

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of September 14, 2016 wherein the ministry determined that the appellant received income assistance for which he was not eligible under section 24 of the Employment and Assistance for Persons with Disabilities Regulation and is required to repay the amount to the ministry as per section 18 of the Employment and Assistance for Persons with Disabilities Act.

PART D – Relevant Legislation

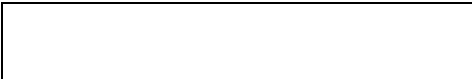
Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 18
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1 and 24

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in the absence of the ministry in accordance with section 86(b) of the Employment and Assistance Regulation.

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

- The appellant is a recipient of income assistance benefits for a unit 3 household.
- The appellant was issued income assistance benefits from July 2015 to October 2015 for a family unit of 4 when he had a family unit of 3 which resulted in an overpayment of \$829.16.
- February 26, 2016 – the appellant was contacted by an Investigative Officer (IO) to confirm when the appellant's child left the home to live elsewhere. The appellant was unable to verify the exact date and the IO gave him until March 16, 2016 to provide a statement confirming he date the son left home to live elsewhere.
- March 18, 2016 – the appellant provided a written statement indicating that he was informed by child services that his child moved to live elsewhere in February or March 2015. The appellant also indicated tht he tried to contact a social worker and was unable to get a response.
- April 20, 2016 – IO confirmed that the appellant's child moved to live with his mother effective June 12, 2015.
- April 21, 2016 – the IO contacted the appellant to advise of the overpayment based on the evidence obtained in the amount of \$829.16 for income assistance benefits issued between July 2015 and October 2015 for unit 4 when the appellant should have received only unit 3 benefits as the older child had moved out.
- April 26, 2016 – an overpayment letter was sent by the ministry to the appellant and the appellant was encouraged to submit any information related to the potential overpayment to the ministry for consideration.
- May 24, 2016 – the ministry mailed the overpayment decision letter to the appellant also stating that no sanction was applied to his file as this is an administrative error overpayment as the appellant did inform the ministry of a change in his household composition.
- June 7, 2016 – the appellant contacted the ministry and confirmed that the appellant had advised the ministry that his child was no longer living with him on February 18, 2015.
- June 22, 2016 – the ministry reviewed the file history information and confirmed that the overpayment was due to ministry error and as a result no sanction would be applied to the file.
- June 24, 2016 – the appellant requested a reconsideration decision of the decision that



determined he received assistance he was not eligible for and that he was required to repay. The appellant states that he shouldn't have to pay for the ministry's mistake.

Notice of Appeal

The appellant writes "I shouldn't have to pay for someone else mistake when I have proof that I told them I took my child off my file."

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision of September 14, 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 received income assistance for which he was not eligible under section 24 of the EAPWDR and is required to repay the amount to the ministry as per section 18 of the EAPWDA.

The relevant legislation is as follows:

EAPWDA

Interpretation

1 (1) In this Act:

"**dependent child**", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

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

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.

Arguments of the Parties

The argument of the appellant is that he advised the ministry on February 18, 2015 that his son had moved out and was no longer living with him. He is not aware of how his monthly benefits are calculated and as a result was not aware that he was being overpaid. The overpayment of benefits is a mistake of the ministry and he does not agree that he should have to repay any overpayment to the ministry.

The ministry argues that it is aware that the appellant declared in the monthly report on February 18, 2015 that the appellant's son had moved out of the appellant's home and as such was not considered a dependent child in accordance with Section 1 of the EAPWDA's interpretation of a "dependent child," and the appellant does not dispute this. The minister notes that the appellant continued to receive the same rate of assistance in April 2015 and determined that the appellant should have been able to notice that his assistance did not decrease after he informed the ministry that his son was no longer residing with him, and should have questioned the ministry why his assistance rate had not reduced. As a result, the appellant has received assistance as a family of 4 from July 2015 to

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October 2015 instead of a family of 3, and received assistance totalling \$829.15 which he was not eligible to receive.

Panel decision:

The issue the panel must consider is the reasonableness of the ministry's reconsideration decision that the appellant received income assistance for which he was not eligible. In this case both parties agree that the appellant received \$829.15 in assistance that he was not eligible to receive for the period that his son was not residing with him from July 2015 to October 2015. The appellant did notify the ministry on February 18, 2015 that his son was no longer residing in his home. Section 18(1) EAPWDA states that if assistance 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 for that period. Section 18(2) EAPWDA states that the minister's decision about the amount a person is liable to repay under subsection (1) is not appealable.

The panel finds that the legislation specifically deals with overpayments and not the manner in which an overpayment has occurred. While the appellant argues that the overpayment occurred due to ministry error does not change the fact that the appellant received benefits for which he was not eligible to receive.

The panel has reviewed all applicable legislation and finds that, based on the evidence, the ministry was reasonable to determine that the appellant received assistance from July 2015 to October 2015, inclusive, that he was not eligible 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 applicable enactment in the circumstances of the appellant and confirms the ministry's reconsideration decision.