



PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") September 16, 2015 reconsideration decision that as the appellant received a larger shelter allowance than permitted under Employment and Assistance for Persons with Disabilities Regulation Schedule A section 4, by the terms of the Employment and Assistance for Persons with Disabilities Act section 18(1) he is liable to repay the amount of the overpayment.

PART D – Relevant Legislation

EAPWDA Employment and Assistance for Persons with Disabilities Act, section 18 and 19 EAPWDR Employment and Assistance for Persons with Disabilities Regulation, Schedule A section 4

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant is a sole recipient with Persons with Disabilities designation.
- May 5, 2015 letter from ministry to the appellant requesting submission of documents for a review of eligibility for assistance.
- July 9, 2015 letter from ministry to the appellant requesting submission of documents for a review of eligibility for assistance.
- July 30, 2015 letter from ministry to the appellant advising completion of the review of his assistance between March 1, 2007 and July 20, 2015 resulted in a determination that he received an overpayment of \$3,477.21 resulting from re-mortgaging on three occasions, and enclosing an overpayment chart and overpayment notification.
- document noted as “initial mortgage in 2002” showing principal amount as \$15,200 and each periodic payment as \$91.02.
- February 23, 2007 Order to Pay, on which is noted “2nd remortgage” and Authorization to Pay mortgage proceeds of \$16,500.
- July 18, 2015 credit union account statement, on which is noted “current mortgage in my name only”, showing original loan at \$53,150 and payment schedule of \$238.44 paid monthly. An August 14, 2014 withdrawal of \$36,054.26 is circled and noted as “payout to ex spouse from 3rd remortgage”.
- August 19, 2015 Request for Reconsideration form with information from the ministry that includes notes stating the client said the second re-mortgage was used to purchase new kitchen flooring and medical expenses for his spouse, the client advised the third re-mortgage was negotiated to allow him to pay a settlement to his ex-spouse as part of the separation agreement, and explained the debt was of no fault to the client.
- August 19, 2015 letter from appellant as section 3 reason for Request for Reconsideration, in which he said in 2007 the case worker approved the increase in mortgage, stated that under couple disability they were far below their shelter allowance and thus were entitled to the increase, and explained that mortgage payments are a legitimate expense under couple disability shelter costs. The appellant said the issues of couple disability were calculated and audited by multiple ministry staff before final decisions were finalized in 2007. He asked how the ministry can make a decision in good faith and then go against that decision 8 years later, and asks how he can be held responsible for the entire debt when both he and his ex-wife received funding from the 2007 mortgage refinance.

Upon appeal the appellant said the minister erred in attributing an overpayment to him and failed to consider presented information.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that as the appellant received a larger shelter allowance than permitted under EAPWDR Schedule A section 4, by the terms of the EAPWDA section 18(1) he is liable to repay the amount of the overpayment.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES 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].*

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.*

**EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION
Schedule A**

Monthly shelter allowance

4 (2) *The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of*

(a) *the family unit's actual shelter costs, and*

(b) *the maximum set out in the following table for the applicable family size:*

(5) *Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless*

(a) *the remortgaging was necessary because of the expiry of the mortgage term, and*

(b) *the amount borrowed under the mortgage is not increased.*

Appellant's Position

The appellant argues that in 2007 the ministry case worker said that under couple disability he and his then wife were far below their shelter allowance and were entitled to the increase. He said at the time the issues of couple disability were calculated and audited by multiple ministry staff before final decisions were made. The appellant questions how the ministry can make a decision in good faith and go against it eight years later. He further asks how he can be held responsible for the entire debt when both he and his ex-wife received funding from the 2007 mortgage refinance. He says the ministry erred in attributing an overpayment to him and failed to consider presented information.

Ministry's Position

The ministry argues that while a mortgage is a permitted shelter cost, in accordance with EAPWDR Schedule A section 4(5)(a)(b) the actual shelter cost permitted is the \$91.02 original mortgage monthly payment. Because the ministry entered the higher mortgage costs as the actual shelter costs in error, the appellant received shelter funds he was not eligible to receive. Under section 18 of the EAPWDA, if disability assistance is received by a person who is not entitled to it, that person must repay the government.

Panel's Decision

On July 30, 2015 the ministry advised the appellant that he had been receiving assistance for which he was not eligible since 2007 and he must repay the ministry. The ministry acknowledged the error in entering higher shelter costs was theirs and no fault of the appellant's. The appellant's initial 2002 mortgage payments were \$91.02, but he remortgaged in 2007 using some of the proceeds for renovations and medical expenses, and in 2014 using some of the proceeds to pay a settlement to his ex-spouse as part of the separation agreement, and thereby increased his mortgage loan and his monthly payments.

Section 4(5) of Schedule A of the EAPWDR states that if shelter costs increase as a result of a recipient remortgaging, the payments are deemed to be the amount before the remortgaging unless the remortgaging was necessary because of the expiry of the mortgage term and the amount borrowed was not increased. In this case the amounts borrowed were increased. The panel finds the ministry's determination that the actual shelter cost permitted for the term of the new mortgage is the amount before the remortgaging to be reasonable.

Section 19(4) of the EAPWDA states a person is jointly and separately liable for a debt accrued in respect of a family unit while the person was a recipient in the family unit. The reconsideration decision does not address the issue of the ex-wife's liability to repay the ministry. However, the ministry said it was unable to determine at that time the amount of the shelter allowance the appellant received for which he was not eligible.



Although the appellant received assistance to which he was not entitled as a result of a ministry error the ministry took many years to discover, section 18 of the EAPWDA states recipients of overpayments are liable to repay the government and makes no exceptions for ministry errors. The panel therefore finds the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.