

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of February 17, 2016 that determined the appellant was provided disability assistance for the month of November 2014 for which he was not eligible because he received income from a trust that exceeded the annual limit permitted under Schedule B section 7(1) and (2.1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and that under section 18(1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) he is liable to repay the amount of disability assistance that he is not eligible to receive to the ministry.

PART D – Relevant Legislation

EAPWDA Section 18
EAPWDR Section 1(1)(l), Section 13(1), Section 24, Schedule A Section 1, Section 4, Schedule B
Section 24(b)

PART E – Summary of Facts

The appellant is a sole recipient of disability assistance since March 2002.

The information before the ministry at the time of reconsideration included the following:

- In 2014 the appellant was a sole recipient of disability assistance plus shared parenting shelter support for a monthly assistance rate of \$1,191.42.
- Bank statements and cheque copies for a savings and chequing account for 2014, both in the name of (Appellant’s name) Trust.
- The ministry has determined that the appellant’s withdrawal of funds from a trust account in 2014 exceeded the maximum exemptible limit of \$8,000.00. The withdrawals are listed in the following chart:

DATE	AMOUNT WITHDRAWN	TOTAL WITHDRAWN
March 3	2,000.00	2,000.00
July 8	2,500.00	4,500.00
August 12	200.00	4,700.00
August 13	2,100.00	6,800.00
September 19	5,000.00	11,800.00

- The ministry calculates that on September 19, 2014 the appellant exceeded the maximum allowable exemptible annual limit of \$8,000.00 by \$3,800.00 and that it had to be deducted from the appellant’s disability assistance for November 2014.
- January 14, 2016 – the appellant signed the request for reconsideration and delivered to the ministry on January 19, 2016.
- In the request for reconsideration the appellant states that he spent between \$50-\$100 per week of his PWD trust money in 2014 on groceries and gas and in one month during 2014 he used trust money to pay his rent of \$900.

Notice of Appeal dated March 9, 2016, the Appellant stated the following:

- He did not use his PWD trust funds improperly, and
- Although his money was moved by his Trustee, it was not under my control. He demonstrated need.

The Appellant provided a late submission to the written hearing that was accepted by the Tribunal Chair and included the following relevant additional information:

- A letter from the Administrator of the trust fund stating that he transferred the large amount of \$5,000.00 to the chequing account to reduce transfer fees. The balance remaining in the account at December 31, 2014 was \$1,692.31.
- The appellant states he used \$896.00 for a vehicle, \$450.00 for a damage deposit, \$330.00 for a phone bill and \$250.00 for car insurance, all of which promote his independence.

The ministry's submission to the written hearing:

"The ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision." In addition, the ministry noted that the legislation pertaining to the maximum exemption of \$8,000.00 for disability related cost under EAPWDR Schedule B Section 7(2.1) was repealed in December 2015, and at the time the money was withdrawn from the appellant's trust this legislation was still in effect.

The panel admitted the submissions as evidence of the appellant and the ministry, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration. The panel admitted the testimony in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of February 17, 2016 was a reasonable application of the applicable legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the appellant was provided disability assistance for the month of November 2014 for which he was not eligible because he received income from a trust that exceeded the annual limit permitted under Schedule B section 7(1) and (2.1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and that under section 18(1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) he is liable to repay the amount of disability assistance that he is not eligible to receive to the ministry.

The relevant legislation from the EAPWDA

Overpayments

Section 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*].

The relevant legislation is from the EAPWDR:

Amount of disability assistance

Section 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.

Assets held in trust for person with disabilities

Section 12 (1) In this section, "disability-related cost" means the cost of providing to a person with disabilities or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre,

- (a) devices, or medical aids, related to improving the person's health or well-being,
- (b) caregiver services or other services related to the person's disability,
- (c) education or training,
- (d) any other item or service that promotes the person's independence, and
- (e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital,
 - (i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and
 - (ii) necessary maintenance for that place of residence.

Schedule B

Exemptions — unearned income

7 (0.1) In this section:

"**disability-related cost**" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for*

person with disabilities] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities]* of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(d.3) subject to subsection (2.1),

(i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or

(iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

Appellant's position:

The appellant argues that he did not use his PWD trust funds improperly, the money as moved by his trustee, was not under his control and he demonstrated need. Of the \$5,000 transferred in September, only \$3,156 was spent in the calendar year before December 31, 2014. The appellant's position is that all of the funds were used to promote his independence.

Ministry's position:

The ministry argues that they have taken into consideration the withdrawals from the appellant's trust totalling \$11,800.00 were to promote his independence, however the maximum annual exemption limit of \$8,000.00 was exceeded on September 19, 2014 with the withdrawal of \$5,000.00 from his trust account and those funds are to be included in the calculation of the amount of income received and should have been deducted from the appellant's November 2014 disability assistance.

Consequently the appellant is not eligible for November 2014 disability assistance and is required to repay the funds.

Panel's decision:

The issue the panel must consider is the reasonableness of the ministry's decision that the appellant received disability assistance for which he was not eligible. During the course of the appellant's dispute on this matter, the appellant argued that some of his expenditures fell under categories of costs for which the "promote independence" limit did not apply. For instance he argued that his expenses for groceries and rent are "disability-related costs" or for "acquisition of a place of residence." However, the panel notes that in his submission on appeal, the appellant acknowledges that all the expenses were to "promote independence," and the ministry took the same view. The appellant further argued that when the funds were transferred from the trust to a chequing account

(also with the name of the trust as the account holder), he did not have control over these funds. However, on examination of the bank statements and copies of cheques, the panel notes that his signature only appears on [most?] of these cheques, indicating to the panel that he had control over that account. The panel finds that the appellant received funds in 2014 from his trust that exceeded by \$3,800.00 the maximum exemption of \$8,000.00 in accordance with Schedule B Section 7(2.1) of the EAPWDR as it read at the time. As the \$3,800.00 exceeded the \$1,191.42 under section 24 of the EAPWDR, the panel finds that the ministry reasonably determined that the appellant was provided disability assistance for November 2014 for which he was not eligible to receive. Section 18 of the EAPWDA states that 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.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and in accordance with sections 24(1)(b) and 24(2)(a) *Employment and Assistance Act* confirms the ministry's reconsideration decision.