

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 29, 2016 which found that:

- the appellant is not eligible for disability assistance for the period October 2008 through April 2013 as a result of having assets valued at more than the allowable limit, pursuant to Section 10(2) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR);
- the appellant is not eligible for disability assistance for the period October 2008 through April 2013, pursuant to Section 9 of the EAPWDR, during the months that the net monthly income of the family unit exceeded the amount of assistance payable due to earned income received by the family unit; and,
- the appellant received disability assistance for which she was not eligible and is liable to repay the amount received over that period, pursuant to Section 18 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9 and 10

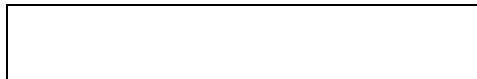
Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 18

PART E – Summary of Facts

Although the appellant did not attend the hearing, she was represented by an advocate who had received prior authorization to attend the hearing and make decisions on her behalf.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Motor Vehicle Branch search for the advocate indicating his address effective February 20, 1981 at residence #1 and changing to residence #2 effective November 18, 2008, after use of a post office box address for the intervening time;
- 2) Motor Vehicle Branch search for the appellant indicating her address as of August 24, 1990 at residence #1 and changing to residence #2 effective June 15, 2010;
- 3) General title document dated May 6, 1997 for the property at residence #1 indicating the appellant as the sole owner;
- 4) Ministry History Report covering the period January 13, 1998 through June 28, 2013;
- 5) Consent form signed by the appellant and witnessed by the advocate on January 29, 1998;
- 6) Application for Disability Benefits dated July 12, 2001;
- 7) Letter dated August 23, 2001 from the ministry to the appellant advising that she is not eligible for disability benefits;
- 8) Letter dated September 25, 2001 in which a family physician referred to the appellant's list of expenses as attached;
- 9) Letter dated September 27, 2001 in which a psychiatrist confirmed that the appellant suffers from a serious major depressive disorder;
- 10) Letter dated October 8, 2001 from a social worker regarding the appellant's application for disability and referring to her "partner";
- 11) Letter dated October 27, 2001 in which the advocate wrote that he has known the appellant for 9 ½ years and referring to them as a "couple";
- 12) Letter dated October 30, 2001 from the ministry to the appellant advising she meets the *Disability Benefits Program Act* definition of a person with disabilities.
- 13) Letter dated May 6, 2003 to the appellant at the address for residence #1 approving her eligibility for Persons With Disabilities (PWD) designation;
- 14) Acknowledgement by ministry on July 31, 2003 that the appellant's disability cheque was released to the advocate;
- 15) Bank statements for mutual funds held by the appellant in 2004 and 2006;
- 16) Credit Union account statements for 2005 and 2006;
- 17) Employment and Assistance for Persons With Disabilities Review dated March 27, 2006 indicating assets of 2 vehicles and \$80 in a credit union account;
- 18) Letter dated April 26, 2006 from the ministry to the appellant at residence #1;
- 19) Consent to Release of Information by the ministry to the advocate, signed by the appellant on June 29, 2006;
- 20) Mortgage dated May 3, 2007 on the property at residence #1 with the appellant as mortgagor, in the total amount of \$27,000;
- 21) Employment and Assistance for Persons With Disabilities Review dated May 9, 2007 indicating assets of 1 vehicle, \$25 cash on hand, and \$210 in a credit union account;
- 22) Mortgage dated August 28, 2008 on the property at residence #2, with the appellant and the advocate as mortgagors, in the total amount of \$260,000 and dated March 7, 2009 for \$255,000;
- 23) Overpayment Chart for the period October 2008 to April 2013 as a result of assets owned by the appellant and resulting in a total owing of \$50,818.68;
- 24) Request for Travel Assistance dated August 26, 2009 and indicating the appellant's address at



residence #2;

- 25) Requests for Non-Local Medical Transportation Assistance in the appellant's name for travel in 2010, 2011, 2012, 2013;
- 26) Overpayment Chart for the period March 2010 to April 2013 as a result of assets owned by the appellant and resulting in a total owing of \$35,050.54;
- 27) Letter dated January 24, 2011 in which a physician wrote that the appellant needs an escort to accompany her to see a specialist in another community and indicating the appellant's address as residence #2 along with a Request for Non-Local Medical Transportation;
- 28) Mortgage dated August 19, 2011 on the property at residence #1 with the appellant and the advocate as mortgagors in the total amount of \$40,000;
- 29) Consent to Disclosure of Information by the ministry to the advocate signed by the appellant on November 4, 2011 with her address indicated at residence #1 and witnessed by the advocate as her "friend," with an expiry of October 17, 2012;
- 30) Shelter Information dated November 9, 2011 for the rental of residence #1 at a rent of \$1,000 per month with the advocate as landlord at residence #2;
- 31) Affidavit sworn December 30, 2011 attesting to the indebtedness of the advocate in the amount of \$3,995.69 under the *Medicare Protection Act*;
- 32) Residential Tenancy Agreement dated August 9, 2012 regarding residence #1 at a rent of \$1,000 per month and indicating the appellant and the advocate as landlords with an address at residence #2;
- 33) Notice to End Tenancy for Unpaid Rent or Utilities dated January 12, 2013 addressed to tenants at residence #1 from the advocate as landlord at residence #2;
- 34) Copy of email dated January 16, 2013 to a named tenant of residence #1 from the advocate as the landlord regarding the eviction;
- 35) Letter dated March 28, 2013 to the appellant advising her cheque will be held until specified information is provided;
- 36) Consent to Disclosure of Information by the ministry to the advocate, with an address listed for the advocate at residence #2, signed by the appellant on April 12, 2013;
- 37) Request for Reconsideration documents dated April 29, 2013;
- 38) Letter dated June 10, 2013 to the appellant requesting specified information regarding her income and assets be provided to the ministry by June 24, 2013;
- 39) Referral for Criminal Investigation dated July 11, 2013 and Investigation Notes for 2013 and 2014 including statements by the ministry regarding interactions with the advocate;
- 40) Assessment Roll Reports dated May 2, 2013, December 10 and December 11, 2013 for residence #1 showing the sole owner as the appellant and a total value for 2013 of \$173,300;
- 41) Assessment Roll Report dated May 2, December 10 and December 11, 2013 for residence #2 showing the appellant and the advocate as owners and a total value for 2013 of \$283,000;
- 42) Title search dated June 5 and December 10, 2013 for residence #1 showing the appellant as sole owner as of June 27, 1997;
- 43) Title search dated June 5 and December 10, 2013 for residence #2 indicating the appellant and the advocate as owners as joint tenants as of August 29, 2008;
- 44) Trace Initiation Requests dated December 18, 2013 and ministry form log;
- 45) Letter dated January 8, 2014 from the ministry to the appellant and the advocate at the address for residence #2 and referring to the ministry's investigation regarding failing to disclose a dependency relationship and asset levels between 2008 and 2013;
- 46) Notice to End Tenancy for Cause dated February 7, 2014 addressed to tenants at residence #1 from the appellant as the landlord at residence #2 and signed by the advocate under "POA" [Power of Attorney] for the appellant;

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- 47) Title search dated April 29 and July 25, 2014 for residence #1 showing the appellant as sole owner as of June 27, 1997;
 - 48) Title search dated April 29 and July 25, 2014 for residence #2 indicating the appellant and the advocate as owners as joint tenants as of August 29, 2008;
 - 49) Assessment Roll Report dated April 29 and July 25, 2014 for residence #1 showing the sole owner as the appellant and a total value for 2014 of \$190,000;
 - 50) Assessment Roll Report dated July 25, 2014 for residence #2 showing the owners as the appellant and the advocate and a total value for 2014 of \$282,000;
 - 51) Transcript dated July 25, 2014 of ministry interview of tenant of residence #1 for September 1, 2012 to March 31, 2014 for rent of \$1,000 per month;
 - 52) Transcript dated August 5, 2014 of ministry interview of tenant of residence #1 for November 15, 2011 until August 16, 2012 for a rent of \$1,000 per month;
 - 53) Consumer Reports for the appellant and for the advocate dated June 5, 2013 and August 5, 2014 indicating they moved from residence #1 to residence #2 as of January 2009;
 - 54) Transcript dated August 7, 2014 of ministry interview of tenant of residence #1 for March 10, 2010 to September 2011 for a rent of \$1,200 per month;
 - 55) Copies of a letter and emails in September 2014 between the ministry and the strata corporation for residence #1;
 - 56) Copy of internet listing dated September 4, 2014 for sale of property for Residence #1 at a price of \$210,000 and undated Sale by Owner for \$215,000;
 - 57) Civil Litigation Case Report and attached Will Say statements of potential witnesses;
 - 58) Letter dated March 19, 2015 from the ministry to the appellant enclosing the Overpayment Chart covering the period October 2008 to April 2013;
 - 59) Consent to Disclosure of Information by the ministry to the advocate signed by the appellant on April 24, 2015 and with no expiry date;
 - 60) Letter dated February 26, 2016 from the ministry to the appellant and the advocate advising a reconsideration decision will be completed; and,
 - 61) Request for Reconsideration dated April 30, 2015 with attached letters and notes from the advocate and copies of mortgage statements and Contract of Purchase and Sale for the purchase of residence #2 on August 15, 2008 for \$365,000 as well as Notices of Assessment for the advocate for the years 2010 and 2012, Statement of Income and Expenses and three photographs.

Additional Information

In her Notice of Appeal dated April 14, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that a number of statements in the documents are misleading or incorrect. She has never made any attempt to do other than comply with providing the requested information.

At the hearing, the advocate provided further documents, namely Income Tax Information sheets for the tax years 2008, 2009, 2011 and 2012.

At the hearing, the appellant's advocate stated that:

- He had hoped the appellant would attend the hearing but she is on heavy medication and could not take the pressure.
- The advocate has lived in the area for over 40 years and is well-known for his forthright opinions but also for his integrity, fairness and honesty, and his contribution to the community.
- He has managed the appellant's affairs for the past 20 years. Several years ago, the

appellant's son who had been helping her moved away and, since then, the advocate has been her support person.

- The appellant cannot perform many daily living activities (DLA) and others she struggles with.
- The advocate helped the appellant to get the Persons With Disabilities (PWD) designation many years ago. He thought that disability assistance was a pension and he realizes now this is where the mistake was made.
- The appellant has an extensive medical background. Referring to his yearly calendars, the advocate detailed medical appointments for the appellant each month, over the period 2008 through 2013, with various doctors and specialists and medical tests, often requiring travel to other communities. The advocate provided transportation to and support for the appellant during these appointments, tests, and procedures.
- With respect to the income received monthly, he has provided a Statement of the Income and Expenses for the townhouse (residence #1) which shows that there were many months when there was no income as the unit was not rented and that often the expenses exceeded the rent paid, resulting in a net loss.
- The expenses listed include mortgage interest relating to residence #1 and also residence #2 as well as taxes, insurance and electrical costs for residence #1.
- He did not reside in the townhouse (residence #1) since he had far too many possessions to fit at the property, including heavy equipment, as detailed in the list he provided. He bought residence #2 because there was lots of space to accommodate his things and also provide the appellant with the room for her crafts and artwork.
- Although he owns assets, his income has not been very high, as shown in his Notices of Assessments from Revenue Canada. He and the appellant are considered common law spouses for tax purposes.
- The appellant's childhood was difficult as she was sexually abused as a very young child, as detailed in the advocate's notes. With the space provided at residence #2, she is more comfortable and has the space she needs. It provides the security that residence #1 did not.
- The appellant has experienced several major health conditions, including breast and uterine cancer. An infection in her lymph glands was missed and, when discovered, she was placed on heavy rounds of chemotherapy on an emergency basis. The advocate received advice that the appellant would have a good claim for medical malpractice based on this error.
- As a result of the damage to the appellant's gastrointestinal tract, the appellant then had to undergo several surgeries to have this repaired. Then, her lung collapsed and needed to be drained. She still does not have full lung capacity.
- The appellant then discovered she had a brain tumor and underwent risky surgery to have this removed.
- The appellant has gone through periods of major depression where she was crying all day long. They finally found a psychiatrist who made a proper diagnosis of bipolar depression and prescribed medications that began to help. She has not experienced a real low or the manic periods since then. During the mania, the appellant would do many things to excess.
- Through all of these occurrences, the advocate provided the appellant with transportation, ongoing support and homecare and he figures he saved the province approximately \$110,000 overall. He was not aware that he could have applied for funds to act as a caregiver during this time.
- He provided a copy of the Contract of Purchase and Sale for the property at [residence #2] to show that he bought the place with his money and with a private mortgage for \$250,000. The intention was to sell the townhouse (residence #1) right away and then put the appellant's

money into the property at [residence #2] but the market dropped and they could not sell the townhouse despite their ongoing efforts. They listed the property for sale before he purchased the second property. The reason he added the appellant's name to the title [for residence #2] is because the appellant suffers from severe abandonment issues and it was to give her some peace of mind.

- The appellant started moving in to the second property [residence #2] around September 2008 and was living there by November 2008.
- The townhouse [residence #1] finally sold in August 2015 and in September 2015 he and the appellant paid the amount of the overpayment (\$50,818.68) to the ministry under protest because they did not believe it was fair. While they agree that, under the technicality of the law, she owned two properties, this had not been her intention.

The ministry relied on its reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of the tax documents. The panel admitted all the documents pursuant to Section 22(4) of the *Employment and Assistance Act* (EAA) as relating to the advocate's yearly income as part of the appellant's family unit, and being in support of information and records that were before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which found that the appellant is not eligible for disability assistance for the period October 2008 through April 2013 as a result of having assets valued at more than the allowable limit under Section 10(2) of the EAPWDR, and during the months that the net monthly income of the family unit exceeded the amount of assistance payable due to earned income received, pursuant to Section 9 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 1 of the EAPWDR provides that:

Definitions

1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets.

Section 10 of the EAPWDR provides in part that:

Asset limits

10 (1) The following assets are exempt for the purposes of subsection (2):

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;
- (c) a family unit's place of residence;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
 - (i) applied to the amount owing on the family unit's current place of residence, or
 - (ii) used to pay rent for the family unit's current place of residence;
- (e) a Canada child tax benefit;
- (f) a goods and services tax credit under the Income Tax Act (Canada);
- (g) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for disability assistance (part 2) form, and female stock held for stock replacement;
- (l) essential equipment and supplies for farming and commercial fishing;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;

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- (n) prepaid funeral costs;
 - (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
 - (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
 - (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
 - (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
 - (s) money that is
 - (i) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (ii) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
 - (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
 - (u) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 3 (b).]
 - (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
 - (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
 - (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,
 - (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
 - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
 - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
 - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;
 - (y) assets exempted under
 - (i) section 11 (2) [asset development accounts],
 - (ii) section 12 (2) [assets held in trust for person with disabilities], or

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- (iii) section 12.1 (2) [temporary exemption of assets for person with disabilities or person receiving special care];
 - (z) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 3.]
 - (aa) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the Child, Family and Community Service Act;
 - (bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
 - (cc) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 3.]
 - (dd) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child;
 - (ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
 - (i) Autism Funding: Under Age 6 Program, or
 - (ii) Autism Funding: Ages 6 — 18 Program;
 - (ff) funds held in a registered education savings plan;
 - (gg) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
 - (hh) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
 - (ii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
 - (jj) funds held in, or money withdrawn from, a registered disability savings plan;
 - (kk) a working income tax benefit provided under the Income Tax Act (Canada);
 - (ll) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
 - (mm) the climate action dividend under section 13.02 of the Income Tax Act;
 - (nn) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
 - (oo) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
 - (pp) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

- (qq) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (rr) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (ss) a tax refund;
- (tt) a BC basic family bonus;
- (uu) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (vv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program.

(1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m).

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5 000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000. . . .

Section 9 of the EAPWDR provides:

Limits on income

- 9 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (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.

Section 18 of the EAPWDA provides:

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].

Ministry's position

The ministry's position, as set out in the reconsideration decision, is that the appellant was a sole recipient of disability assistance up to April 2013 and, therefore, the applicable asset limit under Section 10(2)(a) of the EAPWDR is \$5,000 and, for the period from October 2008 through April 2013, the appellant owned equity in real property in excess of this limit. The ministry stated that the appellant owned her place of residence, which was an exempt asset pursuant to Section 10(1)(c) of

the EAPWDR and then, in August 2008, purchased a second property together with the advocate. The ministry wrote that the calculation of the equity in the second property is based on the assessed value of the property minus the outstanding mortgage and then divided by two as there are two named owners of the property, which was between \$36,500 and \$51,125 between August and December 2008. The ministry wrote that, based on information from third party sources, the appellant moved to live at the second property in January 2009, which then became her place of residence and an exempt asset under Section 10(1)(c) of the EAPWDR; however, the first property then became an additional asset as it was still owned by the appellant. The ministry wrote that the equity in the first property was calculated based on the assessed value of the property minus the mortgage and the equity ranged between \$177,400 and \$133,300 between January 2009 and February 2013. The ministry argued that as the equity in the real property was significantly above the limit of \$5,000 and, therefore, the appellant was not eligible for disability assistance during this time.

The ministry position is that the appellant's net income exceeded her disability assistance rates of \$906.42 per month and, therefore, she is ineligible for disability assistance pursuant to Section 9(2) of the EAPWDR. The ministry argued that after the appellant moved to the second property she rented out the first property and was in receipt of rental income at times over the period from March 2009 until April 2013 that exceeded her disability assistance rate. The ministry acknowledged there were essential operating costs associated with renting out the first property and wrote that the verifiable and approved costs would be deducted from the gross rental income and the remaining net income would be used in determining the appellant's eligibility for disability assistance. The ministry wrote that because the appellant had assets in excess during the period from August 2008 to April 2013, her rental income during that period does not affect the amount of the overpayment and, therefore, the deduction of essential operating costs from the gross rental income does not affect the outcome. The ministry argued that as disability assistance was provided to the appellant when she was not eligible for it, she is liable to repay it pursuant to Section 18 of the EAPWDA.

Appellant's position

The appellant's position, as set out in her Notice of Appeal, is that she has never made any attempt to do other than comply with providing the requested information. The advocate argued, on the appellant's behalf, that he and the appellant intended to sell the appellant's first property before the second property was purchased but it turned out that the townhouse was difficult to sell. The advocate argued that he originally purchased the second property by himself but added the appellant to the title to give her peace of mind, since she experiences severe abandonment issues. The advocate also argued that there were many months over the relevant time period that the first property was not rented out so there was no income from rental and the expenses often exceeded the income because of damage caused to the premises by the tenants and the need for repairs. The advocate argued that the amount of the overpayment was paid under protest to the ministry in September 2015 from the proceeds of sale of the appellant's first property because they believe that fairness dictates that she should not be required to repay these amounts. The advocate argued that the appellant has suffered with many medical conditions at all relevant times, and he has saved the ministry approximately \$110,000 by providing transportation to medical appointments and home care when she was recovering, avoiding lengthy hospital stays, and this should be taken into consideration.

Panel decision

Section 10(2) of the EAPWDR stipulates that a family unit is not eligible for disability assistance if a sole recipient has no dependent children and has assets with a total value of more than \$5,000

[Section 10(2)(a)], and the appellant did not dispute that this limit applied to her. Section 10(1)(c) of the EAPWDR provides an exemption for a family unit's place of residence and the ministry acknowledged that this exemption had initially applied to the appellant's equity in the real property of the townhouse (the first property). While the advocate purchased the second property in August 2008 by himself, since he stated he needed more space for his heavy equipment and other assets, he acknowledged that he added the appellant to the title to the second property to give her peace of mind. The advocate also acknowledged that he purchased the property for \$365,000 and took out a mortgage for \$250,000 and, at the point that the appellant became an owner of the second property, the panel finds that the ministry reasonably determined that the appellant owned an asset with a value in excess of the limit of \$5,000, as set out in Section 10(2)(a) of the EAPWDR, that was not her place of residence.

Based on information from Consumer Reports for the appellant dated June 5, 2013 and August 5, 2014 as well as forms submitted by the appellant to the ministry, the ministry concluded that the appellant moved from the townhouse to the second property in January 2009, and the second property became her place of residence while the townhouse (the first property) was her asset with a total value more than \$5,000. Relying on the assessed value of the townhouse property minus the outstanding mortgage amounts, the ministry claimed that the value of the appellant's equity ranged between \$177,400 and \$133,300, and the appellant did not dispute these amounts. At the hearing, the advocate stated that the appellant started moving in to the second property around September 2008 and was living there full-time by November 2008. Although the second property may have become the appellant's place of residence two months earlier than estimated by the ministry, the panel finds that the ministry reasonably concluded that the appellant maintained ownership of the townhouse throughout this time and the equity in that asset had a total value more than \$5,000. The panel finds that the ministry reasonably concluded that the appellant's equity in real property is an asset beyond the allowable limit of \$5,000 for the period from October 2008 through April 2013 and the appellant, therefore, is not eligible for disability assistance during this time, pursuant to Section 10(2)(a) of the EAPWDR.

The ministry argued that after the appellant moved to the second property she rented out the first property and was in receipt of rental income at times over the period from March 2009 until April 2013 that exceeded her disability assistance rate of \$906.42 per month and, therefore, the appellant is also ineligible for disability assistance pursuant to Section 9(2) of the EAPWDR. The advocate provided a Statement of Income and Expenses for the first property which confirmed that there was rental income received, commencing in March 2009 until April 2013, with a period of no income from November 2010 through October 2011 and also periods of expenses in excess of income due to required repairs to the property plus other expenses. Given that the ministry reasonably concluded that the appellant was not eligible for disability assistance for the period from October 2008 through April 2013, the panel finds that the ministry also reasonably concluded that it is not necessary to calculate the appellant's net income from rental revenue over this same time period as the result will not impact the amount of the overpayment as a result of the ministry's findings under Section 10(2)(a) of the EAPWDR.

Section 18(1) of the EAPWDA stipulates that if disability assistance is provided to a family unit that is not eligible for it, recipients are liable to repay the amount or value of the overpayment provided for that period. The advocate argued that the amount of the overpayment (\$50,818.68) was paid to the ministry under protest in September 2015 because he and the appellant believe that fairness dictates that the appellant should not be required to repay these amounts. The advocate detailed the

appellant's many medical conditions and estimated that he has saved the ministry approximately \$110,000 by providing the appellant with transportation to medical appointments and home care when she was recovering, avoiding lengthy hospital stays, and this should be taken into consideration. However, the panel is not provided with jurisdiction to review the ministry's decision about the amount a person is held liable to repay as, pursuant to Section 18(2) of the EAPWDA, the decision about the amount a person is liable to repay is not appealable to the tribunal.

Conclusion

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the EAA.