

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of March 30, 2016 that determined the appellant was not eligible to receive disability assistance under section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) from September 2015 to January 2016 while she received accommodation and care in a special care facility and that under section 18(1) EAPWDR she is liable to repay that amount to the ministry.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 18
EAPWDR Section 24, Schedule A Section 8(1)

PART E – Summary of Facts

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

- The appellant is a sole recipient of disability assistance and has no dependents.
- August 10, 2015 – the appellant was admitted to a care facility.
- The ministry calculates the overpayment in the following chart:

Month	Amount Received	Eligible	Overpayment	Comments
September 2015	\$ 886.42	\$ 95.00	\$ 791.42	
October	886.42	95.00	791.42	
November	886.42	95.00	791.42	
December	921.42	130.00	791.42	Includes Christmas supplement
January 2016	981.42	95.00	886.42	Includes \$95 comforts allowance
Total	\$ 4,562.10	\$ 510.00	\$ 4,052.10	

- During the period from September 2015 to January 2016 inclusive the appellant was residing in a special care facility and entitled to a comfort allowance of \$95.00 per month. The above chart calculates that there is an excess of benefits in the amount of \$4,052.10.
- In a letter from the appellant to the ministry – the appellant stated she believed that the money being deposited to her bank account was from her parents. She further stated that the money was used for rent, moving and storage and that is what it was intended to be used for.
- April 14, 2016 – the appellant signed the request for reconsideration.
- In the request for reconsideration the appellant states that the ministry decision is incorrect because the appellant should have been aware that she was coming to the hospital and how long she would be staying.

At the hearing:

The appellant stated that:

- she gave her bank card to her parents just after she was admitted to the special care facility, and
- they must have used the money to pay the rent and storage because everything was paid, and
- she did not know that she had that money until the hospital social worker told her.

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The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry further stated that:

- notes in the appellant's file state that in July 2015 the appellant confirmed a new residence that she was moving into and the ministry issued a security deposit for the new residence, and
- in September 2015 the ministry cancelled the security deposit as it was unclaimed and the ministry had not heard from the appellant about what was happening with the new residence, and
- the appellant's file contained no further information about the appellant's status until the ministry was advised by a special care facility social worker on December 17, 2015 that appellant was admitted to hospital on August 10, 2015, and
- the reason for the delay in advising the ministry was apparently that the social worker did not have consent from the appellant to pass this information to the ministry, and
- when the ministry became aware the appellant was in care, the overpayment calculation was made and applied to her file.

The panel admitted the oral testimony 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 EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision of March 30, 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 that the appellant was not eligible to receive disability assistance under section 24 EAPWDR from September 2015 to January 2016 while she received accommodation and that under section 18(1) EAPWDA she is liable to repay that amount to the ministry.

The relevant legislation is as follows:

EAPWDR

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24

(a) *[amount of disability assistance]* of this regulation is the sum of

- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
- (b) a comforts allowance of \$95 for each person for each calendar month.

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]*.

Arguments of the Parties

The argument of the appellant is that she was not aware that the ministry was depositing money to her bank account and believed it was from her parents. She argues that the money in her bank account was used for rent, moving and storage therefore she does not believe it should be paid back to the ministry.

The ministry argues that the appellant has been residing in a special care facility from September 2015 to January 2016, is eligible for a comforts allowance of \$95.00 per month plus a user charge for the special care facility, and is not entitled to receive disability assistance. The appellant continued to receive disability assistance during this period that she was not entitled to receive and must be repaid

to the ministry.

The panel has made the following findings:

The issue the panel must consider is the reasonableness of the ministry's decision that the appellant received disability assistance for which she was not eligible. The appellant did reside in a special care facility from September 2015 to January 2016 and in accordance with section 8(1) of Schedule A of the EAPWDR is entitled to receive a comforts allowance of \$95.00 per month plus a user charge for the special care facility. The panel finds that the appellant did receive disability assistance from September 2015 to January 2016 for which she was not entitled to receive in accordance with Section 24 of the EAPWDR. 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 has reviewed all applicable legislation and finds that, based on the evidence, the ministry was reasonable to determine that the appellant received disability assistance from September 2015 to January 2016, inclusive, that she was not entitled to receive, and therefore, as stated in section 18(1) EAPWDA, must be repaid to the ministry. The panel finds that the ministry's reconsideration decision was a reasonable application of the enactment in the circumstances of the appellant in accordance with sections 24(1)(a) and 24(1)(b) EAPWDR confirms the ministry's reconsideration decision.