

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the Ministry") Reconsideration Decision dated December 29, 2014 which found that the appellant received disability assistance for which he was not eligible in February, June, July, August, September, October and November 2014 and that he was required to repay that amount to the ministry 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*) sections 1, 3 and 18  
Employment and Assistance for Persons With Disabilities Regulation (*EAPWDR*) section 24 and Schedule A section 2

## PART E – Summary of Facts

With the consent of the parties, the hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act* (“*EAA*”).

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

1. A letter from the Ministry addressed to the appellant dated December 3, 2014 setting out the total amount of the disability assistance overpayment, broken down by month;
2. A Ministry “Children Cared For Outside the Parental Home Notification Confirmation” form dated November 24, 2014 indicating that the appellant’s child left the parental home on May 4, 2014;
3. A Ministry Overpayment Notification dated December 3, 2014 indicating that the appellant received an overpayment of disability assistance in the amount of \$94.00;
4. A Ministry Overpayment Notification dated December 13, 2014 indicating that the appellant received an overpayment of disability assistance in the amount of \$604.00;
5. A Ministry Overpayment Chart dated December 3, 2014 indicating disability assistance overpayments to the appellant for the months June, July, August, September, October and November 2014 totaling \$604.00;
6. A Ministry Overpayment Chart dated December 3, 2014 indicating a disability assistance overpayment to the appellant for the month of February 2014 in the amount of \$94.00; and
7. The appellant’s Request for Reconsideration dated December 19, 2014 (“*RFR*”) with the following attachments:
  - Copies of six receipts for groceries, prescriptions and household items incurred between November 28, 2014 and December 9, 2014 (“*the Receipts*”); and
  - Written submissions prepared by the appellant and dated December 12, 2014.

The appellant is a sole recipient of disability assistance with a dependent spouse with PWD designation. The appellant and his spouse have a minor child.

On November 19, 2014, the appellant attended a Ministry office and advised a worker that he was no longer receiving a Child Tax Benefit and Universal Child Care Benefit (together referred to as “*the Benefits*”) as his child had been placed in the care of a different provincial ministry. Following a meeting between the appellant and that different ministry, the Ministry received confirmation that the appellant’s child was not in his care from January 6, 2014 through March 15, 2015 and again from May 4, 2014 through December 2014. During that time, the appellant continued to receive disability assistance benefits which were calculated on the basis that the appellant’s child was a “dependent child” as defined by section 1 of the *EAPWDA*.

The Ministry determined that the appellant’s child did not meet the *EAPWDA* definition of “dependent child” in February, June, July, August, September, October and November 2014 and as a result, the appellant received a total of \$698.00 in disability assistance for which he was not eligible and that he was therefore required to repay that amount to the Ministry as provided by section 18 of the *EAPWDA*.

In the *RFR* Submissions, the appellant states that he and his wife both suffer from chronic and persistent mental illness and that they had both been in and out of the hospital while their son had been in foster care on and off during the past year. The appellant writes that the different ministry informed he and his wife that they were to cancel the *Benefits* but that they were unaware that any other benefits were to be adjusted and as such, they did not alter their already limited budget. The appellant writes that they require all of their limited income to survive and that even a small monthly reduction would be noticed.

The appellant prepared written submissions in support of this appeal dated January 23, 2015. In those submissions, the appellant states that his son was placed in foster care in January 2014 due to his wife’s

hospitalization in December 2013. The appellant writes further that in January 2014 when he and his wife were advised by the ministry in whose care their son had been placed to discontinue the Benefits and that they took steps to do so. The appellant writes that given he and his wife's mental illnesses, maintaining health and capacity to parent without being stressed is their most important priority. He says that having a child is a challenge and that as he and his wife are unable to work, they rely completely on their income assistance and the appellant provides a calculation of the difference in his income assistance benefit received as a family of three as opposed to that received as a family of two.

The appellant notes in his submissions that while his son was in foster care, he and his wife provided all of the child's clothing and as they had up to four consecutive day and overnight visits per month with their son beginning in August 2014, they were required to spend money on his needs which included meals, pajamas, lunch boxes, water bottles, prescription drugs, dental costs and child activities.

The panel finds that the appellant's written submissions did not raise new information as the appellant had previously submitted the Receipts and had made reference to spending money on his child while he was in foster care. For this reason, the panel finds that the written submissions are admissible as written testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *EAA*.

No new evidence was submitted by Ministry which relied on the Reconsideration Decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the December 29, 2014 Reconsideration Decision which found that the appellant received disability assistance for which he was not eligible in February, June, July, August, September, October and November 2014 and that he was required to repay that amount to the ministry pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”).

Section 1 of the *EAPWDA* defines “dependent child” as one who resides in the parent’s place of residence for more than 50% of each month and relies on that parent for the necessities of life.

Sections 3 and 18 of the *EAPWDA* address the eligibility of a family unit for disability assistance and the consequences for receipt of such assistance by those who are not eligible for it respectively as follows:

### Eligibility of family unit

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

### 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 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 A, section 2 provides in part as follows:

### Monthly support allowance

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(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
4	Two applicants/recipients and no dependent children	Both applicants/recipients are persons with disabilities	\$949.06
7	Two applicants/recipients and one or more dependent children	Both applicants/recipients are persons with disabilities	\$1,043.06

### Positions of the Parties

In an attachment to the Notice of Appeal dated January 12, 2015, the appellant writes that in January 2014, once he was advised to stop receiving the Benefits, he took steps to do so but that he and his wife were not notified that the amount of disability assistance they receive had to be adjusted and that they were left unaware of that for a period of 12 months.

The appellant writes that he and his wife both suffer from chronic mental illness and as such they rely 100% on income assistance and by the time the 12 month period referred to above had passed, they had spent money not only on themselves but on their child despite his being in foster care.

The Ministry's position as set out in the Reconsideration Decision is that while the appellant's minor child was placed in foster care, he did not meet the *EAPWDA* definition of "dependent child" and as such the appellant received disability assistance for each of the months of February, June, July, August, September, October and November 2014 for which he was not eligible which he was obligated to repay to the government.

### Analysis

#### Was the appellant's child a "dependent child"?

The evidence before the Ministry at the time of reconsideration was that the appellant's child had been placed in foster care from January 6, 2014 through March 15, 2015 and again from May 4, 2014 through December 2014. Section 1(1) defines "dependent child" as one who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life.

While the appellant argues that as early as August 2014 he had visitation with his son that included "up to 4 consecutive days and nights" as well as lunches and dinners on some occasions and that in the course of these visitations he provided for the necessities of life to his son as evidenced by the Receipts, the length and duration of the visitations at the appellant's place of residence falls well short of 50% and as such the panel finds that based on the evidence the Ministry reasonably determined that the appellant's child was not a "dependent child" as defined by the *EAPWDA* during the months of February, June, July, August, September, October and November 2014.

#### Did the appellant receive disability assistance for which he was not eligible?

Schedule A, section 2(1) sets out the amount of disability assistance which is to be provided to a family unit. The amount varies depending on the make-up of the family unit.

When the appellant's family unit consists of himself and his wife, both of whom are designated as Persons With Disabilities, as well as their dependent child, Item 7 of the Table to section 2 provides that their family unit receives monthly support of \$1,043.06.

However, when the appellant's family unit includes only he and his wife and not their dependent child, Item 4 of the Table to section 2 provides that the amount of monthly support is reduced to \$949.06 for a difference of \$94.00 per month.

Given the panel's finding that the ministry reasonably determined that the appellant's child was not a "dependent child" during the months of February, June, July, August, September, October and November 2014, the panel further finds that the ministry reasonably determined that the appellant received disability assistance for seven months which the appellant was not entitled to.

**Is the appellant liable to repay the disability assistance overpayment received?**

Section 18 of the *EAPWDA* provides that if disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients of the assistance or supplement are liable to repay the government. Given the panel's findings that the ministry reasonably determined that the appellant received disability assistance for which he was not eligible, the panel further finds that the ministry reasonably determined that the appellant was liable to repay that amount to the government.

**Conclusion**

Based on the aforementioned, the panel finds that the Reconsideration Decision was a reasonable application of the applicable enactments in the circumstances of the appellant and the panel therefore confirms the ministry's decision.