

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of January 7, 2016 wherein the ministry determined that the appellant had received disability assistance (“DA”) during the period March 2012 to May 2015 for which she was not eligible and is liable to repay because during that period she received non-exempt unearned income, specifically Old Age Security/Guaranteed Income Supplement survivor benefits (OAS/GIS), that exceeded the DA rates for a Person with Disabilities (PWD) under Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

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(1), 9 (2), 24 and Schedule B Section 1 (d)

PART E – Summary of Facts

The appellant has been designated as a recipient of disability assistance since 2002.

The evidence before the ministry at reconsideration included the following:

- appellant's request for reconsideration received by the ministry December 21, 2015 to which was appended a typewritten note from the appellant, stating:
 - she reported her OAS/GIS benefit to a ministry worker in August 2012 and was told: "Okay, don't worry about it";
 - in August 2015 she asked the ministry how much income she was allowed to make while getting DA from the ministry, which resulted in the loss of her DA;
 - her monthly rent is calculated at 30% of her total income, which included her OAS/GIS, therefore 30% should be deducted from her total overpayment debt.
- February 13, 2012 letter from the federal government informing the appellant that she was eligible for an OAS/GIS benefit commencing March 2012;
- BC Housing rent subsidy applications for the period January 1, 2012 – January 1, 2016;
- summary of the appellant's 2015 rent subsidy/rent contribution;
- copy of the appellant's 2012 tax return;
- December 8, 2015 letter from the ministry to the appellant informing her that she had failed to report her OAS/GIS benefit on her monthly report form;
- ministry notification dated November 27, 2015 notifying the appellant that she had received an overpayment of \$9,689.38 of assistance for which she was ineligible and which she was required to repay;
- ministry calculation of monthly overpayments for the period May 2012 – May 2015;
- appellant's banking records for the period December 2012 – May 2015.

In her Notice of Appeal dated January 12, 2016 the appellant reiterated the submissions contained in the Request for Reconsideration.

At the hearing the appellant repeated the statements made in her request for reconsideration. She admitted that her OAS/GIS benefits commenced in May 2012, and acknowledged that the calculations set forth in the ministry's calculation of overpayments appeared to be accurate.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's determination that the appellant had received disability assistance ("DA") during the period March 2012 to May 2015 for which she was not eligible and is liable to repay because during that period she received non-exempt unearned income, specifically Old Age Security/Guaranteed Income Supplement benefits (OAS/GIS), that exceeded the DA rates for a Person with Disabilities (PWD) under Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The relevant legislation is as follows:

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*].

EAPWDR:

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:

- (f) any type or class of Canada Pension Plan benefits;
- (k) surviving spouses' or orphans' allowances;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;

Limits on income

- 9** (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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

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,

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

The appellant argues that she reported her OAS/GIS income to a ministry worker in August 2012 and was verbally informed that she did not need to worry about it. She states that she never attempted to hide her OAS/GIS income from the ministry, and points out that in August 2015 she went to the ministry to enquire how much money she was entitled to earn doing part-time employment while still receiving DA. The appellant argues further that in the event that she is found liable to repay the overpayment of \$9,689.38 assessed by the ministry a deduction should be made from the total amount owing because her monthly rent during the period May 2012 – May 2015 was calculated at 30% of her total income, which included her DA.

The ministry argues that the appellant's OAS/GIS benefit constitutes unearned income which must be included in calculating a recipient's net income under Schedule B of the EAPWDR, and that DA must not exceed the amount determined under Schedule A minus the net income determined under Schedule B. The ministry determined that between March 2012 and May 2015 the appellant received DA of between \$236.94 and \$306.17 per month which represented her eligible DA after deduction of her CPP disability benefits. In May 2012 the appellant also began to receive OAS/GIS of \$638.75 which, when combined with her CPP disability benefits, exceeded the amount of DA for which she was eligible by \$306.17. During the period May 2012 – May 2015 the appellant received monthly DA payments totaling \$9,689.38 for which she was ineligible and which she is required to repay pursuant to EAPWDA Section 18 (1).

Panel Decision

Disputed Evidence

The appellant states that in August 2012 she was told by a ministry representative that she did not have to worry about receiving OAS/GIS benefits. There is no evidence that the appellant submitted the required written report to inform the ministry that she had experienced a change in circumstances that affected her monthly income. Also, there is no evidence that the ministry worker noted this conversation with the appellant in the appellant's file. In applying the appellant's evidence to the standard procedures that take place between ministry workers and clients, and taking into account the income-related legislative enactments by which the ministry is bound, this panel finds on a preponderance of probabilities that the client's evidence is not consistent with the response that a ministry worker would reasonably communicate to a client in similar circumstances.

Panel's Findings and Conclusion

The appellant does not dispute that between May 2012 and May 2015 she received monthly OAS/GIS benefits of between \$638.75 and \$659.77 with an aggregate total of \$9,689.38. EAPWDR Section 1(1) (u) lists Federal Old Age Security and Guaranteed Income Supplement payments as

“unearned income” which pursuant to EAPWDR Schedule B Section 1 (d) must be included in calculating the recipient’s net income under Schedule B. The panel therefore finds that the ministry reasonably determined that the OAS/GIS received by the appellant between May 2012 and May 2015 represented unearned income that formed part of the appellant’s net income under Schedule B.

The panel also finds that the ministry reasonably determined that during the period May 2012 – May 2016 the appellant’s net income under Schedule B exceeded her eligible benefits as determined under Schedule A, and that the DA she received during this period for which she was ineligible constitutes an overpayment of DA benefits which she is liable to repay pursuant to EAPWDA Section 18 (1).

In conclusion, the panel finds that the ministry’s reconsideration decision was a reasonable application of the applicable legislation in the appellant’s circumstances, and confirms the decision.