

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of May 23, 2017, which found the appellant not eligible for income assistance in December 2009, December 2010 and from February 2011 to December 2015 in accordance with the requirements of section 10 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) as the value of his assets exceeded the allowable limits; as a result the appellant is liable to repay the resulting overpayment under section 27 of the Employment and Assistance Act (EAA).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 10.  
Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 14.

## PART E – Summary of Facts

### **Information from the Ministry's Reconsideration Decision:**

The ministry writes: "Application for assistance was initiated in December 2008 as a sole recipient during your admission to hospital. You had sustained several serious injuries including the loss of a leg in a car accident."

Persons With Disabilities designation was approved effective January 2009.

A file review was initiated in March 2016. The appellant was requested to submit several documents including bank profiles and statements. The banking information indicated that the amount of funds in the appellant's bank accounts exceeded the allowable asset limit for December 2009, December 2010 and from February 2011 to December 2015. "The overpayment chart listed December 2015 as a month where the amount in your bank account exceeded the allowable limit, however, as the limit was raised to \$100,000 December 1, 2015, the asset limit was not exceeded during this month. The amount of the overpayment will be adjusted accordingly."

### **Overpayment Chart December 2009 – December 2015**

The appellant's monthly assistance was \$906.42.

His \$ assets were identified as follows:

October 29, 2009:	3,972.58.
October 29, 2010:	3,178.72.
December 31, 2010:	3,730.04.
January 31, 2011:	3,907.93.
February 28, 2011:	4,000.76.
March 31, 2011:	4,442.34.
April 29, 2011:	4,620.35.
May 31, 2011:	4,621.33.
June 30, 2011:	4,622.28.
July 29, 2011:	8,198.17.

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October 30, 2015:	20,506.36.
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**A Bank Profile**, completed by TD Canada Trust, dated and stamped April 6, 2016, shows the appellant's holdings as follows:

Personal Chequing Account:	\$689.64
Personal Savings Account:	\$6,879.76
Credit Card	\$2000
TFSA:	\$20,549.11
RDSP:	\$21,602.09

**An Application for Disability Assistance** dated December 8, 2008 was filled in incompletely by a ministry outreach worker and signed by the appellant. Several sections were left blank including "All family assets and their current value" (except for "Canada Trust" written in).

**A Direct Deposit Request** dated August 22, 2009 directed the ministry to deposit the appellant's assistance payments directly into his bank account.

**An Overpayment Notification** dated March 31, 2017 states that the appellant received \$56,560.70 assistance for which he was not eligible. The minimum that will be deducted from his assistance to repay the debt is \$10 per month. The appellant signed the following: "I acknowledge that I have received this notification and I am aware of my right to request a reconsideration of this decision."

In his request for reconsideration dated April 20, 2017 the appellant writes he was never informed of the asset levels he was allowed to have, neither was he informed of asset level changes. It took over 8 years to be reviewed and told that he did things wrong and has to pay for it. He was approached by a lady in the hospital that signed him up for assistance while he was still recovering and under a lot of pain medication. The only thing she told him was that he would get the maximum disability assistance, and probably for the rest of his life. He has no documents or forms to submit because he never received anything. It is a lot of money he is expected to pay back and he does not want the debt hanging over him for the rest of his life. He is afraid that if he gets a job the ministry will ask for the money in full. He was told to save as much as he could because one day he will have to pay for his prosthetics which are very expensive.

At the hearing the appellant stated that approximately 3 years ago he became aware that RDSPs are exempt assets. It was recommended to him that he put \$1500 yearly into his RDSP. He did not receive a large sum of money but built up his savings over time. His assistance was directly deposited into his account. After the ministry suggested he must have received monthly stubs he said that this was not so.

The ministry relied on its reconsideration decision and added the following information: The ministry has not asked the appellant for the information that was missing in his 2008 information application until it reviewed his file in 2016. Around 2008 there was a staff shortage and incomplete applications were left unattended and not followed up. The ministry related further that initially they had considered charging the appellant with fraud but decided against it. The appellant is 50 % at fault and the ministry is 50 % at fault. The appellant could have asked the ministry if there are asset limits in place, and the ministry could have followed up much earlier on the missing information. It should be obvious to the appellant that he should inform the ministry when he receives a large sum of money.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for income assistance in December 2009, December 2010 and from February 2011 to December in accordance with section 10 of the EAPWDR because the value of his assets exceeded the allowable limits, and as a result he is liable to repay the resulting overpayment under section 27 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

### EAPWDA:

#### Consequences for providing inaccurate or incomplete information

**14.1** (1) The minister may take action under subsection (2) if the minister determines that

(a) ...,

(b) the disability assistance, hardship assistance or supplement was provided to or for the family unit either

(i) on the basis of inaccurate or incomplete information provided by the applicant or recipient

(A) under section 10 (1) (e) [*information and verification*],  
or

(B) in a report under section 11 (1) [*reporting obligations*],  
or

...

(c) in the minister's opinion, the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister.

(2) In the circumstances described in subsection (1), the minister may reduce the disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

### EAPWDR:

#### Asset limits

**10** (1) The following assets are exempt for the purposes of subsection (2):

.....

(jj) funds held in, or money withdrawn from, a registered disability savings plan;

.....

(2) A family unit is not eligible for disability assistance if the family unit has assets with a total value of more than the following:

(a) in the case of a family unit that includes one applicant or recipient who is designated as a person with disabilities, other than a family unit to which paragraph (b) applies, \$100 000;

.....

Section 10(1)(jj) BEFORE amended by BC Reg 20/2013, effective January 30, 2013.

(jj) funds held in a registered disability savings plan;

B.C. Reg. 363/2007, deposited November 23, 2007, ... the Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002, is amended

*(a) in section 10 (1) by adding the following paragraph:*

(jj) funds held in a registered disability savings plan;

.....

Section 10(2) BEFORE amended by BC Reg 204/2015, effective December 1, 2015.

(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;

.....

Section 10(2)(a) and (b) BEFORE amended by BC Reg 197/2012, effective October 1, 2012.

(a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3 000; ...

The appellant argues that the ministry's decision do make him pay back \$50,000+ is unjust; he was never informed of allowable asset levels and changes of these levels, and it took an unreasonably long time - over 8 years - to be reviewed and contacted but the ministry on these issues. When he was signed up for assistance by an outreach worker he was still in the hospital recovering from his severe injuries and under a lot of pain medication. The only thing this lady told him was that he would get the maximum disability assistance, probably for the rest of his life. He has no documents or forms to submit because he never received any. It is a lot of money he is expected to pay back and he does not want the debt hanging over him for the rest of his life. He has to save as much money as possible because one day he will have to pay for his prosthetics which are very expensive.

In this case, the ministry initiated a review in March 2016 of disability assistance approved January 1, 2009. The appellant sustained serious injuries including the loss of a leg in a car accident when the application was submitted on his behalf and approved. The ministry argues that he was not eligible to receive disability assistance as his assets exceeded the limit which until September 30, 2012 \$3,000. It increased to \$5,000 October 1, 2012 and reached its current level December 1, 2015. The ministry argues that under section 10 of the EAPWDR, a sole recipient is not eligible for disability assistance if the person has assets valued at more than the allowable limit. Section 10 of the Employment and Assistance for Persons with Disabilities Regulation lists assets that are exempt from the calculation of asset limits. Section 10 (2)(a) EAPWDR states a family unit of one person with disabilities is ineligible for income assistance if their asset limit is more than \$100,000.

At hearing, the ministry stated information was missing in his 2008 application which was discovered when they reviewed his file in 2016. Around 2008 there was a staff shortage and incomplete applications were left unattended and not followed up. The ministry related further that initially they had considered charging the appellant with fraud but decided against it. They stated the appellant is 50 % at fault and the ministry is 50 % at fault. The appellant could have asked the ministry if there are asset limits in place, and the ministry could have followed up much earlier on the missing information and that it should be obvious to the appellant that he should inform the ministry when he receives a large sum of money.

Section 10(1) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) states that for the purposes of determining eligibility for disability assistance, the minister may direct an applicant or recipient to supply the minister with information. In this case, the minister owns to never asking the appellant to supply the information. The onus is not on the appellant to supply unsolicited information and at that time, the appellant was suffering from serious injuries including the loss of a leg.

The ministry then argues that under section 27(1) of the EAPWDA, a person is liable to repay assistance they were not eligible to receive, however 27(1) EAPWDA addresses regulations respecting eligibility and assignment of maintenance rights. It is possible the ministry based their argument on s. 27(1) of the EAA, but the appellant is designated as a person with disabilities and the EAA does not apply to him.

Section 14.1(1) EAPWDA provides consequences for providing incomplete information. The minister may take action under subsection (2) if the minister determines that disability assistance was provided to a family unit that was not eligible for it; (b) the assistance was provided on the basis of inaccurate or incomplete information provided by the applicant or recipient ...or (c) if in the minister's opinion, the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister. In these circumstances, the minister may reduce the disability assistance by the prescribed amount for the prescribed period. Section 28.1 EAPWDR states that if the minister determined under s. 14.1(1) of the Act that the minister may take action under 14.1(2) of the Act, the assistance provided may be reduced by \$25 ... (a) a first determination, for the next 3 calendar months.

In this case, the ministry did not direct the recipient of disability assistance to supply information for the purpose of determining eligibility prior to granting assistance. When the minister did request information, the recipient supplied it.

**Panel Decision:**

Section 14.1(1)(b)(i) of the EAPWD Act confers “discretion” on the Minister to take action by reducing the disability assistance if the Minister determines that disability assistance was provided on the basis of incomplete information provided by the applicant. The appellant provided “incomplete information” because he was hospitalized and recovering from traumatic injuries and on medication. As well, the ministry did not direct the applicant or recipient to supply the information as required under s. 10(1) EAPWDA.

Had the ministry followed up on the missing information in a timely manner, the applicant would have had the opportunity to other actions to reduce his asset level and address the eligibility issue. Further, the consequences of providing incomplete information are a reduction of disability assistance for a period of time.

The panel determines that the ministry’s reconsideration decision is not a reasonable application of the legislation in the circumstances of the appellant and rescinds the decision. The appellant is successful in his appeal.