

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 12 January 2015 that determined that the appellant received \$3029.20 in disability assistance for which he was not eligible and pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act* must repay that amount.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 11 and 18.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 24, 29, sections 4 and 5 of Schedule A and sections 1, 6, and 7 of Schedule B.

PART E – Summary of Facts

The hearing was scheduled as an in-person hearing, with the chair attending by teleconference. Prior to the hearing, the appellant advised the Tribunal that he had hurt his leg and may not be able to attend in person. The Tribunal consented to the appellant appearing by teleconference.

The evidence before the ministry at reconsideration included the following:

1. The appellant is a recipient not designated as a person with disabilities (PWD) and is 65 or more years of age, with a dependent spouse with PWD designation, who is a recipient of a monthly \$100 community volunteer supplement (CVS).
2. A letter to the appellant dated 26 August 2014 from Service Canada, to which is attached a table showing the appellant's Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS) benefits he received for the months of June 2013 to August 2014. The OAS amounts start at \$546.07 in June 2013 and increase, through quarterly inflation adjustments, to \$558.71 in August 2014. The GIS amounts start at \$740.44 and increase, through periodic inflation adjustments, to \$757.58. The total of the two payments starts at \$1286.51 and increases to \$1346.29.
3. A ministry Overpayment Chart dated 08 October 2014 covering the period August 2013 to October 2014. For each month, the chart shows the "eligibility amount override" (eligible total support, shelter and CVS, minus the appellant's CPP, OAS and GIS = eligible amount), the actual assistance amount, the eligible amount and the overpayment amount. For instance for August 2013 the eligibility amount override is $\$1619.06 - \$1487.17 = \$131.89$. The assistance amount is \$333.25, the eligible amount is \$131.89 and the overpayment amount is \$201.36. The total overpayment amount for the period August 2013 to October 2014 is shown as \$3029.20.
4. The appellant's Request for Reconsideration, dated 01 January 2015. The appellant writes that:
 - He and his spouse gave all papers required. The ministry made the wrong calculation causing the overpayment.
 - He gave all requested information before he turned 65 years old. He is been on CPP since he turned 60, as required by the ministry.
 - He doesn't change his stubs because there are no changes.
 - Because of the overpayment his rent went up so that he overpaid his rent for 15 months.
 - The ministry made a mistake and now wants to blame him and his spouse and they will not accept being called cheats.
 - They did not find out about the overpayment decision until 17 December 2014.

The appellant's Notice of Appeal is dated 24 January 2015. The appellant writes:

"Was not our fault. We gave all pertinent information before the age of 65. It was a miscalculation on ministry's fault. Plus this decision ruins the future OAS and CPP for the wife."

At the hearing, the appellant explained that prior to his turning 65 he had attended ministry offices and had telephone conversations with ministry workers on several occasions advising that he would

soon be turning 65 and be receiving OAS and GIS. The day he received his first OAS and GIS bank deposits coincided with a ministry cheque issue date. He was at his bank that day and asked for a printout of recent transactions. He was surprised to see a ministry deposit of \$333.25, as he thought that with his OAS and GIS he might not be eligible for ministry assistance. He went to the ministry office and enquired about the \$333.25 assistance amount. He was told that this was a monthly "top-up" that might only last for a year.

The appellant stated that as a result of the ministry's miscalculations, his rent increased and he ended up paying about \$1000 in additional rent. He also expressed concern that having the overpayment and resulting obligation to repay on file would effect his spouse's eligibility for CPP and OAS when the time comes for her to apply for them.

In answer to questions from the ministry and the panel, the appellant stated that he did not report his OAS and GIS income on his monthly stub, as the ministry already knew that he was receiving OAS and GIS and that he did not report any changes in those amounts because they only amounted to a few dollars. For the same reason, he did not report any changes since he turned 60 in his CPP income.

The ministry explained that there is a data match with the federal government for CPP, but not for OAS and GIS. The ministry's payment system uses the data match for CPP. When a client turns 65, the system automatically switches to factor in OAS and GIS. When a client does not report OAS and GIS income, as in the case of the appellant, and because there is no data match, the system uses provincial "basic" or average amounts, which for the appellant turned out to be less than what he was actually receiving by about \$200, resulting in not enough being deducted and the resulting overpayment.

The ministry noted that, so as not to create undue hardship for the appellant, the overpayment is to be repaid at \$10 monthly. This is a matter between the ministry and the appellant and will have no bearing on the CPP or OAS for the appellant's spouse when she becomes eligible for those federal benefits.

The ministry also referred to file reports of several conversations between ministry workers and the appellant regarding his assistance status when he turned 65. He was advised that his assistance will depend on the amount of OAS and GIS and if the amount exceeded his assistance rate he would be eligible for medical services only (MSO).

The panel finds that the information provided by the appellant is in support of the records and information before the ministry at reconsideration, as it is consistent with the information concerning the appellant's interactions with the ministry and monthly reporting history on the ministry's files. Therefore the panel admits this information as evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision, which found that the appellant received disability assistance for which he was not eligible and that pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act* must repay the amount, is reasonably supported by the evidence or is a reasonable application legislation in the circumstances of the appellant.

The relevant legislation is from the *EAPWDA*:

Reporting obligations

- 11** (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must
- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
 - (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.
- (2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

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*].

And from the *EAPWDR*:

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: [*numerous classes of payments, including*]

- (f) any type or class of Canada Pension Plan benefits;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;

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.

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) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (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;
- (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;
- (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.

And from Schedule A:

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
5	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	\$949.06

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

And from Schedule B of the EAPWDR:

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.

Sections 7, 7.1 and 8 of Schedule B of the EAPWDR set out other exemptions from unearned income, none of which apply in the appellant's circumstances.

The position of the ministry is that, under section 24 of the EAPWDR, the income the appellant received for CPP, OAS and GIS is unearned income that does not fit the exemption criteria and must be deducted from his disability assistance. According to the overpayment chart, his monthly disability assistance was calculated as follows: \$949.06 support + \$570 shelter + \$100 CVS = \$1619.06 minus his total monthly CPP, OAS and GIS. Upon review of the monthly calculation and what he actually received, he was provided a total of \$3029.20 for the period August 2013 to October 2014 for which he was not eligible. As a result, pursuant to section 18 of the *EAPWDA*, the appellant is required to repay \$3029.20 to the ministry.

The appellant's position is that the ministry was fully aware that he was receiving OAS and GIS and that the overpayment was the result of ministry miscalculations. He submits that it is unfair for the

ministry to expect him to repay such a large sum as a result of these miscalculations, particularly as he overpaid \$1000 in rent as a result, as he lives in subsidized housing and his rent is based on his income.

Panel decision

The appellant receives CPP, and since he turned 65, OAS and GIS. The panel finds that the ministry was reasonable in finding that under section 1 of the EAPWDR, these amounts are unearned income, and pursuant to section 24 must be deducted from his monthly assistance rate determined under sections 2 and 4 of Schedule B of the EAPWDR. The evidence is that when the appellant turned 65, the ministry deducted a "basic" amount of OAS and GIS, which turned out to be less than the actual amount of these federal benefits received by the appellant. This deduction of a lower amount was a result of the appellant not reporting the actual amounts as required under section 11 of the *EAPWDA* and section 29 of the EAPWDR. As a consequence, the appellant was provided an amount of disability assistance for which he was not eligible. Section 18(1) of the *EAPWDA* is clear that if disability assistance 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 an ineligible amount is provided are liable to repay to the government that amount. The panel therefore finds the ministry reasonably determined that the appellant must repay the amount that he was ineligible to receive.

Section 18(2) of the *EAPWDA* states that the minister's decision about the amount a person is liable to repay under subsection (1) is not appealable to the Tribunal. Accordingly, the panel will not make a determination as to the actual amount to be repaid.

The panel finds that the ministry's decision, that for the period August 2013 to October 2014 the appellant received disability assistance for which he was not eligible and is liable to repay that amount, is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.