



PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry dated November 3, 2015, which held that, since the Appellant had cash assets exceeding \$5,000 in value, the limit allowed under section 10(2) of the Regulation, from February 2014 to September 2015, the Appellant was not entitled to the amount of disability assistance that the Ministry paid to the Appellant during that period and must repay that amount.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the “Act”), ss. 1 and 18(1)

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”), ss. 10(1) and 10(2)

PART E – Summary of Facts

The evidence before the Reconsideration Officer consisted of

1. 19 monthly statements for the Appellant’s personal banking account at a chartered bank (the “Personal Account”) from January 10, 2014, to August 12, 2015;
2. three semi-annual investment statements for the Appellant’s tax free savings account at the same chartered bank (the “Tax Free Account”) from July 1, 2013, to December 31, 2014, the statement for the period ending December 31, 2014, bearing a handwritten notation: “No further statements have been issued as there have been no transactions for this account”;
3. a Ministry Bank Profile signed by a teller at the chartered bank on August 27, 2015, showing the balances of the Personal Account and the Tax Free Account as of that date;
4. a Ministry Overpayment Chart showing the Ministry’s calculation of overpayment of disability assistance to the Appellant between February 2014 and September 2015;
5. the submissions of the Appellant found at page 13 of the Appeal Record; and
6. a letter dated October 21, 2013 (*sic*), “to whom it may concern” about the Appellant from a vocational and rehabilitation service organization. Since the Appellant’s Request for Reconsideration is dated October 21, 2015, and the Appellant authorized the Tribunal on December 1, 2015, to release information to the person who signed the letter, the Panel concludes that the date on the letter should be “October 21, 2015”, not October 21, 2013.

Neither the Appellant nor the Ministry tendered further evidence or made further submissions, except as contained in the Notice of Appeal, on the Appeal.

Based on the evidence contained in the Appeal Record, the facts are as follows. They are not in dispute.

1. The Appellant has no dependent children and has been receiving disability assistance as a sole recipient for some time, including the period from February 2014 to September 2015. She has been diagnosed with autism and requires assistance to understand procedures and policies.
2. From January 2014 to August 27, 2015, the Appellant had two bank accounts, the Personal Account and the Tax Free Account.
3. As of January 31, 2014, the balance in the Personal Account was \$3,381.20 and the balance in the Tax Free Account was \$4,996.15, for a total of \$8,377.35.
4. In no month between January 2014 and August 2015 was the total in the two accounts less than \$7,900.
5. As of August 27, 2015, the balance in the Personal Account was \$9,204.02 and the balance in the Tax Free Account was \$8,099.32, for a total of \$17,303.34.
6. The Ministry determined during a file review begun in August 2015 that it had overpaid disability assistance to the Appellant between February 2014 and September 2015.



7. The Ministry has calculated the total overpayment to be \$16,992.79.
8. The Appellant has complied with all requests for information throughout the time she has been receiving disability assistance.
9. The Appellant opened a registered disability savings plan (“RDSP”) in September or October 2015.

PART F – Reasons for Panel Decision

Issues

Does the evidence reasonably support the decision of the Ministry that the Appellant was not entitled to the amount of disability assistance that the Ministry paid to the Appellant from February 2014 to September 2015, because she had assets exceeding \$5,000 in value during that period, and that she must repay that amount, and was the decision a reasonable application of the Act and the Regulation in the circumstances of the Appellant?

Relevant Law

In the Act and the Regulation the term “family unit” means the recipient in a family unit to whom disability assistance is provided (Act, s. 1).

Section 18(1) of the Act states that “if disability assistance . . . is provided to or for a family unit that is not eligible for it, the 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.”

Under the Regulation, the term, “asset”, means, among other things, “cash assets” which include, in relation to a person, “money standing to the credit of the person . . . with a savings institution . . . that must pay it to the person on demand.” The term, “savings institution”, includes a chartered bank (*Interpretation Act*, s. 29).

At the times relevant to this appeal, section 10(2) of the Regulation provided that a family unit is not eligible for disability assistance if a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5,000.

Section 10(1) of the Regulation contains a list of assets that are exempt from the calculation of the limit prescribed in s. 10(2). Section 10(1)(jj) exempts funds held in or money withdrawn from an RDSP from the calculation.

On December 1, 2015, the limit prescribed in s. 10(2) was increased to \$100,000.

Analysis

The Appellant submits that she did not understand the restrictions imposed by the Regulation. The Act and the Regulation establish a scheme for the payment of disability assistance based on objective criteria. A recipient’s understanding or lack of understanding of the requirements of the scheme is not a factor the Ministry may take into account in determining whether or not the Ministry has overpaid the recipient and requiring repayment, even when the recipient suffers from a neurodevelopmental disorder such as autism, which may be characterized by difficulty communicating and understanding abstract concepts.

The evidence shows that the Appellant is frugal and manages her money responsibly. The Appeal Record contains no allegation or evidence that the Appellant intentionally failed to disclose the amounts in her accounts from time to time. On the contrary, she complied with all requests for information.

In September or October 2015, after the period in which the overpayment occurred, the Appellant opened an RDSP to bring the value of her assets below the \$5,000 limit. The federal government implemented the RDSP

program in December 2008. Although opening an RDSP earlier than September or October 2015 would have enabled the Appellant to remain below the asset value limit, the Appeal Record contains no evidence indicating why she did not do so. Further, the Appeal Record contains no evidence indicating that the Appellant would have qualified for an RDSP before September 2015. Even if she would have qualified, the fact remains that Appellant did not open an RDSP before then; the Act and the Regulation do not give the Ministry the discretion to impute RDSP status to a non-RDSP account such as the Personal Account or the Tax Free Account.

Further, the Appellant seeks forgiveness of the overpayment, particularly in view of the increase in the asset value limit on December 1, 2015. Under the Act and the Regulation, the Ministry has no discretion to forgive an overpayment. The amendment to the Regulation that increased the value of assets that a recipient may have and remain eligible for disability assistance came into effect December 1, 2015. The Ministry cannot apply it retroactively. The Ministry is bound by the Regulation as it was at the time of the overpayment and the Reconsideration Decision and cannot take into account the subsequent increase in the asset value limit when determining the Appellant's liability to repay the overpayment.

The Minister relies on the Act, the Regulation, and the reasoning expressed in the Reconsideration Decision.

The Appellant is a "family unit" for the purposes of the Act and the Regulation.

The Appellant held the funds in the Personal Account and the Tax Free Account in a savings institution, the bank. The nature of such accounts is that the bank must pay money in the accounts to the Appellant on demand. The accounts are therefore cash assets which, in turn, are assets for the purposes of section 10(2) of the Regulation. The accounts do not fall within any of the exemptions listed in section 10(1) of the Regulation. Throughout the period from February 2014 through September 2015 assets of the Appellant in the form of the Personal Account and the Tax Free Account exceeded \$5,000 in value. Because the Appellant had assets exceeding \$5,000 in value, she was not eligible for the disability assistance that the Ministry paid her during that period. Section 18(1) of the Act makes the Appellant liable to repay the overpayment to the government, even though the Appellant complied with all requests for information.

The Panel notes that the Reconsideration Decision refers incorrectly to section 11, instead of section 10, of the Regulation. Since the full text of section 10 is attached to the decision as "Appendix A - Legislation" and the erroneous references are clearly to the appended text, the Appellant suffered no prejudice as a result of the errors.

Conclusion

Based on the foregoing analysis, the Panel finds that the Reconsideration Decision that the Appellant was not entitled to the amount of disability assistance that the Ministry paid to the Appellant from February 2014 to September 2015, because she had assets exceeding \$5,000 in value during that period, and that she must repay that amount, was reasonably supported by the evidence and was a reasonable application of the Act and the Regulation in the circumstances of the Appellant. The Panel confirms the decision.