

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated March 23, 2016 in which the ministry determined the appellant has an overpayment of \$2,308.87 assistance for July, August, and September 2015 because his assets exceeded the \$5,000 limit under section 10 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined the exemptions in sections 10(1), 11, 12, and 12.1 of the EAPWDR do not apply to the overpayment and the appellant is required to repay assistance that he was not eligible to receive, as required under section 18 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 18
Employment and Assistance Regulation - EAPWDR - sections 1, 10, 11, 12, and 12.1

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following documentation:

1. A *Request for Reconsideration* signed by the appellant on March 9, 2016 with hand-written submissions listing tax credits and other deposits and outlining his argument.
2. Bank profiles and records for the appellant's chequing, savings, and GIC accounts including *Deposit Account History* print-outs and *Account Activity* print-outs showing credits from "Canada", with a date range from January 2007 to January 2016.
3. A decision of the Employment and Assistance Appeal Tribunal ("tribunal") dated December 17, 2015 confirming the ministry's November 2, 2015 reconsideration decision which found the appellant ineligible for disability assistance due to assets that exceeded the \$5,000 limit under section 10(2) of the EAPWDR.
4. An *Employment and Assistance Review* form signed by the ministry and the appellant on August 26, 2015, indicating the appellant's monthly expenses and assets (bank account, family assets and CPP). The form states that it is the appellant's responsibility to report all money and assets that he receives each month.
5. Letters to the appellant from the ministry:
 - August 20, 2015 advising that his file has been selected for a compliance review, with reminder letter of September 9, 2015 asking him to provide banking and financial information including his tax Notice of Assessment for 2013 and 2014.
 - September 24, 2015 advising that the requested information had not been received, his eligibility for assistance cannot be determined, and he is therefore no longer eligible for assistance. The ministry stated that his file will be closed on October 26, 2015.
 - January 18, 2016 advising that his file has been reviewed and the ministry believes he has an overpayment of assistance for which he was not eligible, calculated at \$2,308.87. The ministry invited the appellant to provide information related to the potential overpayment and reminded him to accurately and completely report his income, assets and circumstances when he applies for assistance and thereafter on a monthly report form or stub. The ministry attached an *Overpayment Chart* (2 pages) showing "assets over limit" for July, August, and September 2015 with \$0.00 declared to the ministry for the 3 months.
 - January 29, 2016 indicating a review of the appellant's assistance from June 1 to December 31, 2015 has been completed and the ministry has confirmed he received assistance for which he was not eligible. An overpayment of \$2,308.87 has been recorded on his file. The ministry noted that the overpayment occurred as a result of a failure to declare assets; specifically, his bank balances were over the asset levels during the time period specified. The ministry stated that the appellant was not eligible for the assistance he received from July to September 2015 and the amount is a debt the appellant is liable to repay to the government.
6. An *Overpayment Notification* dated January 29, 2016 indicating the \$2,308.87 overpayment and explaining the terms for repayment.
7. Information from the ministry record, referencing the previous tribunal decision of December 17, 2015 that confirmed the ministry determination that the appellant is ineligible for assistance due to excess assets. The ministry noted that the overpayment period (for the current reconsideration) is in respect to those same assets. The ministry further noted that the asset limits were increased effective December 1, 2015 but the applicable legislation are the regulations that were in effect at the time the assistance was provided. The ministry indicated the appellant provided a bank profile and statements for one of his banks on August 31, 2015 and submitted outstanding bank documents on

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September 28, 2015. The ministry determined that the combined total of his accounts at the end of June, July, and August 2015 exceeded the maximum \$5,000 asset allowance, noting that it calculates asset levels based on the balance at the end of each month, as of the date of the last transaction. The ministry overpayment calculation showed the appellant's balances as \$5,559.95 for June, \$5,640.04 for July, and \$6,019.55 for August 2015.

Additional submissions

Subsequent to the reconsideration decision, the appellant provided the following documents:

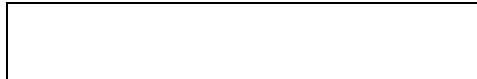
1. A *Notice of Appeal* in which he listed his tax credits and other deposits and provided his argument.
2. A letter to the ministry from an advocate dated March 19, 2016 indicating the appellant received "automatic deposits" to his bank account for HST, GST, carbon tax credit, BC sales tax, and income tax refunds. The advocate states that the appellant was not aware that he should have reported the income to the ministry before they show on his bank statements as income. The letter also summarizes the appellant's argument on appeal.
3. At the hearing, the appellant submitted the following documents:
 - The advocate's summary of deposits the appellant received (HST, income tax refunds, BC sales tax credit, refundable medical expense supplement, and a GST payment); their income status under the EAPWDR (not considered income, or considered as unearned income); and their treatment by the ministry (exempt or no exemption).
 - Two pages of *Deposit Account History* bank statements. The appellant noted that these pages were missing from the bank statements he submitted for the reconsideration.

The ministry had no objections to any of the above submissions. The panel finds that they are all in support of the information the ministry had for the reconsideration where the appellant provided lists of the tax credits and other deposits he received as well as the remaining *Deposit Account History* statements. The panel therefore admits the documents under section 22(4)(b) of the *Employment and Assistance Act* ("EAA") as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Oral submissions

The appellant attended the hearing with an interpreter and summarized his bank statements and provided his argument on appeal. The ministry added the following background information in response to the appellant's submissions and questions from the panel:

- The appellant was originally on income assistance, then transferred to disability assistance, and is currently getting the Canada Pension and no longer receives assistance payments from the ministry. The ministry explained that the ministry does not ask for banking information on a monthly basis but where a client is transferring to a different program for support, a file audit is undertaken and financial information, including assessments from the Canada Revenue Agency ("CRA"), is requested in the majority of cases.
- Ministry investigators asked the appellant to provide information from CRA to verify that the GST and other tax credits were his personal entitlements and not deposits on behalf of another person. The ministry explained that someone else could give the appellant their GST cheque, for example, and grant CRA permission to deposit it into the appellant's account. The ministry indicated that Notices of Assessment from CRA confirm whether the client is receiving deposits for GST, income tax refunds, provincial tax credits, etc.



- The ministry explained that a monthly reporting form is used for regular income assistance but not disability; however, the client is still required to report any changes in their finances as they occur and this is stated in a letter that the ministry sends when the client is first approved for disability assistance. The ministry explained that when a client's file is being reviewed, the ministry will use verbal requests for information as a client's cheque is often being held pending verification of income. The ministry then follows up by sending out letters to the client.

The panel accepts the oral testimony of both parties as argument in support of the parties' positions at reconsideration, and finds that the ministry's additional background information is in support of the records the ministry had at reconsideration which included letters sent to appellant regarding the review of his file and requests for financial records including tax assessments. The panel admits the additional information under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of March 23, 2016 which determined that the appellant has an overpayment of \$2,308.87 assistance for July, August, and September 2015 because his assets exceeded the \$5,000 limit under section 10 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined the exemptions in sections 10(1), 11, 12, and 12.1 of the EAPWDR do not apply to the overpayment and the appellant is required to repay assistance that he was not eligible to receive, as required under section 18 of the EAPWDA.

The following sections of the legislation apply to the issue under appeal:

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

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;

"assistance" means disability assistance, hardship assistance or a supplement;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

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;
- (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

(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;

(ww) a BC early childhood tax benefit.

(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.

Asset development accounts

11(1) In this section:

"asset development account" means a savings institution account that is

(a) established exclusively for the purpose of enabling an applicant or a recipient to participate in an asset development account program, and

(b) comprised exclusively of deposits of money contributed by an applicant or a recipient and additional amounts that

(i) are contributed by or through the operator of the asset development account program, and

(ii) equal the percentage of the applicant's or recipient's contributions established for the applicant or recipient under the program;

"asset development account program" means a saving program that is

(a) designed to assist individuals to achieve savings for the purposes of future self-sufficiency or future enhanced self-sufficiency, and

(b) approved by the minister for the purposes of this regulation.

(2) For the period that an applicant or recipient is participating in an asset development account program, the applicant's or recipient's asset development account is exempt as an asset for the purposes of section 10 (2) [asset limits].

Assets held in trust for person with disabilities

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,

(2) If a person referred to in subsection (1) complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:

(a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus

(b) any capital subsequently contributed to a trust referred to in paragraph (a),
is exempt for the purposes of section 10 (2) [asset limits].

Temporary exemption of assets for person with disabilities or person receiving special care

12.1(1) In this section, "person receiving special care" means a person who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre.

(2) During the exemption period described in subsection (3), an asset received by a person with disabilities or by a person receiving special care is exempt for the purposes of section 10 (2) [asset limits] if the minister is satisfied that the person intends to

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- (a) establish a registered disability savings plan or trust, and
(b) contribute some or all of the asset to the registered disability savings plan or trust.

Positions of the parties

Appellant

In his submissions, the appellant argues that deposits to his accounts for GST, HST, carbon tax credits, BC sales tax, and income tax refunds are exempt as income under the legislation and should not be considered as an overpayment. He acknowledges that he received about \$2,700 from these deposits.

The appellant submits that he was not aware that he should have reported the deposits to the ministry and he stated that the ministry did not request his tax assessments. He argues, nevertheless, that the deposits are clearly his entitlements from the government because the source is recorded as "Canada". Also, if someone else was transferring their GST to him, he would have cashed it; however, his bank statements show that the deposits remained in his accounts.

He submits that when he was receiving disability assistance and no longer had monthly report cards to fill out, he was not aware that he had to report GST, etc. as a change of circumstance given that he was receiving these deposits all along, ever since he was on regular income assistance. He submits that he was waiting to put most of his money into "non-dependent and self-sufficient accounts" and \$3,000-\$6,000 into a trust. He states that he could not put money into disability accounts (RDSPs).

The appellant further argues that his GIC is only redeemable on a one-year term and it has to stay in his account as a \$500 security deposit for his credit card; and that his disability assistance and rent payments should not be counted and some of his disability payments were for the following month. The ministry told him that assistance was not included in asset totals but he submits that \$736 was added to his bank balance to put him over the exemption amount.

The appellant inquired about a judicial review and also asked for an adjournment part-way through the hearing so that he could provide his records from CRA to verify his GST and other deposits from the government. The panel explained that it does not have the authority to conduct a judicial review or provide legal advice, and that adjournment requests are considered prior to, or at the beginning, of the hearing.

Ministry

In the reconsideration decision, the ministry argues that it already reviewed the appellant's assets for the earlier finding of ineligibility for disability assistance that was later confirmed by the tribunal. The ministry argues that for the current determination that the appellant has an overpayment, the appellant did not meet the allowable asset limit of \$5,000 under section 10 of the EAPWDR because for each of July, August, and September 2015 the value of his assets exceeded \$5,000 and he is therefore not eligible for disability assistance under subsection 10(2)(a) of the EAPWDR.

The ministry further argues that the appellant does not meet any of the exemptions identified in section 10(1) of the EAPWDR and that he also does not meet the exemptions in sections 11, 12, and

12.1 which are related to the exemptions identified in section 10(1). The ministry noted that the appellant's assets were not held in an asset development account ("ADA") as set out in section 11 of the EAPWDR. The ministry noted that the appellant's assets were held in his personal chequing and savings accounts and a GIC, and that he was not participating in an ADA program. The ministry argues that the ADA exemption therefore cannot be applied to the overpayment period. The ministry argues that the exemption in section 12 of the EAPWDR does not apply because the appellant's assets were not being held in trust.

Regarding section 12.1 of the EAPWDR, the ministry argues that this exemption does not apply because there was no indication at the time of the review, or in the previous appeal to the tribunal, that the appellant intended to move money to a trust or RDSP. The ministry noted that the assets were not disclosed to the ministry and while the ministry acknowledges that the overpayment is three months of assistance, it cannot apply this to past eligibility. The ministry further indicated that the appellant does not reside in a private hospital or care facility (noting that he has a rental address) and argues that section 12.1 is therefore not applicable.

At the hearing, the ministry acknowledged that the appellant is correct: GST, tax refunds, and other government entitlements are exempt under the EAPWDR; however, the overpayment is based on his bank statements and financial information at the time of reconsideration as there was no information from CRA to verify his GST and other deposits. The ministry explained that in order to exempt the government deposits, it requires evidence in support of the transaction history to verify the source of the deposit as of the specific dates. The ministry submits that it clearly requested the appellant's tax Notices of Assessment but these were not provided; and the ministry cannot accept written notes from the appellant or the advocate in place of official verification by CRA. The ministry therefore argues that it reasonably determined the appellant has an overpayment based on the information in the record.

Panel's decision

The panel finds that the ministry reasonably determined that the appellant has an overpayment of assistance for July, August, and September 2015 because his assets exceeded the \$5,000 limit under section 10 of the EAPWDR. The bank statements and overpayment charts indicate that he is over the \$5,000 exemption limit for assets, as described in subsection 10(2)(a), because his combined account balances were \$5,559.95 for June, \$5,640.04 for July, and \$6,019.55 for August 2015.

The evidence indicates that the appellant was receiving disability assistance and was therefore aware of his responsibility to report his complete financial situation to the ministry. The ministry requested financial information including tax assessments from the appellant both verbally and in it letters from August 20, September 9, and January 28, 2016 and reminded him of his reporting obligations. While the appellant provided his bank statements at the reconsideration as well as the two missing pages at this appeal, neither the ministry nor the panel were provided with copies of his tax assessments or any other documents which would verify that he was entitled to GST or any of the other entitlements he claimed as exempt with corresponding deposit dates. The panel therefore finds that the ministry reasonably based the finding of an overpayment on the records it had at the reconsideration.

[Redacted]

The panel finds that the ministry reasonably determined that the exemptions set out in sections 10(1), 11, 12, and 12.1 of the EAPWDR cannot be applied to the appellant's overpayment for the following reasons:

- Most of the assets listed in section 10(1) do not apply to the appellant's situation.
- Some of the assets listed in section 10(1) [such as GST and income tax refunds] were received by the appellant and are, as he argued, exempt under the regulation. However, the ministry did not, as noted above, have any verification from CRA. As argued by the ministry at the hearing, the notations "Canada" on the bank statements indicate that the deposits came from the government but do not confirm that these deposits reflect the appellant's personal entitlements.
- There is no evidence that the appellant had an asset development account or was involved in the associated ASD program under sections 11(1) and (2) of the EAPWDR. The appellant made no mention of the ASD program in his submissions.
- There is no evidence that he had a beneficial interest in real or personal property held in a trust pursuant to the exemption set out in section 12(2) of the EAPWDR, or that he was receiving care in a hospital or special care facility and intended to contribute assets to a trust or RDSP to meet the exemption under section 12.1. While the appellant stated that he "was waiting to put most of (his) money into a trust", he provided no information to confirm that he had discussed a trust or an RDSP with the ministry and the bank.

The panel further finds that the ministry reasonably determined that the appellant is required to repay three months of assistance pursuant to section 18 of the EAPWDA because he received disability assistance that he was not eligible for. Section 18(1) of the EAPWDA clearly states that If assistance is provided to a family unit that is not eligible for it, the recipient is liable to repay to the government the amount or value of the overpayment provided. The panel notes that the ministry has no discretion under the legislation to waive the repayment obligation and in accordance with section 18(2) of the EAPWDA, the minister's decision about the amount the person is liable to repay is not appealable.

Conclusion

The panel finds that the ministry's determination that the appellant has an overpayment of assistance for July, August, and September 2015 because his assets exceeded the \$5,000 limit under section 10 of the EAPWDR was reasonably supported by the evidence. The panel confirms the reconsideration decision in accordance with sections 24(1)(a) and 24(2)(a) of the EAA.