
PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“the ministry”) dated September 24, 2018, which determined that the appellant received disability assistance for which she was not eligible and which, in accordance with section 18 of the *Employment and Assistance for Persons with Disabilities Act* (“the Act”), she is liable to repay. The ministry determined that due to its error, for the period of September 2015 to April 2016, spousal support received by the appellant was not deducted from her disability assistance as required by section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (“the Regulation”) resulting in a \$2400 overpayment of disability assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (“the Act”), sections 11 and 18

Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”), sections 1, 24, and 29, Schedule A and Schedule B

PART E – SUMMARY OF FACTS

The appellant is a sole recipient of disability assistance who is entitled to receive \$300 of spousal support per month.

On July 31, 2018, the ministry concluded that it had made an administrative error by coding the spousal support received by the appellant as child support for the period affecting disability assistance months September 2015 to April 2016. The ministry determined that as a result of its error, spousal support in the amount of \$2400 was not deducted from the appellant's disability assistance over this period of time.

Included in the appeal record is the ministry's Overpayment Chart, a Family Maintenance Enforcement Program "Statement of Payments Disbursed," and the appellant's bank account records. Though the monthly amounts of spousal support received varies somewhat between these documents, the total amount of spousal support received by the appellant for July 2015 through February 2016, the months affecting disability assistance months September 2015 through April 2016, is consistently \$2400. The appellant also provided Tax Return Summary documents for taxation years 2015, 2016 and 2017 which show the total amount of spousal support received in each of the taxation years, not monthly payments.

The appellant's Request for Reconsideration and her Notice of Appeal set out her reasons for disputing the ministry's decision. The arguments of both parties are set out in Part F of this decision.

The appellant attended the hearing with her advocate. The ministry attended the hearing with two additional ministry staff members who observed the hearing with the appellant's consent.

The appellant stated that she was first made aware of the ministry's failure to deduct her spousal support in September 2018 and that she had not previously noticed the increase in her disability assistance. She explained that her monthly disability assistance payments vary depending on when the spousal support payments are received in her account; in some months she receives no spousal support and in other months she receives two spousal support payments. The appellant stated that she has always trusted the ministry to be correct and that any repayment resulting in a reduction in her assistance would affect her greatly.

The ministry confirmed that its error resulted in the failure to deduct the appellant's spousal support from her disability assistance and that the appellant has always correctly reported the spousal support she received on her monthly reporting stub.

The panel determined that the information provided on appeal was either argument or reiteration of information at reconsideration. Therefore determination of admissibility of new information under section 22(4) of the Employment and Assistance Act was not necessary.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision that under section 18 of the Act the appellant is liable to repay disability assistance for which she was not eligible is reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Applicable Legislation

Relevant sections of the Act

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*].

Relevant sections of the Regulation

Section 1(1)

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
 - (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
 - (c) war disability pensions, military pensions and war veterans' allowances;
 - (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
 - (e) superannuation benefits;
 - (f) any type or class of Canada Pension Plan benefits;
 - (g) employment insurance;
 - (h) union or lodge benefits;
 - (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
 - (j) workers' compensation benefits and disability payments or pensions;
 - (k) surviving spouses' or orphans' allowances;
 - (l) a trust or inheritance;
 - (m) rental of tools, vehicles or equipment;
 - (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
 - (o) interest earned on a mortgage or agreement for sale;
 - (p) maintenance under a court order, a separation agreement or other agreement;
 - (q) education or training allowances, grants, loans, bursaries or scholarships;
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(r) a lottery or a game of chance;

(s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;

(t) any other financial awards or compensation;

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

(v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;

(w) tax refunds;

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation.

Amount of disability 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. 87/2018:

- (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.

Schedule B - Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

- (a) the following are exempt from income:
 - (i) any income earned by a dependent child attending school on a full-time basis;
 - (ii) Repealed [B.C. Reg. 96/2017];
 - (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
 - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
 - (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
 - (v) the basic child tax benefit;
 - (vi) a goods and services tax credit under the *Income Tax Act* (Canada);

(vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);

(viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;.....

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlv) a BC early childhood tax benefit;

(xlvi) child support;.....

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption

under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

(i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;

(iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;

(f) a tax refund;

(g) a benefit paid under section 22, 23, or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all

payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

Positions of the Parties

At reconsideration, the appellant argued that she did not receive an overpayment because in some months she receives two spousal support payments, something she has no control over. In her Notice of Appeal and at the hearing, the appellant explained that due to her mental health condition, sometimes she does not understand things correctly and that she did not realize that she was being overpaid disability assistance, but now she does. The appellant and her advocate argue that because the overpayment of disability assistance is the result of ministry error, it is unfair to make the appellant pay back any disability assistance but that if it must be repaid, it should be at the rate of \$10 per month.

The ministry's position is that the spousal support received by the appellant is unearned income as defined in section 1 of the Regulation and that while some types of unearned income are exempt or deducted under sections 1, 6 and 7 of Schedule B of the Regulation when calculating monthly net income, such as child support, spousal support is not included in those exemptions and deductions. Therefore, when calculating the amount of monthly disability assistance for which the appellant is eligible under section 24 of the Regulation, the spousal support received must be deducted from the disability assistance.

The ministry acknowledges that the over payment was due to Ministry error in coding the appellant's spousal support as child support, explaining that as of September 2015 the legislation was changed to permit the exemption of child support, but not spousal support, from net income. The ministry states that the appellant should have been aware that spousal support was to be deducted from her disability assistance and that the appellant did not advise the ministry that she was receiving an additional disability assistance. The error was not corrected until April 2016, at which time the spousal support was again deducted from the appellant's disability assistance.

Panel Decision

In accordance with the legislated reporting requirements, and in particular section 29 of the Regulation, income received during the previous month is to be reported by the 5th of the current month and affects the following month's assistance. As the ministry noted, the appellant reported the spousal support she received on her monthly reporting stubs.

Based on the appellant's bank statements, and as illustrated in the ministry's table in the reconsideration decision, the appellant received \$600 in spousal support in July 2015, which affects the amount of disability assistance for September 2015. In September, October and November of 2015, \$300 in spousal support was received, respectively affecting disability assistance for November and December of 2015, and January 2016. In December 2015, \$600 in spousal support was received, affecting disability assistance for February 2016, and in February 2016, \$300 in spousal support was

received affecting April 2016 disability assistance. The appellant acknowledges that these spousal support payments were not deducted from her disability assistance payments.

The panel finds that spousal support payments are unearned income as defined in section 1 of the Regulation and that none of the exemptions and deductions set out in Schedule B apply to spousal support. Accordingly, spousal support payments are included when calculating monthly net income and impact the calculation of the amount of disability assistance under section 24 of the Regulation. Therefore, as the spousal support received by the appellant from July 2015 through February 2016 was not included when determining the amount of disability assistance for which the appellant was eligible from September 2015 through April 2016, the ministry has reasonably concluded that the appellant received disability assistance for which she was not eligible. Additionally, the ministry is reasonable in determining that, in accordance with section 18(1) of the Act, the appellant is liable to repay the disability assistance she received for which she was not eligible. The panel has not addressed the amount that the appellant must repay because section 18(2) provides that the minister's decision about the amount a person is liable to repay under subsection (1) is not subject to appeal.

The panel concludes that the ministry's reconsideration decision that the appellant is liable to repay disability assistance for which she was not eligible is a reasonable application of the applicable enactment and therefore confirms the decision. The appellant is not successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Jane Nielsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/11/06

PRINT NAME Carl Gorham	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/11/06
PRINT NAME Margarita Papenbrock	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/11/08