

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated December 5, 2012 in which the ministry determined that the appellant was overpaid \$375 of assistance for October 2012 and that pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act*, she is required to repay it.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 18
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 1, 24 and Schedule B

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

- 1) The appellant's Request for Reconsideration dated November 11, 2012 (RFR) states that she disputes that she still owes \$750 to the ministry from the period of February to November 2012 because she had informed the ministry that she had not received child maintenance from her husband in May 2012 and October 2012;
- 2) Letter from the appellant dated November 19, 2012 in which she states that she is not disputing that she was overpaid child maintenance by her spouse of \$375 during August 2012, but is challenging the ministry for not updating the system to reflect the non-payment of child maintenance from her spouse in May and October 2012. The appellant states that the ministry appears only to confirm the overpayments but not recognize the months where no payment is received. The appellant also states that she fails to see where the overpayment of \$750 is when she informed the ministry office of non-payments and overpayments of child support from her spouse;
- 3) FMEP statement period January 27, 2012 through November 14, 2012;
- 4) FMEP List of Payments Form showing payments from September 18 through January 1;
- 5) Ministry of Social Development Overpayment Notification dated October 17, 2012 indicating that the ministry determined that the appellant received assistance of \$375 for which she was not eligible;
- 6) Ministry of Social Development Overpayment Notification dated April 25, 2012 indicating that the ministry determined that the appellant received assistance of \$375.58 for which she was not eligible;
- 7) Appellant's monthly reports showing FMEP, GST and Child Tax Benefit amounts reported for September, October and November 2012;
- 8) Overpayment chart for October 2012;
- 9) FMEP Payment Summary (List) dated November 14, 2012 showing benefit months from February through November 2012;
- 10) FMEP Payment History (Query) printed November 14, 2012 showing the appellant's FMEP payments and their applicability to the ministry benefit month; and
- 11) Cheque history (query) indicating that for October 2012 the appellant received a shelter allowance of \$660, support allowance of \$375.58, less a repayment of \$20 and an earning deduction of \$375 for a cheque in the amount of \$640.58.

In her Notice of Appeal the appellant states that she disagrees with the ministry's reconsideration decision because the ministry failed to look into the April 2012 overpayment despite her requests that the ministry do so. The appellant also states that no clarity has been given regarding the overpayment in October 2012 relating to August 2012 despite her spouse paying no maintenance in

October 2012 and despite the fact that she informed the ministry that no payment was received in October 2012. With her Notice of Appeal the appellant included a letter dated December 11, 2012 stating that the ministry has failed to clear up the overpayment issues relating to April 2012 and October 2012 caused by two payments of \$375 in February 2012 and two payments of \$375 in August 2012. The appellant states that she does not understand why only the October 2012 overpayment is part of the reconsideration decision and asks that the April 2012 overpayment also be considered at the tribunal hearing. The appellant also included another copy of her letter dated November 19, 2012, a copy of the FMEP statement of payments disbursed, FMEP Payment Summary (List), and FMEP List of Payments Form that were before the ministry at reconsideration.

As the appellant's letter dated December 11, 2012 did not contain new information, the panel accepted the letter and the information as the appellant's written submission.

At the hearing the appellant stated that her ex-husband knows the system and is intentionally missing payments some months then giving her two payments in the same month. The appellant stated that she has completed her stubs as directed, reporting all child maintenance support and that the ministry had advised her that they would "sort it out" but instead have determined that she received overpayments in April and August 2012.

The ministry relied on the reconsideration decision. By way of further explanation however, the ministry representative stated that when the appellant received income in August 2012, she had until September 5, 2012 to declare that income and that it then is applied and affects the October 2012 assistance cheque. The ministry representative confirmed that the appellant did everything correctly in declaring both child maintenance payments of \$375 that she received in August 2012 and stated that it was a ministry error that only one payment of \$375 was deducted in October 2012 and not the full \$750 the appellant received. However, as family maintenance payments are unearned income and do not fall into any of the exemptions set out in EAPWDR Schedule B, section 7, the ministry is bound by the legislation and has to deduct the full maintenance received in its entirety. The ministry representative explained that although it was a ministry error in not deducting the full \$750 that does not change the fact that the appellant received \$375 in October 2012 to which she was not entitled, so it must be repaid.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision which determined that the appellant was overpaid \$375 of assistance in October 2012 and that pursuant to EAPWDA section 18(1), it must be repaid.

The relevant sections of the legislation are 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

Section 1, Definitions

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

(p) maintenance under a court order, a separation agreement or other agreement;

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.

EAPWDR Schedule B

Section 1, Net Income Calculation

Section 1(a) provides that when calculating the net income of a family for the purposes of EAPWDR section 24(b), there are various exemptions, listed as(i) to xxxix) relating to income earned by a dependent child, family care rate paid for foster homes, family bonus, basic child tax benefit, GST, other tax credits, government grants, BC earned income benefit, rent subsidy, payments made or payable as various specified settlement agreements, rebate of energy or fuel tax, specified payments

relating to the *Child, Family and Community Service Act* or *Mental Health Act*, payments relating to Autism Funding, Fair PharmaCare refunds, and the working income tax benefit provided under the *Income Tax Act*,

EAPWDR Schedule B, section 1(d) states that all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

EAPWDR Schedule B, section 6 - 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.

 [Top](#)

EAPWDR Schedule B, section 7 Exemptions – unearned income

Section 7(2)(1) provides that the items listed as (a) to (f) are exempt from unearned income. That list includes a portion of mortgage interest, veterans affairs benefits, criminal injury compensation award, payments from a trust, structured settlement annuity payment, registered disability savings plans, certain CPP benefits or tax refund.

The appellant does not dispute that she received two child maintenance payments of \$375 each during the month of August 2012. However, the appellant's position is that it is unfair for the ministry to require both payments to be deducted from her October 2012 disability assistance when her ex-husband did not make any payment in May or October 2012. The appellant's position is that the ministry ought to attribute one of the August 2012 payments to another month.

The appellant's position is that although she received two child maintenance payments of \$375 each in February 2012, she did not receive any maintenance payment in May 2012 so it is not fair for the ministry to determine that she received an overpayment in April 2012 based on the two maintenance payments received during the month of February 2012.

The ministry's position is that in August 2012, the appellant received two maintenance payments of \$375 each: one on August 2 and the other on August 29, 2012 and that section 1 of the EAPWDR defines maintenance under a court order, a separation agreement or other agreement as unearned income. The ministry's position is that pursuant to EAPWDR section 24, the appellant's net income (calculated under Schedule B), must be deducted from her assistance and that Schedule B requires all unearned income to be included in the calculation of net income except for that which is exempted under Schedule B, section 1, 6 and 7. The ministry's position is that as family maintenance payments are not included in any of the exemption categories, all of the child maintenance payments must be deducted from the appellant's assistance.

The ministry states that as the appellant's net income in August 2012 was \$750 but only \$375 was deducted in October 2012 the applicable benefit month, the appellant has a \$375 overpayment. EAPWDA section 18 states that if disability assistance is provided to a recipient who is not eligible for

it, the recipient is liable to repay to the government the amount of the overpayment provided. The ministry's position is that as the appellant was not eligible for \$375 of assistance received for October 2012, the appellant is required to repay it and that pursuant to EAPWDA, section 18(2), the amount of the overpayment is not appealable to the tribunal.

The ministry also states that while they acknowledge the appellant's statement that in May 2012 she did not receive a maintenance payment but \$375 was still deducted from her July disability assistance cheque, it is not within the jurisdiction of a reconsideration officer to review this issue as it was not a part of the original denial. The minister states that a request will be made to have the local office review the appellant's file for past discrepancies.

Panel Decision

The panel notes that its jurisdiction is limited to a determination of whether the ministry reasonably determined that the appellant received an overpayment of assistance for October 2012. Pursuant to EAPWDA section 18(2) the amount of the overpayment is not appealable to the tribunal.

The panel also notes that although the appellant is requesting that the tribunal address the issue of the ministry's determination that she received an overpayment in April 2012, the panel's jurisdiction is limited to determining whether the ministry's reconsideration decision was reasonable. As the reconsideration decision only relates to the ministry's determination that the appellant received an overpayment of \$375 in October 2012, the panel does not have the jurisdiction to consider the issue of the April 2012 overpayment.

The panel notes that the appellant does not dispute that she received two child maintenance payments of \$375 each during the month of August 2012 for total child maintenance income of \$750.

Pursuant to EAPWDR section 1, maintenance under a court order, a separation agreement, or other agreement is defined as unearned income and pursuant to EAPWDR section 24, a recipient's net income (calculated under Schedule B), must be deducted from their assistance. Schedule B explains that all unearned income must be included in the calculation of net income except for that which is exempted under Schedule B, section 1,6 and 7. As family maintenance payments are not included in the deduction of exemption categories, the panel finds that the family maintenance payments must be deducted from the appellant's disability assistance.

As the appellant received family maintenance payments of \$750 in August 2012 but the ministry only deducted \$375 from her disability assistance cheque in October 2012 rather than the full \$750 as required by the legislation, the panel finds that the appellant received \$375 to which she was not entitled. Although the failure to deduct the full \$750 was a ministry error that does not change the fact that the appellant received an overpayment and pursuant to EAPWDR section 18 the appellant must repay it.

Accordingly, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the ministry's reconsideration decision.