

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") Reconsideration Decision dated August 19, 2014 which found that the appellant was required to repay to the ministry disability assistance in the amount of \$1,322.16 that he received from April through July 2014 and for which he was not eligible pursuant to section 18 of the Employment and Assistance for Persons With Disabilities Act ("EAPWDA").

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(1) and 24
Schedule A and Schedule B sections 1, 6 and 7

PART E – Summary of Facts

The evidence before the ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. A ministry Overpayment Chart dated July 16, 2014 (“Chart #1”);
2. A ministry Overpayment Chart dated July 24, 2014 (“Chart #2”);
3. A letter dated April 17, 2014 addressed to the appellant from a private pension plan advising him that his pension in the amount of \$330.54 will commence February 1, 2014 (“the Pension Letter”);
4. The appellant’s Request for Reconsideration dated August 7, 2014; and
5. The appellant’s Request for Reconsideration written submissions dated August 6, 2014 (“the Reconsideration Submissions”) to which are attached the following exhibits:
 - A ministry Overpayment Notification dated July 16, 2014;
 - Chart #1;
 - The Pension Letter;
 - A letter from a provincial health authority dated July 21, 2014 and addressed “To Whom It May Concern” requesting the renewal of the appellant’s transportation supplement;
 - The appellant’s monthly invoice for cable television services dated June 22, 2014;
 - The appellant’s monthly bank statement dated July 25, 2014;
 - The appellant’s monthly telephone bill dated June 17, 2014;
 - The appellant’s monthly statement of prescription costs dated July 23, 2014 and one individual prescription receipt for July 23, 2014; and
 - The appellant’s nutrition guidelines and meal planning guide.

The appellant is a single recipient of disability assistance whose file was opened by the ministry in April 2013. On May 13, 2014, the appellant submitted a copy of the Pension Letter to the ministry. On July 11, 2014, a ministry worker reviewed the appellant’s file and determined that the appellant’s monthly pension was “unearned income” as defined by section 1(1)(j) of the *EAPWDR* and that it should have been deducted when calculating the appellant’s monthly disability benefit and applied against his disability benefit for April, May, June and July 2014 which resulted in a total overpayment of \$1,322.16. The ministry accordingly notified the appellant that he was liable to repay this amount.

In the Reconsideration Submissions, the appellant wrote that the ministry’s determination that his pension is unearned income and he must repay the disability benefit for which he was found to be ineligible would cause him financial hardship. The appellant noted his various medical conditions, the required treatment and medications, his nutritional requirements and the associated costs and his monthly budget both prior and subsequent to the ministry’s decision to demonstrate the serious hardship that the repayment would have on him which he describes as “an impossible decision.”

At the hearing the appellant’s advocate stated that the appellant has a myriad of medical conditions and that the original hearing of this matter was adjourned due to his being in the hospital. The advocate stated that the appellant had been granted Persons With Disabilities (“PWD”) status and that he suffered from diabetes and mobility restrictions including a broken foot which has not healed and as such he requires the use of a wheelchair. The appellant’s advocate explained that the appellant did not have enough money at the end of each month which impacts on his health and will require further hospital care. The appellant therefore applied for his pension to help him get through each month.

In response to questions, the appellant’s advocate stated that while he was working, the appellant paid union dues and as such was entitled to a pension.

At the hearing, the ministry re-stated the Reconsideration Decision. It stated that the appellant received a private pension in the amount of \$330.54 beginning in April 2014 and that while this was reported by the

appellant to the ministry in May 2014, it was not applied to the calculation of the appellant's disability benefit with the result that he received disability assistance for which he was not entitled for the months of April, May, June and July 2014 and that as a result he was required to repay \$1,322.16 to the ministry.

In response to questions, the ministry stated that section 18 of the *EAPWDA* is clear and rigid and that section 1(1)(j) of the *EAPWDR* refers to pensions generally and is not restricted to private pensions. The ministry stated that pensions are unearned income.

No new evidence was submitted by the appellant or the ministry.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision which found that the appellant was required to repay to the ministry \$1,322.16 of disability assistance for which he was not eligible pursuant to section 18 of the *EAPWDA*.

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* defines "unearned income" as follows:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

...

(j) workers' compensation benefits and disability payments or pensions;

Section 24 of the *EAPWDR* provides as follows:

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.

EAPWDR Schedule B, sections 1, 6 and 7 provide as follows:

Deduction and exemption rules

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:

...

(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;

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

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.
- (3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

Positions of the Parties

In the Notice of Appeal, the appellant argues that the ministry failed to understand and acknowledge how severe his medical disabilities are and that he decided to begin receiving his union pension prior to reaching the age of 65 because he needed the money for costs related to his disability.

The ministry's position is that the appellant's monthly pension benefit constitutes non-exempt unearned income which must be deducted when calculating the appellant's disability assistance benefit. Further, the ministry argues that as the appellant's pension benefit was not deducted when calculating his disability benefit for April, May, June and July 2014, an overpayment resulted and the appellant is now required to repay the amount of the overpayment to the ministry.

Analysis

The appellant began receiving a pension on February 1, 2014 and he provided notice of this to the ministry on May 13, 2014. Due to what is described in the Reconsideration Decision as an administrative error, the ministry failed to apply the amount of the appellant's pension when calculating his disability benefit for the months of April, May, June and July 2014 resulting in an overpayment to the appellant of \$1,322.16.

The starting point for the determination of a disability benefit recipient's monthly benefit amount is section 1(1)(j) of the *EAPWDR* which defines unearned income as including "workers' compensation benefits and disability payments or pensions." (emphasis added).

The ministry argued that the word "pensions" in section 1(1)(j) was to be interpreted broadly and should not be restricted to private pensions or pensions that were only related to workers compensation benefits or disability payments. The appellant's advocate referenced section 2 of Schedule B to the *EAPWDR* which provides that union dues are a permitted deduction from earned income and the advocate argued further that as the appellant's union dues funded his pension, the pension should be exempt from calculating the appellant's income.

On review of the legislation, the panel finds that section 1(1)(j) of the *EAPWDR* does not include language that would restrict or otherwise limit "pensions" to workers compensation benefits or disability pensions. Further, while section 2 of the *EAPWDR* does permit a deduction of union dues from earned income, that occurs within the context of income calculation under Schedule B of the *EAPWDR*. The panel finds that the ministry's determination that the appellant's pension was properly defined as "unearned income" as provided in section 1(1)(j) of the *EAPWDR* was reasonable.

The next question for consideration is whether the appellant's pension is a type of unearned income that is exempt in the calculation of the appellant's monthly income. Section 24 of the *EAPWDR* provides that the amount of monthly assistance is determined by deducting the amount of income calculated under Schedule B from the amount of shelter and support allowances calculated under Schedule A.

The ministry argues that sections 1, 6 and 7 of Schedule B set out the type of unearned income that may be deducted or exempted from the calculation of the appellant's monthly income and that private pensions are not included in those sections. The appellant's advocate however raises two arguments in reply. First, he argues that section 1(a)(xx) of Schedule B of the *EAPWDR* should apply as the appellant's disability assistance allows him to live in the community rather than in an institution. Second, he submits that section 6(b) should apply to allow the appellant to deduct "essential operating cost of renting self-contained suites."

Section 1 of Schedule B of the *EAPWDR* provides that when calculating net income for the purposes of section 24(b), there are various exemptions from that calculation. Section 1(a)(xx) provides an exemption for "money paid by the government of British Columbia, under 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." Section 6(b) similarly provides for the deduction of essential operating costs of renting self-contained suites. The panel notes however that the issue at reconsideration was whether "pensions" could be deducted or exempted from the calculation of the appellant's monthly income and, having reviewed the legislation in question, the panel finds that the ministry reasonably determined that they could not on the basis that "pensions" were not included in sections 1, 6 or 7 as a type of income that was exempt from the calculation.

Conclusion

Based on the aforementioned, the panel finds that the ministry reasonably determined that the appellant received disability assistance that he was not eligible for in April, May, June and July 2014. The panel further finds that pursuant to section 18 of the *EAPWDA*, the ministry's determination that the appellant is required to repay the disability assistance he was not eligible to receive was a reasonable application of the applicable enactment in the circumstances of the appellant and the panel therefore confirms the ministry's decision.