of this decision.

### Findings of Fact:

- The appellant is a sole recipient of disability assistance and receives \$861.42 monthly.
- The appellant received an inheritance cheque dated November 1, 2013, on December 22, 2013, which was deposited in her bank account the same day as received.
- The appellant reported her inheritance to the ministry January 20, 2014.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant received a disability assistance overpayment of \$861.42 for February 2014, was a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined that although the appellant's inheritance cheque in the amount of \$18,964.91 was dated November 1, 2013, and is defined as "unearned income" under s.1(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), she did not receive and deposit the cheque in her bank account until December 22, 2013, and therefore did not receive an overpayment for the month of January 2014. However, as this income was received December 22, 2013, and not reported to the ministry until January 20, 2014, the appellant failed to meet the regulatory requirements for reporting income as set out in s.29 of the EAPWDR which stipulates that a person is required to report income by the 5<sup>th</sup> day of the month following the month income is received. Furthermore, under s.9(2) of the EAPWDR a family unit is not eligible to receive disability assistance if the amount of income, which in the appellant's case was \$18,964.91, exceeds the total monthly support and shelter allowance, which was \$861.42. As the appellant failed to report her inheritance by January 5, 2014, as required under s.29 of the EAPWDR, the correct calculation was not made, resulting in her receiving an overpayment of \$861.42 for February 2014, and under s.18 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), she is now liable to repay this amount to government. In arriving at their decision the ministry relied upon the following:

### Employment and Assistance for Persons with Disabilities Act

The panel notes that while the ministry has incorrectly listed the legislation it relied upon under "Applicable Legislation" it has included all of the legislation it relied upon is included in Appendix B of its Reconsideration Decision.

### 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

#### (A) Definitions

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:

(i) a trust or inheritance;

#### (B) Asset limits

10 (1) The following assets are exempt for the purposes of subsection (2):

An inheritance is not one of the exempted assets listed (a to z)

#### (C) 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.

(D) Monthly 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 one or more of the following occur:

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

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(B.C. Reg. 332/2012)

(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) 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.

(v) any warrants as described in section 14.2 (1) of the Act. (B.C. Reg. 85/2012) (B.C. Reg. 335/2007)

(vi) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 3.1 of Schedule B, the amount of earned income received by the family unit in the calendar month and the source of that income; (B.C. Reg. 332/2012)

(vii) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 7.1 of Schedule B, the amount of unearned income that is compensation paid under sections 29 and 30 of the *Workers Compensation Act* received by the family unit in the calendar month. (B.C. Reg. 332/2012)

The appellant's position is that as a result of her disabilities, January 20, 2014, was the earliest possible date she was able to report her inheritance to the ministry and that she could not possibly have overpayment for February 2014, because she did not receive a disability assistance cheque from the ministry for that month.

In the appellant's Request for Reconsideration she argued that she reported her December 22, 2014, inheritance of \$18,964.91 to the ministry as soon as she possibly could on January 20, 2014. She further argues that there was no possible way to do this sooner because of her disabilities which prevent her from phoning, and that coming into the ministry office requires extensive preparation because of social anxiety and chronic pain. In both her Request for Reconsideration and her Notice of Appeal the appellant further argued that as she did not receive disability assistance for January, February, March, April or May 2014, she could not possibly be in overpayment for February 2014. She reports that May was paid back to her in June and she also argues that she should have been paid back for April as she had less than \$5000.00 in assets as of April 17, 2014. The appellant concludes by arguing that there is a huge problem with the provision of information and the ease of access for Persons with Disabilities.



The ministry's position is that as the appellant did not report her December 22, 2013, inheritance of \$18,964.91 to the ministry until January 20, 2014, this income was not included in the calculation made in determining her eligibility to receive disability assistance for February 2014, resulting in her receiving an overpayment of \$861.42 for the month of February 2014, for which she is now liable to repay to the government.

The ministry argued in their Reconsideration Decision that an inheritance is defined as unearned income under s.1(1) of the EAPWDR and that s.29 of the EAPWDR stipulates that a person is required to report income by the 5<sup>th</sup> day of the month following the month income is received. As the appellant failed to report her December 22, 2013, inheritance to the ministry until well after the required reporting date of January 5, 2014, (i.e. on January 20, 2014) this requirement was not met. The ministry further argued that as the appellant failed to report her unearned income for December by January 5, 2014, it was not included in the calculation made under s.9(2) of the EAPWDR, which states that a family unit is not eligible to receive disability assistance if the amount of income, which in the appellant's case was \$18,964.91, exceeds the total monthly support and shelter allowance, which was \$861.42. As a result the appellant received disability assistance for February 2014, for which she was not eligible and is in overpayment for \$861.42. Under s.18 of the EAPWDA if disability assistance or a supplement is provided to or for a family unit that is not eligible to receive it, recipients who are members of the family unit are liable to repay to the government the amount or value of the overpayment. For these reasons the ministry argued that the appellant received disability assistance for the month of February 2014, and is in overpayment in the amount of \$861.42 which must now be repaid to government.

The panel finds that while the appellant has raised concerns about her eligibility for disability assistance for months other than February 2014, the panel's jurisdiction is limited to determining the reasonableness of the ministry's decision that the appellant was not eligible disability assistance for the month of February 2014, and is therefore unable to make a determination on the appellant's eligibility for disability assistance in any other months.

The appellant argued in her Notice of Appeal and Request for Reconsideration that as a result of her disabling medical conditions which prevent her from phoning, and because coming into the ministry office requires extensive preparation because of social anxiety and chronic pain, January 20, 2014, was the earliest date that she could report her inheritance to the ministry. The panel finds no documental medical evidence was submitted to support the appellant's arguments and that based on the evidence provided the ministry reasonably determined that the appellant failed to meet the regulatory requirements set out above in s.29 of the EAPWDR which stipulates that a person is required to report income by the 5<sup>th</sup> day of the month following the month income is received.

The panel also finds that the appellant did not report her inheritance of \$18,964.91, defined as unearned income under s.1(1) of the EAPWDR, until January 20, 2014. As a result the ministry reasonably determined that it did not have the correct information available to it on January 5, 2014, to enable it to make a correct calculation, as set out above in s. 9(2) of the EAPWDR, to determine the amount of disability assistance the appellant was eligible to receive for February 2014. Section 9(2) of the EAPWDA states that a family unit is not eligible to receive disability assistance if the amount of income, in this case \$18,964.91, exceeds the total monthly support and shelter allowance, which in the appellant's case was \$861.42. As the required information was not submitted to the ministry by January 5, 2014, the panel finds that the ministry reasonably determined that the appellant received disability assistance for the month of February 2014, for which she was not eligible and is therefore in overpayment for that month.

The panel further finds that while the appellant argued in her Notice of Appeal and Request for Reconsideration that she could not possibly be in overpayment for the month of February 2014, because she did not receive disability assistance for that month, the ministry Overpayment Chart for January and February 2014, shows cheque number 1317911 in the amount \$861.42, was issued to the appellant for February 2014, and that the overpayment amount for February 2014, was \$861.42. Based on this documental evidence the panel finds that the ministry reasonably determined that the appellant received \$861.42 of disability assistance for the month of February for which she was not eligible and that, as set out above in s.18 of the EAPWDA, the overpayment be repaid to the government.

In conclusion, the panel finds based on the evidence presented and the applicable legislation set out above the ministry reasonably determined that the appellant is not eligible for disability assistance for the month of February 2014, and must therefore repay the amount to the government. The panel therefore confirms the ministry's decision.