



PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") June 16, 2015 reconsideration decision that the appellant received \$425.94 disability assistance for which she was not eligible, and under the terms of the Employment and Assistance for Persons with Disabilities Act, section 18, she is liable to repay it.

PART D – Relevant Legislation

EAPWDA Employment and Assistance for Persons with Disabilities Act, section 18
EAPWDR Employment and Assistance for Persons with Disabilities Regulation, Schedule B

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- The appellant is a sole recipient of disability assistance.
- Employment and Social Development Canada Certificate of Eligibility Part-Time Student Loans and Grants (illegible) date stamped January 8, 2015 by Canada Post.
- October 20, 2014 letter from the appellant listing total educational costs as \$2374.06 with supporting documents.
- On October 28, 2014 the appellant's November 2014 \$906.42 income assistance cheque was cashed.
- On January 27, 2015 the ministry determined \$2374.06 of her \$2800 student grants received in September 2014 was exempt, that the appellant received \$425.94 for which she was not eligible.
- December 18, 2014 Notification of Assessment Financial Aid for Part-time Studies from the Ministry of Advanced Education to the appellant, showing assessed need of \$1658 and \$1200 eligible funding for January 5, 2015 - April 21, 2015 term (date stamped by the ministry February 2, 2015).
- On May 6, 2015 the ministry advised the appellant there was an overpayment and the debt of \$425.94 added to her file.
- Request for reconsideration form, with June 2, 2015 letter from the appellant stating she was granted \$2800 in total for the fall term, part of which was an annual grant, and \$1200 in January for the second term. She stated her expenses were \$2300-2400 for each term, so the total awarded was not sufficient for her total yearly costs, and that none of it covered any living expenses.

Upon appeal the appellant submitted a June 25, 2015 letter reiterating and elaborating upon the timing and amounts of her education grants and expenses. She said the January 2015 grant was \$1200, while the Student Aid BC Notice of Assessment showed her calculated need was \$1658 and did not include travel or internet expenses.

At the hearing the appellant's advocate submitted a July 14, 2015 letter from the college attended by the appellant stating both the Canada student grant for persons with disabilities, and the BC supplemental bursary for students with a permanent disability, are intended to support the student throughout the program year, defined as August 1, 2014 to July 31, 2015. She also provided a written submission of the appellant's arguments, including a description of the ministry's policy with respect to students' assistance. The appellant argues the policy recognizes the different kinds of student financial aid and different ways and times in which student financial aid is paid, and directs staff to "consider the client's education costs for the period the funding is intended to cover when determining how much of the funding to exempt", but was not applied in the appellant's case. The advocate went on to argue statutory interpretation of the applicable legislation.

The ministry acknowledged that at reconsideration the difference in the times the grants were intended to cover was not noted or considered. Consistent with its policy, the ministry has determined it will no longer pursue recovery of the \$425.94.

The panel determined the additional oral and documentary evidence was admissible under section 22(4) of the EAA as it was in support of the records before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that the appellant received \$425.94 disability assistance for which she was not eligible, and under the terms of the Employment and Assistance for Persons with Disabilities Act, section 18, she is liable to repay it.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT (excerpt)

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 (excerpts)

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...*

(q) *education or training allowances, grants, loans, bursaries or scholarships;*

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.*

Schedule B (excerpts)

Net Income Calculation (section 24 (b))

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...*

Minister's discretion to exempt education related unearned income

8 (1) *In this section:*

"education costs" *means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester.*

[]

(2) *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.

Appellant's Position

The appellant states that while her first term educational expenses were less than the grants she received in September 2014, the grant for the January 2015 term was considerably less and did not cover her educational expenses for the second term. Two of the September grants were intended to cover the school year, not just the first term. She argues that in assessing her net income, the ministry should have applied its policy and consider that part of her grants were intended to cover the school year.

Ministry's Position

At reconsideration it was the minister's position that as the appellant's grants in September 2014 totalled \$2800 and her educational expenses for the term were \$2374.06, the \$425.94 difference constituted income not exempted by the legislation.

Panel's Decision

While the EAPWDR Schedule B section 8 definition of education costs refers to a semester, at the hearing the ministry gave evidence that its policy is to consider the period the funding is intended to cover when determining how much of the income to exempt. In the appellant's case, two of the grants were intended to support the student throughout the program year. This was not taken into consideration at reconsideration.

The panel finds the ministry's reconsideration decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision.