

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of June 26, 2017 wherein the ministry determined that the appellant received disability assistance from September 2016 to February 2017 for which she 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 required in 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, 9, 24 and 29

PART E – Summary of Facts

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

- The appellant is a recipient of disability assistance benefits with her spouse and three children as dependents.
- The appellants' spouse had earned income from January 2016 to February 2017 and the appellant did not declare this income to the ministry.
- The ministry determined that the basic 2016 Annual Earnings Exemption of \$12,000 had been exhausted in August 2016.
- The appellant was issued disability assistance benefits from September 2016 to February 2017 that she was not eligible to receive, resulting in an overpayment of disability assistance in the amount of \$9,028.92.
- On May 24, 2017 the ministry advised the appellant that the overpayment of disability benefits was required to be repaid to the ministry.
- June 12, 2017 – the appellant signed her "Request for Reconsideration" stating that she did not understand that she had to submit her spouses' work stubs. The appellant states that she asked the ministry if she had to bring in the stubs and the lady said no, everything is good. She was advised that her October support will be cut off because she has reached her limit. She was told that her support would be reset in January 2017. She was still receiving support until her spouse went in to the office (in February 2017) to let them know he got laid off work.

Notice of Appeal

On June 30, 2017 the appellant writes "these ladies at the office told me everything is fine and I didn't have to bring in any stubs after the month of September. They told me I had to save money starting October until January because I had reached my limit. So I have ever since they made a mistake and kept sending my support. It wouldn't be fair now that her "spouse" is on EI that they deducted each dollar off, so that would mean over \$2,000 is already paid off.

At the hearing

The appellant's advocate presented arguments supporting the appellant's position, specifically:

- a) Sometimes after June 2016, after receiving a letter from the ministry she didn't understand, she attended the ministry office for clarification. She was told that the last support she will ever get will be September, so she needs to learn how to save money as soon as possible. This was confusing to the appellant.
- b) The appellant states she did submit stubs for the months of July, August and September 2016.
- c) In October 2016 the appellant again spoke to the ministry officials and asked about income reporting requirements. The appellant states that because it was winter and she was busy with her children, it was difficult for her to deliver stubs each month. The ministry official told her that she wouldn't have to worry about submitting stubs.
- d) The appellant argues that she suffers from 'fetal alcohol disorder' and has difficulty with memory, trouble with attention, with processing information, difficulty with reasoning and problem-solving, difficulty identifying consequences of choices and poor judgment skills. The appellant was confused about the information that was given to her by the ministry with regard

to income reporting requirements and that this led to her underreporting her household income.

The appellant stated that she visited the ministry office in February 2017 to inform them that her husband was laid off work and was now on EI and asked what she was supposed to do. She said that she did not understand what was expected of her.

The ministry reviewed the evidence provided in the reconsideration decision and referred to the Overpayment Chart, noting the following:

- a) the appellant is eligible for a \$12,000 earnings exemption for the period commencing on March 1, 2016 to February 28, 2017, and
- b) the unreported income earned by the appellant's spouse commenced on March 1, 2016 which reduced the earnings exemption balance each month, and
- c) at September 2016 the earnings exemption balance available to the appellant was \$943.23 and the unreported income earned by the appellant's spouse was \$1,695.34 resulting in an overpayment of benefits, and
- d) the appellant continued to receive disability benefits, that she was not eligible to receive, from October 2016 to February 2017.

The ministry further stated that the legislation does not provide any discretion when it comes to overpayment of benefits. Whether this was a ministry error or an error of the appellant, the fact is that there was an overpayment of disability benefits and that the overpayment is required to be repaid as set out in legislation.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision of June 26, 2017 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 received disability assistance from September 2016 to February 2017 for which she 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

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

Interpretation

1 (1) *In this Act:*

"earned income" means

(a) *any money or value received in exchange for work or the provision of a service,*

(b) *Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]*

(c) *pension plan contributions that are refunded because of insufficient contributions to create a pension,*

(d) *money or value received from providing room and board at a person's place of residence, or*

(e) *money or value received from renting rooms that are common to and part of a person's place of residence;*

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 income 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.*

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.

Arguments of the Parties

The argument of the appellant is that she was told by the ministry that she didn't have to bring in any stubs after the month of September and told her she had to save money starting October until January because she had reached her limit. However, the ministry made a mistake and continued to send her disability assistance for October to January. It wasn't until her spouse advised the ministry in February 2017 that she understood that his pay stubs were required by them.

The ministry argues that the appellants' spouse had earned income from January 2016 to February 2017 and the appellant did not declare this income to the ministry. The basic 2016 Annual Earnings Exemption of \$12,000 had been exhausted in August 2016 and her spouse's employment earnings should have been deducted from her disability assistance from September 2016 to February 2017. This resulted in an overpayment of \$9,028.92 which must be repaid to the ministry.

Panel decision:

The issue the panel must consider is the reasonableness of the ministry's reconsideration decision that the appellant received disability assistance she was not eligible to receive and is liable to repay.

Section 9(2) EAPWDR states that a family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

The appellant's spouse earned employment income from January 2016 to February 2017 and in accordance with Section 1 EAPWDR the panel finds that this employment income is defined as earned income.

In accordance with Section 24 EAPWDR the amount of assistance a family unit is eligible to receive is determined by deducting the amount of income earned by the appellant's spouse from the support/shelter/transportation allowances assistance calculated under Schedule A EAPWDR received by the appellant. The panel reviewed the types of earned income that may be exempted from the calculation of the amount of income received under Schedule B EAPWDR and notes that Section 3 allows for up to \$12,000 of earned income to be exempted. The panel finds the appellants' annual exemption amount was reached in September 2016 and the earned income should have been deducted from the appellant's disability benefits received from September 2016 to February 2017. Pursuant to Schedule A EAPWDR. The appellant's family unit received \$869.45 in September 2016, \$1,621.56 in October and November 2016, \$1,721.65 in December 2016, \$1,825.50 in January and February 2017.

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 September 2016 to February 2017, inclusive, that she 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. The appellant is not successful in her appeal.