

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of July 22, 2015, which held the appellant liable to repay \$361.42 to the government pursuant to sections 18 and 19 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and section 8 of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); the ministry determined that in January 2013 the appellant received full support allowance when she was only eligible for comforts allowance of \$95 as she was admitted to a hospital receiving extended care.

### PART D – Relevant Legislation

Sections 18 and 19 of the EAPWDA and  
Section 8 of Schedule A of the EAPWDR.

## PART E – Summary of Facts

The appellant did not attend the hearing. Upon confirming that the appellant was notified the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

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

An overpayment notification signed by the appellant on February 21, 2013 states that

- the appellant received \$361.42 of assistance for which she was not eligible and that she is liable to repay.
- “If you disagree with the ministry’s decision...you may request the ministry to reconsider that decision.”

The appellant signed under the following statement: “I acknowledge that I received this notification and I am aware of my right to request a reconsideration of this decision.”

In her request for reconsideration dated July 10, 2015, the appellant states that

- she signed an overpayment notification but did not understand she had the right to dispute the debt.
- She was in the hospital temporarily.
- She was not in a residential care facility.

From ministry records:

- The appellant is a single recipient of disability assistance;
- On November 29, 2012 the appellant was admitted to a hospital for a period of 3 months and informed the ministry that she would be receiving extended care until the birth of her baby which was due February 2013;
- The ministry was not aware of the appellant’s extended stay at the hospital until December 19, 2012;
- The appellant had already received \$951.42 assistance for January: \$531.42 support, \$375 shelter, and \$45 natal allowance.
- The ministry determined that in January 2013 the appellant was eligible to receive \$570: \$450 for rent, \$45 natal allowance, and \$95 comforts allowance, minus \$20 debts owed.
- The appellant was not offered her right to reconsideration at the time the debt was added to her file in February 2013.

In her Notice of Appeal dated July 28, 2015 the appellant states that

- she was admitted to the hospital on November 29, 2012 due to concerns with her pregnancy;
- It was a voluntary stay at the hospital and she was free to come and go when her health permitted. On days she was not in the hospital she was required to provide for her basic needs and she did maintain off site housing during this time;
- She stayed in the hospital approximately until January 20<sup>th</sup> 2013;
- She has other health issues that cause her to be confused and she has issues with understanding and processing information.

Pursuant to section 22(4) of the Employment and Assistance Act, the panel admits the appellant’s

statements in her Notice of Appeal as being in support of the information and record that was before the ministry at the time of reconsideration; specifically, the appellant provided additional details about her health and her hospital stay substantiating the information that was before the ministry.

The ministry relied on its reconsideration decision and added the following information: The information before the ministry at reconsideration and on appeal did not include any medical records.

The panel makes the following findings of facts:

1. The appellant received support allowance for January 2013.
2. The appellant informed the ministry of a 3 months hospital stay starting November 29, 2012.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision, which held the appellant liable to repay \$361.42 to the government pursuant to sections 18 and 19 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and section 8 of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); the ministry determined that in January 2013 the appellant received support allowance when she was only eligible for comforts allowance of \$95 as she was admitted to a hospital receiving extended care.

### 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*].

### Schedule A of the EAPWDR

#### People receiving special care

- 8** (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of
- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
  - (b) a comforts allowance of \$95 for each person for each calendar month.

.....

**The appellant argues** that she is entitled to her full support allowance as she was not in a residential care facility and her hospital stay was brief. She was free to come and go as her health permitted and had to provide for her basic needs, food and clothing, when she was not in the hospital. She had to continue paying for her rent while she was in the hospital and should be compensated for that. The panel notes that the appellant received a \$450 allowance for rent.

The appellant argues further that she was not aware of the debt she was agreeing to when she signed the overpayment notification, and she did not understand she had the right to dispute the debt. As a result of health issues she gets confused and has problems understanding and processing information.

**The ministry argues** that in January 2013 the appellant received full support allowance of \$531.42 despite the fact that she was only eligible for comforts allowance of \$95 under Schedule A section 8 of the EAPWDR. As a result the appellant received disability assistance for which she was not eligible and which she is liable to repay under section 18 of the EAPWDA.

The ministry argues further that while a hospital is not the same as a long term care facility, section 8 of Schedule A of the EAPWDR applies in the circumstances of the appellant because she was admitted to a hospital for extended care – being admitted for a period of 3 months constitutes “extended care”. Section 8 states that for a person with disabilities who receives accommodation and care

- in a special care facility,
- in a private hospital, or
- who is admitted to a hospital because she requires extended care,

the amount of disability assistance is the sum of the actual cost, if any, to the recipient of the accommodation and care at the rate approved by the ministry for the type of facility plus a comforts allowance of \$95 for each person for each calendar month.

**The panel finds** that the ministry reasonably classified the appellant’s 3 months hospital stay as an extended period of time rather than a short time period as argued by the appellant. As a result section 8 of Schedule A of the EAPWDR applies in the circumstances of the appellant; section 8(1) holds that for a person with disabilities who is admitted to a hospital because he or she requires extended care, the amount of disability assistance is the sum of the actual cost, if any, to the recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus a comforts allowance of \$95 for each calendar month.

As the appellant had already received the full support allowance for the month of January the panel finds that the ministry reasonably determined that the appellant is liable to repay the disability assistance for which she was not eligible in accordance with section 18(1) of the EAPWDA. Section 18(2) provides that the amount of a repayment is not subject to appeal.

After considering all the evidence and the applicable legislation the panel finds that the ministry’s reconsideration decision which held the appellant liable to repay disability assistance for which she was not eligible was reasonably supported by the evidence and was a reasonable application of the applicable regulation in the circumstances of the appellant. Therefore the panel confirms that decision.