

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("Ministry's") reconsideration decision dated April 18, 2017, which held that the appellant failed to declare \$301.00 of Employment Insurance income he received in January 2017 as required under section 11 of the *Employment and Assistance for Persons With Disability Act* (EAPWDA) and section 29 of the *Employment and Assistance for Persons With Disability Regulation* (EAPWDR), resulting in an overpayment of assistance for the month of March 2017 and, consequently, the applicant is required to repay the Ministry in accordance with section 18 of the EAPWDA.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disability Act (EAPWDA), sections 11 and 18

Employment and Assistance for Persons With Disability Regulation (EAPWDR), sections 9, 24, and 29

PART E – Summary of Facts

Information before the Ministry at reconsideration

The Ministry had the following information at reconsideration:

- The appellant is a sole recipient with a Persons with Disabilities (PWD) designation;
- On March 13, 2017, the Ministry received a report from Service Canada, the EI/MHSD Common Claimant Report for the appellant dated February 20, 2017 showing an Employment Insurance (EI) entitlement for January 18, 2017 of \$151 for “over-pay deduct” plus \$150 “cheque amt”;
- On March 21, 2017, the Ministry sent a letter to the appellant advising him of a possible disability assistance overpayment, and assessing the overpayment as \$301.00, comprised of a full \$301.00 EI entitlement even though the appellant only received an EI payment of \$150 due to a previous overpayment. The letter attached a Ministry overpayment chart for March 2017, showing an overpayment of assistance in the amount of \$301 due to actual income of \$301 from Employment Insurance: Service Canada;
- On March 27, 2017, the appellant provided the Ministry with a bank statement for the period of January 1 to January 31, 2017 showing a deposit from Canada on January 20, 2017 in the amount of \$150; and
- A Statement of Account(s) from Employment and Social Development Canada that the appellant provided to the Ministry, dated February 11, 2017, showing EI in the amount of \$301.00, a payment of \$151.00, and a new balance of \$488.00.

Information provided on appeal

In his notice of appeal, the appellant stated that he did not receive a cheque for \$301.00; that his EI claim had ended in November or October of 2016; and when he received \$150.00 in January he did not check his account to see where the money had come from as he thought it was part of his “welfare check”.

At the oral hearing the appellant said he did not report EI income for January because he did not realize that he had been paid any EI income. As far as he knew, his EI benefits had ended in October, and he thought the deposit in his account from Canada must be an income tax refund or GST refund. He said he did not intentionally fail to report income. The appellant acknowledged that he did receive EI income in January, but that it was for \$150 and that he never received \$301. In support, he provided two documents:

- an Itemized Statement of Benefits Paid for 2016 from Human Resources and Skills Development Canada, showing his EI payments from July 31, 2016 through to October 23, 2016 and their dates of issue.
- an Employment Insurance Benefit Statement for the week of October 23, 2016 to October 30, 2016 in the amount of \$301, noting a \$151 deduction for “Recovery of debt(s)”, and showing a direct deposit issued for January 18, 2017 in the amount of \$150. It includes a message that “This is an adjustment to a period previously processed.”

The Ministry relied on the reconsideration summary provided in the Record of Ministry Decision. The Ministry also submitted that EI is unearned income that must, by legislation, be deducted from disability assistance. Further, the legislation requires that the entire eligibility for EI must be deducted, and that is why the Ministry deducted the full \$301.

New evidence on appeal

The ministry did not object to the admission of the additional documents provided by the appellant at the hearing. The panel admitted the additional documents under s. 22(4) of the *Employment and Assistance Act* as information in support of the information available at reconsideration. The information substantiates the previous information that was before the Ministry at reconsideration about the payment that Canada made to the appellant in January 2017 and provides clarification about the purpose of the payment.

PART F – Reasons for Panel Decision

Issue on appeal

The issue is whether the Ministry's decision—that the appellant failed to declare \$301.00 of Employment Insurance income he received in January 2017, resulting in an overpayment of assistance for the month of March 2017 that the applicant is required to repay the Ministry—is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation

Employment and Assistance for Persons With Disability Act (EAPWDA)

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

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*].

Employment and Assistance for Persons With Disability Regulation (EAPWDR)

Definitions

1. ...

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: ...

(g) employment insurance;

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.

Amount of disability assistance

24 Subject to section 24.1 (3), 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.

[am. B.C. Reg. 175/2016, App. 1, s. 4.]

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the [Workers Compensation Act](#) as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the [Workers Compensation Act](#) received by the family unit in the calendar month.

[en. B.C. Reg. 335/2007; am. B.C. Regs. 85/2012, Sch. 2, s. 4; 332/2012, s. 1; 226/2014, s. 1.]

The Panel's decision

The parties positions

The appellant's position is that he did not intentionally fail to declare EI income that he received in January. He acknowledged that he did receive such income but says he first learned of it through the Ministry. He stated he never received \$301 in EI income in January, only \$150.

The Ministry's position is that the legislation requires the appellant to report income received in a month (s. 11 of the EAPWDA, and s. 29 of the EAPWDR) in order for the Ministry to determine monthly eligibility for disability income; that an EI entitlement is unearned income (s. 1 of the EAPWD); that a person's income must be deducted from their disability assistance (s. 24 of the EAPWDR); and that "income" includes an amount deducted from the income of an applicant (s. 9 of the EAPWDR). Therefore, the Ministry representative stated the appellant was required to report the \$301 in EI income and that the full amount of this income had to be deducted from the appellant's entitlement even though Canada deducted \$151 in repayment of a previous debt.

The panel's decision

The documentary evidence before the Ministry at reconsideration and the documents provided by the appellant on appeal show the appellant received, in January 2017, an EI entitlement of \$301 for the last week of October, of which \$151 was deducted by Canada for recovery of a debt. Although the appellant says he did not intentionally fail to report this income, section 11 of the EAPWDA and section 29 of the EAPWDR required him to do so by February 5, 2017 and he did not do so.

Further, section 9 of the EAPWDR provides that income includes "an amount garnished, attached, seized, deducted or set off from the income" of a recipient. Accordingly, the entire amount of the appellant's EI entitlement (\$301) is "income" regardless of whether \$151 was deducted by Canada and not paid to the appellant.

Therefore the panel finds the Ministry's decision that the appellant failed to report \$301 in income for the month of January 2017, resulting in an overpayment for the month of March 2017, is reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

The panel confirms the Ministry's decision that the appellant failed to declare \$301.00 of Employment Insurance income he received in January 2017 as required under section 11 of the EAPWDA and section 29 of the EAPWDR, resulting in an overpayment of assistance for the month of March 2017 and, consequently, the applicant is required to repay the Ministry in accordance with section 18 of the EAPWDA. The appellant is not successful in his appeal.