

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated March 19, 2015, in which the Ministry determined that the Appellant must repay the amount of disability assistance she received for the months of July and August, 2006. The Ministry found that the Appellant received an insurance settlement cheque in May, 2006 which she did not report within the period set out in Section 29(a) of the Employment and Assistance for Persons with Disabilities Regulation, which is by the 5th day of the calendar month following the calendar month in which it was received. The Ministry determined that the Appellant had income in excess of the amount of her disability assistance for July, 2006 and assets in excess of the maximum allowable for her family unit for August, 2006 and therefore was not eligible for disability assistance for that period and is required to repay the amount of disability assistance she received for those months.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 18, 19

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9, 10, 24, 29

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A letter to a creditor from the Appellant dated November 11, 2010 asking for forgiveness of a debt.
- A letter To Whom it May Concern from a physician dated September 8, 2009 stating medical information in support of a request for forgiveness of debt.
- A letter from the Appellant dated September 10, 2009 with no addressee titled “The condition and how it affects my ability to work”
- A bank statement dated 21 January 2000 partly illegible, with a note “Last term deposit to be closed”. The statement showed a deposit of \$1,500 May 16, 2006 maturing in May 2009 and an initial deposit of \$85,000 on 18 May 2006, maturing 18 May 2007.
- Copies of two documents dated January 31, 2011 titled “Account close authorization”.
- An Account Activity report from a financial institution dated 19 December 2007 showing a balance forward of zero.
- An Account Activity report from a financial institution dated January 17, 2011 for the period November 19, 2010 to December 17, 2010.
- An Account Activity report from a financial institution dated January 17, 2011 for the period December 17, 2010 to January 17, 2011.
- A bank statement dated January 11, 2011 for the period December 15 to January 10.
- An Account Activity report from a financial institution for the period November 17, 2010 to January 15, 2011.
- A copy of an account statement from a financial institution printed January 17, 2011 with a handwritten note stating that this account is being closed.
- An Account Activity report from a financial institution for the period November 5, 2007 to December 19, 2007.
- A letter from the Appellant to the Ministry dated January 28, 2011 stating that she has enclosed bank records and that she received \$110,000 and spent it on credit card debt, gifts to relatives and an extended holiday outside Canada. She stated that she returned to Canada, ran out of funds and applied for debt forgiveness accrued in 2008 from a credit card. She states she has volunteered regularly for her community but never received financial support for that work and has on-going health problems.
- A letter from the Appellant to the Ministry dated November 18, 2014 in which she stated that she does not believe that she was the recipient of an overpayment and that the Ministry contacted her about the debt in 2011. She stated she submitted the required bank statements for May-September 2006 and never signed a repayment agreement.
- A letter from the Appellant to the Ministry dated February 8, 2015 in which she asked whether the Ministry can take repayments if she never saw or signed a repayment agreement, whether it was legal for the Ministry not to inform her of the result of her 2011 reconsideration request and whether it is legal for the Ministry to request records from 5 years previous.
- A copy of a statement of account dated May 12, 2006 from a lawyer dealing with the insurance settlement received by the Appellant, stating that \$110,098.77 had been disbursed to the Appellant. .
- A copy of a letter from the Ministry to the Appellant dated January 13, 2015 stating that the overpayments made to her in July and August 2006 have been reviewed and are correct. An additional overpayment of February 2008 was noted in the subject line.
- A copy of the Ministry’s Overpayment Chart of \$1,944.84 for July and August 2006 dated January 13, 2015.
- The Appellant’s Request for Reconsideration dated March 13, 2015.

The Appellant submitted a statement with her Notice of Appeal to the Tribunal. The Panel accepted the statement as part of the Appellant’s argument.

The Panel makes the following findings of fact:

- The Appellant received disability assistance for the months of July and August, 2006.
- The Appellant received an insurance settlement of \$110,098.77 in May, 2006, which she did not report to the Ministry.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's reconsideration decision dated March 19, 2015, in which the Ministry determined that the Appellant must repay the amount of disability assistance she received for the months of July and August, 2006. The Ministry found that the Appellant received an insurance settlement cheque in May, 2006 which she did not report within the period set out in Section 29(a) of the Employment and Assistance for Persons with Disabilities Regulation, which is by the 5th day of the calendar month following the calendar month in which it was received. The Ministry determined that the Appellant had income in excess of the amount of her disability assistance for July, 2006 and assets in excess of the maximum allowable for her family unit for August, 2006 and therefore was not eligible for disability assistance for that period and is required to repay the amount of disability assistance she received for those months.

Legislation

EAPWDA

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*].

Liability for and recovery of debts under Act

- 19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
 - (b) deducted, in accordance with the regulations from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

EAPWDR

Definitions

- 1** (1) In this regulation:

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with

- (i) a savings institution, or
- (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds.

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.

Asset limits

- 10** (1) The following assets are exempt for the purposes of subsection (2):
- (a) clothing and necessary household equipment;
 - (b) one motor vehicle generally used for day to day transportation needs;
 - (c) a family unit's place of residence;
 - (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
 - (i) applied to the amount owing on the family unit's current place of residence, or
 - (ii) used to pay rent for the family unit's current place of residence;
 - (e) a Canada child tax benefit;
 - (f) a goods and services tax credit under the *Income Tax Act* (Canada);
 - (g) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
 - (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
 - (i) business tools;
 - (j) seed required by a farmer for the next crop-year;
 - (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for disability assistance (part 2) form, and female stock held for stock replacement;
 - (l) essential equipment and supplies for farming and commercial fishing;
 - (m) fishing craft and fishing gear owned and used by a commercial fisher;
 - (n) prepaid funeral costs;
 - (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
 - (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
 - (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
 - (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
 - (s) money that is
 - (i) paid or payable to a person if the money is awarded to the person by an adjudicative panel

- in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
- (ii) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (u) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 3 (b).]
- (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
- (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,
- (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
 - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
 - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
 - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;
- (y) assets exempted under
- (i) section 11 (2) [*asset development accounts*],
 - (ii) section 12 (2) [*assets held in trust for person with disabilities*], or
 - (iii) section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*];
- (z) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 3.]
- (aa) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (cc) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 3.]
- (dd) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
- (i) Autism Funding: Under Age 6 Program, or
 - (ii) Autism Funding: Ages 6 — 18 Program;
- (ff) funds held in a registered education savings plan;
- (gg) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

- (hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (ii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (jj) funds held in, or money withdrawn from, a registered disability savings plan;
- (kk) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (ll) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (mm) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (nn) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (oo) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (pp) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (qq) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (rr) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (ss) a tax refund;
- (tt) a BC basic family bonus;
- (uu) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (vv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (ww) a BC early childhood tax benefit.

(1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m).

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5 000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000.

(3) The minister may authorize one or more of the following:

- (a) that the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset of the family unit for the purposes of subsection (2) for the period specified by the minister;
- (b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by

the minister.

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) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

The Appellant stated in her Request for Reconsideration that she did not use the insurance funds for living expenses during July and August, 2006, while they were being organized into investments. The Appellant stated that she used part of the insurance settlement to repay debt, part as a gift to family members and the remainder for a year-long vacation. She stated that she thought the matter had been closed due to the time that had elapsed, and was surprised to learn in 2011 that the Ministry was claiming that she had been overpaid. The Appellant stated that she never agreed that she had been overpaid and never signed an agreement to repay the funds. The Appellant argued that the Ministry knew of the insurance settlement in 2007 when she reapplied for assistance and took no action then.

The Ministry noted in the "Decision to be reconsidered" section of the Request for Reconsideration that there is no signed repayment agreement on file and stated in the Reconsideration decision that there are no provisions authorizing the minister to waive the requirement to repay a debt to the government or the requirement of person [sic] to sign an agreement to repay the funds. The Ministry argued that the Appellant did not report the income at the time of receipt in 2006. The Ministry stated that the Appellant received assistance for two months when she was not eligible due to having income in excess of the amount of assistance for which she was eligible and that she had assets in excess of the allowable limit for her family unit, which was \$5,000.

The Panel notes that the letter from the Appellant's lawyer detailing the distribution of her insurance settlement is dated May 12, 2006, with a cheque issued to the Appellant in the amount of \$110,098.77. Ministry records show payments of \$972.42 in disability assistance to the Appellant in the months of July and August, 2006. Section 29, EAPWDR provides that a recipient who has a change in assets or income must report it to the Ministry by the 5th day of the calendar month following the calendar month in which it is received. Section 9 states that a family unit is not eligible for assistance if the net income determined under Schedule B equals or exceeds the amount of assistance determined under Schedule A for a family unit matching that family unit. Section 10 states that a sole applicant or recipient with no dependants is not eligible for assistance if the sole applicant or recipient has assets valued at more than \$5,000.

The panel notes there is no Ministry documentation of the Appellant's statement in her March 13, 2015 Request for Reconsideration that she spoke to a ministry worker in November 2007 of her "full situation with the settlement" when she re-applied for disability.

The panel finds no detailed bank accounts for May-September 2006 which the Appellant states in her November 18, 2014 letter to the Ministry she forwarded, January 28, 2011 as the Ministry required.

The Panel notes the Ministry stated in the Reconsideration Decision Summary of Facts that the Appellant was advised in September 2011 of another overpayment in February 2008 and that this would be addressed in a separate Reconsideration Decision. The panel notes much of the Appellant's correspondence after January 17, 2011 addressed this overpayment and that of July and August 2006.

The Panel finds that the Ministry reasonably determined that the Appellant received disability assistance for which she was not eligible for the months of July and August, 2006 because the Appellant's insurance payment was unearned income and a cash asset as defined in Section 1(1), EAPWDR, and was not exempt under Schedule B, EAPWDR and was in excess of the Appellant's disability assistance rate as determined under Schedule A for the month of July, 2006, and her assets exceeded the allowable limit of \$5,000 under Section 10(2), EAPWDR in the month of August, 2006. Pursuant to Sections 18 and 19, EAPWDA the Appellant is liable to repay the disability assistance she was not eligible for. There is no requirement in the applicable legislation for a signed agreement to be in place in order for a determination of overpayment to be made, nor may the amount of overpayment be appealed. The Panel confirms the Ministry decision as reasonably supported by the evidence.