

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of 23 October 2014 that the appellant had received unearned income as defined in Section 1 of the Employment and Assistance for Persons with Disabilities Regulation in the form of a scholarship, and that the income must be deducted from the appellant's disability assistance. The ministry determined that there were no exemptions for scholarships under Schedule B of the Employment and Assistance for Personal with Disabilities Regulation, and that exemptions for education related costs in Section 8 of the EAPWDR were limited to tuition, books, supplies, compulsory student fees and reasonable transportation costs. The ministry determined that under Section 18 of the EAPWDA the appellant was required to repay \$904.31 Disability Assistance for September 2014 for which she was not eligible.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA);

- Section 18 and 19 Overpayments
- Section 29 Reporting
- Schedule A Disability Assistance rates

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Section 1 Definitions
- Section 9 Income
- Section 24 Amount of disability assistance
- Schedule B Sections 1, 2, 3, 6, 7, 8, 9 concerning deductions and exemptions

PART E – Summary of Facts

Before the hearing the Appellant indicated she intended to have an advocate attend and a Release of Information form was duly completed. The Appellant also confirmed she wished her father to attend the meeting. The Appellant provided text copies of statements she and her advocate intended to read, and a letter from her physician. The Ministry did not object to these materials.

The evidence before the minister at the time of reconsideration was:

- “My dashboard” summary of student costs and funding (undated, part of Ministry package dated 30 October 2014)
- Letter dated July 24, 2014 from the BC Paraplegic Foundation advising of a scholarship of \$2,949.90
- Emails from the BC Paraplegic Foundation dated September 4, 2014 and July 21, 2014
- Bank profile for the appellant completed by a bank dated 29 August 2014, and a printout of the account activity
- A letter to the appellant dated 16 September 2014 from the ministry Investigation Office advising of overpayment.
- Ministry overpayment chart and overpayment notification dated 16 September 2014.
- Request for reconsideration dated 12 October 2014 including an attached statement and records of services received through a community recreation centre from May 2009-September 2014

In the request for reconsideration the appellant requested that the ministry reconsider their decision that “other disability related expenses do not fall under the definition of exemption for unearned income.” The appellant stated that as a person with multiple permanent disabilities (neurological mental and physical) she faced additional challenges in pursuing her educational goals, and used mental and physical health therapy programs as a way to manage her stress and wellness. She considers these to be ‘exceptional educational expenses’ as they allow her to succeed in her degree level studies.

At the hearing the appellant reiterated the points she had raised in her request for reconsideration, and provided additional detail on the costs associated with her education program and the sources of support for these costs. For each course she takes, the cost of additional tutoring and specialized transportation is about \$2,000. She is currently taking 3 courses in the September-December semester, and intends to take 4 in the semester beginning in January. Taking fewer courses will lengthen the time required to complete her course of study and as graduation requirements are re-set every few years, may require her to take additional courses to complete different requirements for a later graduation year.

Funds available to her for this academic year (both semesters) amount to \$8,000 from a Canada Grant program, and additional funds available through the University. However, University funds are limited and students are advised to seek other sources of support, as the Appellant did. To date \$6,000 of the \$8,000 Canada Grant will be used for the 3 courses in the current semester, and there will be a gap of up to \$6,000 for the next semester, depending on funds to be realized from the University. In this context, the Appellant sought and received support from the BC Paraplegic Foundation which was disbursed in the form of a scholarship.

The Appellant also referred to additional expenses incurred for activities prescribed by her physician

to enable her to complete her education: involvement in physical and mental recreational activities, massage and physiotherapy. She receives some discounts on these costs due to her PWD designation and participates in them through local community recreation facilities. She also referred to the purchase of a tablet computer as another educational expense.

The Appellant lives independently and her living costs are covered through PWD Assistance. Her education costs are covered through student financial assistance and additional educational support as noted above.

The Appellant's father noted that the family had no complaint about their treatment by the Ministry and felt that the process had been transparent and that the workers involved had been very courteous. However, their concern was that the Ministry had defined the scholarship from the BC Paraplegic Foundation, which was intended to assist with educational expenses associated with the Appellant's disabilities, as income. This then meant that the Ministry determined an overpayment had been made, which had the effect of reducing the Appellant's living expense support, and reducing the funds available to her for additional educational support needed as a student with disabilities.

The panel determined that the additional evidence presented by the Appellant in the form of a note from her physician confirming the Appellant was a patient and had medical conditions was admissible as it was in support of medical information held by the Ministry at the time of the reconsideration decision.

At the hearing the Ministry reaffirmed their position as stated in the reconsideration decision, noting that because the funds provided by the BC Paraplegic Foundation had been defined as a "scholarship" by the Foundation, and a cheque issued directly to the Appellant, the Ministry was bound to apply the definition of "unearned income" found in the EAPWDR Appendix B Section 1 (q) which specifically states that "education or training allowances, grants, loans, bursaries or scholarships" are considered unearned income. The Ministry further noted that Schedule B Section 8 of the EAPWDR, under which student scholarships could be exempted, applied only to funds required by a student for "tuition, books, compulsory student fees and reasonable transportation costs for a semester." The Ministry representative clarified that any funds paid directly to an individual would tend to be considered as income.

The panel makes the following findings of fact:

1. The appellant is a PWD and is a full time student at a university. She received an amount in student loan for the September-December term in September 2014 that would cover tuition and fees, and a sum for books, supplies, living costs and transportation.
2. The appellant received a payment of \$2,989.90 described as a scholarship from the Canadian Paraplegic Foundation on July 31, 2014 to be used for the September – December 2014 term.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision to define the scholarship received by the Appellant as "unearned income" and to not exempt it as an 'education cost' was a reasonable application of the applicable enactment in the circumstances of the Appellant.

In terms of the definition of unearned income, the EAPWDR, Section 1(1), defines "unearned income" in section (q) as:

" education or training allowances, grants, loans, bursaries or scholarships;"

Regarding the Ministry's ability to exempt the funds, Schedule B, Section 8(1) of the EAPWDR defines "education costs" as:

"the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;"

And Section 8(2) specifies that:

"The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of

- a. a training allowance,
- b. student financial assistance, and
- c. student grants, bursaries, scholarships or disbursements from a registered education savings plan received for the semester."

Finally, Section 18(1) of the EAPWDA specifies that

"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."

Appellant's position

The Appellant believes that scholarships intended to be used for services to enable disabled individuals to complete their education should be exempted and not considered as income in calculating eligibility for PWD Assistance.

Ministry's position

The Ministry refers to the Regulation which is unambiguous in its definition of unearned income as including scholarships, and the limitations on what can be considered education costs for exemption.

Panel's decision

The panel finds the ministry's determination that the scholarship received in July 2014 by the Appellant qualified as "unearned income" and did not meet the conditions for exemption as the intended use of the funds did not fall within the definition of education costs, was a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore the panel finds that the Ministry reasonably determined that the Appellant received Disability Assistance for September 2014 for which she was not eligible and is liable to repay pursuant to Section 18 of the EAPWDA. The panel therefore confirms the Ministry's decision.