

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of June 1, 2015 wherein the ministry determined that the appellant received disability assistance for which she was not eligible under section 24 of the Employment and Assistance for Persons with Disabilities Regulation and is required to repay the amount to the ministry as per Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 18. The ministry determined that the appellant received \$3900 in child support as unearned income that was not deducted from her disability assistance and that these child support payments are not considered exempt income according to Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule B section 1.

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 1,9,24
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule B

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An overpayment notification dated April 9, 2015 in the name of the appellant. The notification states the ministry has calculated that the appellant received an overpayment of \$3900.
- A list titled Family Maintenance Payment Summary in the name of the appellant. The list states the appellant declared \$200 each month from March 2013 to April 2014, \$450 each month from May 2014 to December 2014, and \$600 in the month of January 2015.
- A contact summary printout in the name of the appellant. An entry dated November 25, 2014. The entry reads, "Client states that son was removed from her file 2009-Mar-11 and came back to reside with her in February 2010 but was never added back to her file. Client has provided a letter confirming this and that the child's father in January 2012 started to pay child support of \$150.00 per month."
- A letter dated November 5, 2014 from the appellant. The appellant writes that in February 2010 her son came into her care and her son's father began paying for his clothes and school sports. In January 2012 her son's father started to pay \$150 per month in child support.
- An overpayment chart dated March 2012 to April 2014 in the name of the appellant. The chart adjusts the amount of child support she received each month and adjusts her eligible assistance amount. The result of the monthly overpayment adjustments shows an overpayment of \$3900.
- An undated ministry report titled Fraud Allegation Reporting in the name of the appellant. The report includes the comments, "client provided a letter that she was receiving child support of \$150 per month since Jan 2012. Stated that her son has been living with her since Feb 2010 but had not been added back to the file."
- Request for Reconsideration dated May 22, 2015 with attached letter in which the appellant wrote that she disputes that the \$150 a month she received for her youngest son should have been considered as income since she did not claim this child as a dependant. His father was fully supporting him financially. The \$150 went towards the child's food and was not used to support her or her eldest child. Her eldest child was claimed as a dependant due to lack of support from his father. Since her youngest child was not claimed as a dependant, she did not receive any money from the ministry for him. She is no longer receiving assistance, is still disabled and unable to work, her husband is on WCB and they have no extra money.

In her Notice of Appeal the appellant writes, "As quoted in background, 'the ministry made an error not to add this ongoing income to your file at that time.' I should not be paying for their error."

At the hearing the appellant told the panel that when she originally went on disability in 2009 she had the older of her two sons living with her and he was added to her ministry file as a dependent. In 2010 her younger son moved back in with her. At the time she had an arrangement with her youngest son's father and he agreed to would pay for his food, clothes, and any sundry expenses incurred. In early 2012 she negotiated with her son's father to pay \$150 per month for his expenses to make the payment of expenses easier to manage. She informed the ministry that her youngest son had moved back in with her but she decided not to add him to her ministry file, or request additional income assistance, because her son's father was paying for any expenses relating to her youngest son. She told the panel that she felt it wasn't right to ask for additional support when she didn't have additional expenses.

The appellant told the panel that in April of 2014 the ministry began to deduct the \$150 per month in child support she was receiving from her son's father from her monthly assistance because the child support was considered unearned income and therefore not exempt according to the legislation. She added she got remarried in August 2014 and ceased receiving Employment Assistance income as of September 2014.

At the hearing the ministry told the panel that in 2009 the appellant declared she had one son living with her. This eldest child was listed as a dependent on her file. The appellant was declaring child support from the child's father and the amount of child support was reflected in her monthly support she received from the ministry. The ministry contact records show the appellant contacted the ministry April 5, 2011 to disclose that her second, youngest, son had moved in with her 4 days per week. The ministry contact record states the appellant was instructed to submit her youngest son's identification and other information so he could be added to her file, however, the ministry contact records show the appellant did not follow through with providing the requested documentation.

The ministry explained that the issue in this appeal is not whether the appellant's youngest son was listed as a dependent on the ministry file or not. The ministry stated the issue is simply that the appellant received monthly child support from her youngest son's father of \$150 per month that was not adjusted against her monthly assistance from the ministry resulting in \$3900 in an overpayment (26 months of payments). The ministry continued that had the appellant added her youngest son to her ministry file as a dependent when he moved in with her she would have received an additional \$80 per month in housing allowance. The ministry added that it is not possible to retroactively add him to her file nor is it possible to adjust the housing allowance she didn't receive against the overpayment amount.

The ministry told the panel that it is not clear exactly where the error was made or by whom resulting in the \$150 per month in child support not being adjusted however both parties agree that the child support was paid to the appellant from her son's father. The ministry added that it is not alleging she had the intent to mislead the ministry, but rather, the ministry told the panel there was an error made and the legislation does not differentiate based on who was responsible for the error.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable to determine the appellant received disability assistance of \$3900 for which she was not eligible and must repay the money to the ministry. The ministry determined the appellant received child support totaling \$3900 that the ministry was previously unaware of and according to the legislation, shown below, must be repaid because child support payments are unearned income and not considered exempt income according to Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule B section 1.

The relevant legislation is as follows:

Employment and Assistance for Persons with Disabilities Act Section 18

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]*.

Employment and Assistance for Persons with Disabilities Regulation Sections 1,9,24

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:

- (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.
- (2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under
- (a) an order of a court in British Columbia,
 - (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
 - (c) an agreement filed in a court in British Columbia,
- the child is a dependent child of the parent who is designated in writing by both parents.
- (3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

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;

Employment and Assistance for Persons with Disabilities Regulation Schedule B

Schedule B

Net Income Calculation

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:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) 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);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) 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
 - (B) 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;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (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;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) 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*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) 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;
- (xxvi) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;

- (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's (A) Autism Funding: Under Age 6 Program, or (B) Autism Funding: Ages 6 — 18 Program;
- (xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
- (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxx) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;
- (xxxi) 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;
- (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxiii) 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;
- (xxxiv) money withdrawn from a registered disability savings plan;
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxviii) 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;
- (xxxix) 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;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xliii) 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;
- (xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xlv) a BC early childhood tax benefit,
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

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; (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.

Arguments of the Parties

The argument of the appellant is that although she received child support from her youngest son's father in the amount of \$150 per month, the money was to cover the expenses directly relating to her youngest son and the lump sum of \$150 per month was easier to manage than having her son's father pay for multiple smaller costs throughout the month. She argues that since her son was not listed on her ministry file as a dependent, she didn't receive additional ministry support that she would have been entitled to. She argues that because the ministry concedes in the reconsideration decision that the overpayment error was made by the ministry and not her, she should not be obligated to repay the money.

The ministry argues that the appellant received 26 monthly child support payments of \$150 each, totaling \$3900, from March 2012 to April 2014 that are considered maintenance under an "other agreement" as outlined in EAPWD section 1 and there are no exemptions for this type of income. The reconsideration decision incorrectly states March 2012 to December 2014. At the hearing the ministry noted this was an error and that the correct dates are March 2012 to April 2014. The amount of these payments should have been deducted from her disability assistance but, due to an error, it was not. This resulted in an overpayment that must be repaid to the ministry according to the EAPWDA section 18.

In this case both parties agree that the appellant received \$3900 in child support from the father of her youngest son between the dates of March 2012 and April 2014 totaling \$3900. The issue the panel must consider is the reasonableness of the ministry's decision that the appellant received disability assistance for which she was not eligible.

Regarding the ministry's determination that the \$150 per month in child support, totaling \$3900. The

EAPWDR section 1 defines “unearned income” to include “maintenance under other agreement.” The appellant argues that the \$150 per month she was receiving was intended to pay for the direct expenses of her youngest son. Although the appellant and her son’s father had come to a mutually agreed upon way of dealing with the sundry costs associated with her youngest son, their agreement would reasonably fall into the category of “maintenance under... other agreement”. Under Section 1(d) of Schedule B of the EAPWDR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted and, given the directory language of the Section 1 (i.e. the use of the word “must”), the ministry does not have the discretion to do otherwise. Therefore, according to EAPWDR section 24, this income must be deducted from her monthly disability payments. The panel finds the ministry was reasonable to determine the \$150 per month in child support, totaling \$3900, is unearned income, to be included in the family unit’s net income as defined by the legislation.

The panel considered the appellant’s argument that her youngest son was not listed on her ministry file as a dependent; therefore, she did not receive additional disability assistance she would have qualified for. It is not within the panel’s jurisdiction to determine what her eligibility would have been had she completed the process of adding her youngest son to her ministry file in 2012. The panel accepts the ministry’s testimony that it is not possible to retroactively add her youngest son to her file and collect any benefit she would have qualified for although she may have been eligible for additional assistance had she have done this.

Regarding the ministry’s determination that there are no exemptions for the type of income the appellant received listed in the legislation. The \$150 per month in child support the appellant received has been reasonably found to be “maintenance under... other agreement”. The panel has reviewed all applicable legislation and finds the ministry was reasonable to determine that the income the appellant received is not exempted from deduction.

Regarding the ministry’s determination that the \$3900 overpayment must be repaid to the ministry by the appellant, the panel considered the evidence. The appellant argues that the ministry concedes that it made an error in not deducting the \$150 per month from her disability assistance and therefore the appellant maintains she should not be obligated to repay money she received due to a ministry error. The legislation dealing with overpayments, EAPWDA section 18, does not differentiate a recipient’s obligation to repay an overpayment based on who was responsible for the error. The panel notes that the ministry has not suggested the appellant had any intent to mislead the ministry. The panel finds the ministry was reasonable to determine that as an overpayment occurred, the appellant is liable to repay the amount of the overpayment as per section 18 of the EAPWDA.

The panel finds that the ministry’s reconsideration decision was a reasonable application of the enactment in the circumstances of the appellant and confirms the ministry’s reconsideration decision.