

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 24, 2017 which found that the appellant is not eligible for disability assistance (DA) for the period of August 2015 to November 2015 and July 2016, pursuant to sections 11 and 24 of the *Employment and Assistance Persons with Disability Act* (EAPWDA) as the net monthly income of the family unit exceeded the amount of assistance payable due to income received by the appellant. The ministry also found that the appellant is liable to repay the overpayment amount of \$4230.68 pursuant to section 18 of the EAPWDA.

## PART D – Relevant Legislation

*Employment and Assistance Persons with Disability Regulation* – section 24  
*Employment and Assistance Persons with Disability Act* – sections 11 and 18  
Schedule A – section 1, 2, and 4.  
Schedule B – section 1, 2, 3, 4, 6 and 7.

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

1. 48-page bank statement dated from November 27, 2014 to September 18, 2016 which show deposits from the appellant's employer.
2. 3- page confirmation of earnings dated from December 2014 to October 7, 2016.
3. 1-page employment insurance report dated from February 14, 2016 to May 29, 2016.
4. Request for Reconsideration (RFR), signed and dated April 10, 2017, which included several emails between the appellant and the third party administrator and stated in part the following:
  - In June 2015 the ministry called the appellant and requested bank statements and pay stubs for the previous 90 days but continued to provide DA.
  - The same request was made on October 28, 2015.
  - On November 2, 2015 the ministry called to inform the appellant that due to an out of province matter that needs attention the appellant's file with the ministry has been closed.
  - From November 5, 2015 to February 2016 the ministry requested more information.
  - Her DA and medical benefits were cut off from November 2015 to July 2016.
  - From February 14, 2016 and for the next 16 weeks the appellant collected employment insurance benefits.
  - June 2016 the appellant re-applied for DA but was told she had to provide additional information and that she was under investigation.
  - July 7, 2016 the appellant received her DA cheque which came after the ministry's investigations into her current eligibility were complete.
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### **Evidence on Appeal**

Notice of Appeal (NOA), signed and dated May 8, 2017, which in part states that the ministry was provided with updated bank statements and recent pay stubs on 2 separate occasions. But the ministry claims the appellant did not declare anything.

### **Evidence at the Hearing**

At the hearing the appellant reiterated the information provided in the RFR and added that:

- She was aware that \$9600.00 of her earnings are exempt and anything earned after that is subject to deductions from her DA.
- She was not aware of the ministry's fiscal year end and therefore did not know the time period of the exemption or at what point she reached her exemption.
- The ministry called her and advised her in June 2015 and October 2015 that she was close to meeting the exemption amount.
- The ministry should have known that the appellant was employed and informed her of her eligibility requirements. The ministry should be held accountable for its mistake.
- She always submits a monthly reporting stub because she is aware of the reporting requirements.
- She does not dispute working, making about \$35 000 in 2015, or that she received DA when she was working. The appellant disputes responsibility for the overpayment. The ministry had information that she was working and should not have issued DA.

At the hearing the ministry relied on the reconsideration decision and added the following:

- The ministry can investigate past eligibility.
- With income assistance recipients are required to provide monthly reporting stubs. However with DA recipients are not required to provide monthly reporting stubs. Therefore the ministry would not have sought this information.
- A re-investigation into the appellant's past eligibility only opened up when she reapplied for DA in June 2016. However, investigations into past eligibility would not necessarily affect current eligibility which is why the appellant received her July 2016 assistance.
- The ministry does not request information via telephone. If the ministry wanted past bank statements or pay stubs a letter would have been mailed to the appellant. Since the information was not requested in June or October of 2015, the ministry only became aware of the appellant's employment when she reapplied for DA in June 2016.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for disability assistance (DA) for the period of August 2015 to November 2015 and July 2016, pursuant to sections 11 and 24 of the EAPWDA, as the net monthly income of the family unit exceeded the amount of assistance payable due to earned income received by the appellant and that the appellant is liable to repay the overpayment amount of \$4230.68 pursuant to section 18 of the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation states:

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)

EAPWDR

### 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.

### The Reasons for the Appellant's Appeal

The appellant argues that though she did receive overpayments for the stated months totaling \$4230.68 and that she earned over \$35, 000 in 2015, the ministry is responsible for the overpayment and only it should be held accountable for its mistake. To support her reasons for appeal, the

appellant argues that she submitted her pay stubs with her monthly reporting. Thus there was ample information available to the ministry for it to realize that she was employed prior to issuing the overpaid amount. Additionally, the ministry was provided with bank statements dating back to 2014 in June 2016. It not only failed to notice that she was employed from August 2015 to December 2015 the ministry also issued her new eligibility. The appellant argues that the ministry only chose to pursue repayment after it lost another appeal with the appellant in August 2016.

### The Ministry's Rationale

The ministry argues that it did not receive information from the appellant regarding her employment (i.e. pay stubs or monthly reporting stubs) at the time she was issued her DA from August 2015 to December 2015 or prior to that period. Pursuant to section 11 of the EAPWDA the appellant was required to report any changes or information that may affect her eligibility for DA. Additionally, the ministry argues that the appellant's wage is considered earned income and earned income exceeding \$9600.00 must be deducted from her DA because she was not eligible for it pursuant to section 24 of the EAPWDR. Finally the ministry argues that pursuant to section 18 of the EAPWDA the appellant is required to repay any amount that is overpaid.

### The Panel's Decision

The appellant does not dispute the following: that her wages are considered to be earned income; that earned income over \$9600.00 must be deducted from her DA; that she earned more than \$9600.00 from her employment in 2015; that she received DA when she was working; how overpayments are calculated; that overpayments are repayable or that the total repayment required is \$4230.68. Therefore the panel will not make a determination on these areas of the ministry's decision. The issue for the appellant is, who should be held responsible for the overpayment and therefore the cost of repayment?

The panel notes that panel's jurisdiction is limited to determining whether or not the ministry's reconsideration decision in the case of the appellant was reasonable given the evidence and legislation and that the applicable legislation was applied. Furthermore, it is noted that section 18(2) of the EAPWDR states that the minister's decision about the amount a person is liable to repay is not appealable. Therefore the panel cannot make a determination as to how much the appellant is liable to repay.

Section 11 of the EAPWDA states that any changes that may affect eligibility must be reported to the ministry. The appellant argues that she submitted a reporting card, which included her pay stub, each month at her local ministry office. Since this information was available to the ministry it should not have continued to issue her DA and therefore the ministry is responsible for the \$4230.68 owing. Furthermore, when her DA was reinstated in the summer of 2016, the ministry had her bank statements dating back to 2014 and should have dealt with any overpayment at that time. The ministry argues that it did not receive any reporting stubs or pay stubs for the period in question nor would the ministry seek such information in a PWD case. Furthermore, that at the time the appellant's DA was reinstated in the summer of 2016, the ministry was still investigating the appellant's past eligibility which did not affect her current eligibility. The panel finds that the point in time at which the ministry became aware of the appellant's employment is not relevant to the issue at hand because section 24 of the EAPWDR clearly states that the amount of DA a recipient is eligible for is the amount determined by Schedule A minus the recipient's income. There is no dispute by either the ministry or the appellant that the appellant's income was greater than her DA eligibility from August 2015 to December 2015 and July 2016. Section 18 of the EAPWDA clearly states that if DA is provided to a family unit that is not eligible for it, the *recipients* are liable to repay to the government

the amount or value of the overpayment provided. In other words, regardless of who made the error, (i.e. the appellant or the ministry) it is the recipient of the DA (i.e. in this case the appellant) who is responsible for repayment of the funds owed to the government. The legislation is clear as to who is responsible for repayment and the panel therefore finds that the ministry's interpretation and application of the legislation given the evidence in the circumstances of the appellant are reasonable.

### Conclusion

The panel finds that the ministry's decision, which found that the appellant is liable to repay assistance she was not eligible to receive pursuant to section 18 of the EAPWDA and section 11 of the EAPWDR, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the decision. The appellant is not successful in her appeal.