

## PART C – Decision under Appeal

The decision under appeal is the January 27, 2016 reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry), which held that, pursuant to section 18 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), the appellant is liable to repay assistance he received between January 2014 and August 2015 for which he was not eligible. The appellant had not met his reporting obligations under section 29 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because he did not advise the ministry that his family unit included his daughter and the mother of his daughter, “P”, who are both dependants as defined in section 1 of the EAPWDA, and did not apply for assistance on behalf of his entire family unit as required by section 5 of the EAPWDR.

## PART D – Relevant Legislation

EAPWDA, sections 1 and 11

EAPWDR, sections 5 and 29

## PART E – Summary of Facts

From January 2014 through August 2015, the appellant received disability assistance as a single person family unit. During this time period, the appellant and “P” resided together with their minor child and both the appellant and “P” acknowledge a parental role for their child. Tenancy agreements for the shared accommodations during this period are included in the appeal record.

Ministry records record contact with the appellant as follows.

- March 2013 – the appellant contacted the ministry regarding a crisis supplement for furniture. The appellant had moved to residence “A” on February 1, 2013.
- No further contact was recorded until February 4, 2014.
- February 4, 2014 – the appellant was requested to provide confirmation of residence from July 2013 to January 2014 following the return of ministry correspondence in December 2013. The landlord of residence “A” confirmed that the appellant had abandoned the residence in July 2013.
- February 5, 2014 – the appellant submitted a Tenancy Agreement for residence “B”, effective July 1, 2013 and signed by the appellant and “P.” At that time, the appellant told the ministry that his relationship with “P” was as roommates only. The appellant was advised of the importance of reporting changes of circumstances in a timely manner.
- April 15, 2015 – the appellant requested a Special Transportation Subsidy.
- August 13, 2015 – the appellant requested to have “P” added to his file as a dependant.
- September 2, 2015 – the appellant stated he had been living with “P” for over a year. He stated that “P” was currently working and that she had a medical condition. The appellant was requested to provide required documents including current shelter information.
- September 3, 2015 – “P” and the appellant’s daughter were added to the appellant’s file as dependants.
- September 15, 2015 – the appellant stated that a certain ministry worker was aware that the appellant lived with “P” since June 2013 and that they had a child together. The appellant did not provide the name of the ministry worker.
- September 16, 2015 – the appellant submitted a copy of his current tenancy agreement, showing that he and “P” had resided at this residence since October 15, 2014. The appellant had not previously advised the ministry of the move from his previous residence.

The appellant’s evidence is that he had advised the ministry on several occasions about his living circumstances, including when he attended the ministry office in February 2014. He states that he was advised on each occasion that he was only eligible as a single person and the neither “P” nor his daughter could be added to his file as dependants because his daughter was in the direct care of “P.” The appellant states that he was not advised of the ministry definition of “dependant” and that had he been made aware, he would have added them to his file which would have increased the amount of assistance he received.

Additional information submitted at reconsideration comprised a 10-page January 25, 2016 submission prepared by the appellant’s advocate, with attachments, including banking information for the appellant and an “Underpayment Chart” showing the amounts the appellant would have received if assistance had been provided for a 3-person family unit at a rate of \$1,537.08. The Underpayment

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Chart shows unearned and earned income received by “P” during the period in question, including \$287.31 earned income and \$2,274.56 unearned income received in April 2015.

In his reconsideration submission, the advocate provides the following information.

- February 2014 – when attending the ministry in person, the appellant advised that he was living with “P” and his daughter, and that he was not in a spousal relationship with “P” and was told that he would continue to receive assistance as a single recipient as their daughter was living under the direct care of “P.”
- In August 2015, “P” became ill and was subsequently hospitalized. She was too ill to return to work and was without any form of income.
- September 3, 2015 – fearing possible eviction, the appellant attended the ministry office and requested that ministry staff attend the hospital to assess “P” for eligibility as a single income assistance recipient. This request was denied and the ministry advised that “P” would have to be added to his file in order for any income assistance to be issued as she was his dependant. This is the first time the appellant was advised by the ministry that his family unit was not in accurate standing with the ministry. The appellant reluctantly agreed to the change, as he had no alternative way to ensure that his rent would be paid. The appellant disagreed that “P” was his dependant as he was unaware of the legislated definition.

*Information provided on appeal*

At the hearing, the appellant stated that his contact with the ministry in August 2014 was initially with a ministry worker who regularly attended a community service where the appellant volunteered. He advised this worker that “P” was in hospital and asked how her share of the rent could be covered. He was told to go to the ministry office, which he did, and when asked if he was married or single, he responded that he was single. The appellant maintains that at this time, he did not request “P” be added to his file, as the ministry states. The appellant clarified that the references to his daughter being under the “direct” care of “P” reflect that “P” financially supported the daughter.

The appellant’s advocate provided a 19-page submission dated March 7, 2016, which reiterated information previously provided and provided additional argument and ministry policy respecting overpayments. The argument and policy is reflected in Part F of this decision, as part of the appellant’s position.

The advocate stated that he had intended to include 78 pages of bank account transaction records respecting four bank accounts held by “P” in his Request for Reconsideration submission. The panel notes that the documents are listed in the advocate’s reconsideration submission and were before the ministry at reconsideration on the related matter of resulting sanctions on the appellant’s file. As there was no objection raised by the ministry at the hearing, and given that the information was before the reconsideration officer who made both reconsideration decisions, the panel admitted the information as written testimony in support of the information before the ministry at reconsideration in accordance with section 22(4) of the Employment and Assistance Act. Given the substantial detail in these documents, they are not summarized, but the panel notes that one of the accounts shows deposits of \$1775.73 on October 30, 2014 and \$1273.75 on December 22, 2014.



At the hearing, the ministry stated that it had not seen the policy referenced by the advocate, noting that ministry policy frequently changes, and that while it is likely that the ministry investigative officer was aware of the policy, the ministry's decision must be based on the legislation. The ministry stood by its reconsideration decision.

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## PART F – Reasons for Panel Decision

### Issue under appeal

The issue under appeal is whether the ministry decision that, pursuant to section 18 of the EAPWDA the appellant is liable to repay assistance he received for which he was not eligible between January 2014 and August 2015, because he did not report the changes to his family unit as required by section 29 of the EAPWDR and consequently did not apply for assistance on behalf of his entire family unit in accordance with section 5 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the legislation.

### Relevant Legislation

#### **EAPWDA**

#### **Interpretation**

**1** (1) In this Act.....

**"dependant"**, in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

**"family unit"** means an applicant or recipient and his or her dependants;

#### **Reporting obligations**

**11** (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form prescribed by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the

information provided in it is affirmed by the signature of each recipient.

## **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**

### **Applicant requirements**

**5** For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability assistance or supplement on behalf of the family unit unless

(a) the family unit does not include an adult, or

(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

### Appellant's position

The appellant's position is that although he resided with "P" and their daughter during the relevant period and they both share a parental role for their daughter, he had repeatedly advised the ministry of these circumstances thereby meeting his reporting obligations. Also, he was repeatedly incorrectly advised by the ministry that "P" and his daughter could not be added to his file.

The meaning of "dependant", as defined in section 1(1)(c) of the EAPWDR, is contrary to the commonly held understanding of the term, which would not include "P" given that she and the appellant lead very independent lives. It was incumbent upon the ministry to assist him in understanding what is required of him. Furthermore, if the ministry had accurately advised the appellant of the legislated meaning of dependant, the appellant would have received an increased amount of assistance based on a 3-person family unit.

Citing the following ministry policy, the advocate argues that because the appellant did not receive a greater amount of assistance than he would have been eligible for during the relevant period as a 3-person family unit, he did not receive assistance for which he was not eligible. The advocate also argues that a debt does not arise from the application of section 5 of the EAPWDR because that section does not set out an eligibility test, but rather, addresses ministry procedure.

## Overpayments: January 19, 2015

January 19, 2015

Overpayments of *income assistance, disability assistance, hardship assistance or supplements* may result from either of the following:

- ministry (administrative) error
- client error (intentional or unintentional)

### Amount of Overpayment

When calculating an overpayment due to undeclared income or other circumstances, the total amount of the overpayment is the amount of assistance received by the family unit which exceeds the amount they would have received if they had reported the income or other circumstance. Failure to report does not necessarily result in the family unit being found ineligible for the entire amount of assistance issued for the assistance month.

The advocate concludes that the ministry's decision that the appellant was ineligible for the assistance he received between January 2014 and August 2015 and is liable to repay that assistance is not a reasonable application of section 18 of the EAPWDA or ministry policy because the appellant met his reporting obligations to the best of his ability and did not receive assistance for which he was not eligible. The reconsideration decision is both punitive and contrary to the spirit and intention of the legislation.

### Ministry's position

The ministry argues that as the appellant's daughter resided with him for 100% of each month, she is his dependant. Additionally, because "P", who has resided with the appellant since October 2013, demonstrates a parental role for the child she had with the appellant, "P" is the appellant's dependant as defined in section 1(1) of the EAPWDA.

The ministry argues that the evidence does not verify the appellant's assertion that he had notified the ministry on several occasions about these living circumstances. Rather, ministry records indicate that between March 13, 2013 and August 13, 2015, there were only two occasions of contact. The first, in February 2014, was initiated by the ministry upon the return of undeliverable mail. During that contact, the appellant disclosed that he had been living with "P" since October 2013 as roommates, but there was no mention of a baby noted on his file. The second contact, in April 2015, was initiated by the appellant who requested his Special Transportation Subsidy. There was no further contact until August 13, 2015, at which time his daughter and "P" were added to the appellant's file.

In response to the appellant's argument that it was incumbent upon the ministry to explain the definition of "dependant", the ministry argues that as the ministry had not been made aware of the change in the appellant's relationship with "P", who had been described as solely a roommate, or that

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the appellant and “P” had a daughter, there was no indication that an explanation was required.

At the hearing, the ministry argued that its decision must be based on the legislation and that the appellant had the opportunity to advise the ministry of any changes to his circumstances but did not.

### Panel Decision

Section 29 of the EAPWDR sets out the specific reporting requirements arising from the obligation to report set out under section 11 of the EAPWDA. Section 5 of the EAPWDR requires that for a family unit to be eligible for disability assistance, the assistance must be applied for on behalf of the entire family unit. A “family unit” is defined in section 1(1) of the EAPWDA as being an applicant or recipient and his or her dependants. Section 1(1) also defines “dependant” as the following persons, if they reside with the applicant or recipient – the spouse of a person, a dependent child (such as the appellant’s daughter), or a person who indicates a parental role for the applicant or recipient’s dependent child. Both “P” and the daughter she had with the appellant were his dependants, and part of his family unit, during the period in question and it is clear, on the evidence, that the appellant did not apply for assistance on behalf of his entire family unit as required by section 5 of the EAPWDR.

While the appellant argues that, as evidenced by his testimony, he did meet his reporting obligations, there is no confirmation of his assertion that he repeatedly advised the ministry of his daughter, or gave the ministry information upon which it would enquire further as to his relationship with “P.” To the contrary, the evidence establishes that the appellant failed to contact the ministry to report that he had moved on two separate occasions and ministry records indicate that over the course of more than two years, there were only two contacts with the ministry, one of which was initiated by the ministry upon the return of undeliverable mail it had sent to the appellant. Also, ministry records and the appellant both indicate that he repeatedly identified “P” as a roommate. Consequently, the panel accepts that the ministry had no reason to explain the definition of dependant to the appellant. The panel finds that the ministry decision that the appellant did not meet the reporting requirements of section 11 of the EAPWDA and section 29 of the EAPWDR and that he did not apply for assistance on behalf of his entire family unit as required by section 5 of the EAPWDR is reasonably supported by the evidence and confirms that part of the decision.

Having reasonably determined that the above requirements were not met, the ministry reasonably turned to section 18 of the EAPWDA respecting the repayment of assistance the appellant received between January 2014 and August 2015 for which he was not eligible. However, the panel finds that the ministry has not complied with the legislative framework or its own policy when determining if the appellant received assistance for each month during this time period for which he was not eligible. Rather, the ministry has simply determined that the appellant was not eligible for any assistance during the period in question, instead of determining whether the assistance received each month exceeds the amount that would have been received if “P’s” income and the other circumstances had been reported.

In reaching this conclusion, the panel finds that based on the information provided by the appellant respecting “P’s” unearned and earned income, in some months, including April 2015 when “P’s” income exceeded the assistance rate for a 3-person family, the appellant received assistance for



which he was not eligible. That this is the case is reflected in the advocate prepared “Underpayment Chart.” However, it appears that not all of “P’s” income is reflected in that chart. For example, the deposits to one of “P’s” bank accounts of \$1775.73 on October 30, 2014 and \$1273.75 on December 22, 2014, are not reflected in the “Underpayment Chart” either for the month in which they were received or for the assistance month that would be impacted. The panel notes that the ability of the ministry to properly assess monthly eligibility was impaired by the appellant’s failure to meet his reporting obligations, and the ministry was likely without all of the information needed to assess eligibility, which would include “P’s” assets as well as all of her income during the period in question.

In conclusion, while the panel confirms the ministry’s decision that the appellant did not meet his reporting obligations or apply for assistance on behalf of his entire family unit, the panel finds that the ministry has not reasonably applied section 18 of the EAPWDA when assessing the appellant’s monthly eligibility during the period in question. The panel rescinds that part of the ministry decision and, as the amount that a person is liable to repay is not subject to appeal pursuant to section 18(2) of the EAPWDA, the matter is referred back to the ministry for reassessment.