

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 28, 2019 which found that the appellant received an overpayment of disability assistance 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 per Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 18. The ministry determined that the appellant received child support payments as unearned income that was not deducted from her disability assistance and that these child support payments are not considered exempt income according to Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule B section 1.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 11, 18, 19

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24; Schedule A, sections 1, 2, 4; Schedule B, sections 1, 2, 3, 6, 7

## PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated March 21, 2013 advising that the ministry determined that she received an overpayment of disability assistance.
- A copy of a ministry Overpayment Notification dated March 21, 2013.
- A handwritten note dated Nov. 16, 2012 stating that the appellant [was] paid \$1000 for child support on November 15, 2012.
- A handwritten note dated November 12, 2012, signed by the appellant, stated that she received a total of \$8000 from June, 2012 to November, 2012 in child support.
- A note dated August 12, 2012, signed by the appellant, stating that she received \$700 in June, 2012, \$2000 in July, 2012 and \$300 in August, 2012.
- A note dated September 26, 2011, notarized September 28, 2011, signed by the appellant, stating that she received \$500 on September 16, 2010 and \$5000 on September 30, 2010.
- A note dated September 16, 2010, signed by the appellant, notarized September 16, 2010, stating that the appellant received \$6000 cash for child support.
- A letter from the ministry to the appellant dated January 31, 2013 asking for clarification.
- A copy of a Family Maintenance Enforcement Program request for information dated January 31, 2013.
- A B.C. Family Maintenance Enforcement Program account statement in the appellant's name as recipient for the period August 29, 2011 to February 22, 2013, stating that the amount of \$9,000 was received for the period.
- A copy of a bank statement for the period January 28, 2012 to February 2, 2013.
- A ministry Overpayment Chart dated March 21, 2013.
- A letter from the ministry to the appellant dated February 28, 2013 requesting records for an eligibility review.
- A letter from the ministry to the appellant dated February 8, 2013 requesting information for an eligibility review.
- A letter from the ministry to the appellant dated January 25, 2013 requesting information for an eligibility review.
- A letter from the ministry to the appellant dated March 21, 2013 advising the appellant that an overpayment occurred.
- A letter from the Family Maintenance Enforcement Program to the appellant dated January 31, 2013 requesting confirmation of amounts received.
- The appellant's Request for Reconsideration, signed April 19, 2013, with a note from the appellant.
- A letter from the appellant, dated February 6, 2019, outlining why she was seeking reconsideration in February 2019

At the hearing, the appellant stated that she came to Canada as a spouse. The appellant advised that her marriage subsequently failed and she was left with 3 children under the age of 6. The appellant stated that she had few marketable skills, so she was unable to make mortgage payments. She stated further that her husband refused to pay the mortgage. The appellant said she was denied income assistance due to her assets. She stated further that she had to sell her house. Her eldest son was sent to jail where he was injured badly. She told the panel that she did not know what to do. The appellant stated that her husband, the child's father, sent money to her which she then sent to her son. The appellant advised that this was not child support but rather money owed to her by her husband for past unpaid child support when all three of her children were dependents. The appellant stated that she felt very depressed about the situation. She stated that her husband did not want to give her any money and only did so if she signed a receipt for double the amount she actually received from her husband. She stated that he owed unpaid child support in the amount of \$70,000, but when the house was sold, she had to pay his legal fees.

In response to questions from the panel, the appellant stated that she had one dependant when she was receiving disability assistance. She informed the panel that the amounts shown on the Overpayment Chart are the correct amounts paid to her by her husband, which she subsequently passed on to her son. The appellant denied that the payments were child support since her son was no longer a minor and the money was for unpaid child support

[REDACTED]

deemed owing from the past.

The ministry responded that their decision was based on the Act and Regulations that were in force at the time the appellant was in receipt of disability assistance. The Annual Earnings Exemption has changed since 2013. The ministry stated that the appellant is not currently receiving disability assistance. However, during the period of time when she was receiving disability assistance, the appellant received earned income, unearned income, and child support that she failed to report. The ministry referred to the amounts stated on the Overpayment Chart and the amounts shown on her bank statements. The ministry made reference to the requirement set out in section 11(1) EAPWDA that a recipient must report any change in circumstances or information that may affect the eligibility of the family unit. The ministry stated that under section 24 of the EAPWDR the amount of disability assistance that may be provided to a family unit is not more than the amount of assistance determined under Schedule A minus the family's net income under Schedule B. In this case, the appellant's income exceeded her disability assistance amount and she is subject to repayment.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which found that the appellant received an overpayment of disability assistance 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 per Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 18.

### Legislation

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) [*reconsideration and appeal rights*].

### Liability for and recovery of debts under Act

**19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

- (a) recovered in a court that has jurisdiction, or
- (b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

EAPWDR (September, 2012 to March, 2013)

### Definitions

**1** (1) In this regulation:

"**earned income**" means

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

**"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;

#### **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 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**

(section 24 (b) )

#### **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) the basic family care rate paid for foster homes;

- (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;
- (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;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
- (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
  - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (xxvi) a loan that is
- (A) not greater than the amount contemplated by the recipient's business plan, accepted by

- the minister under section 70.1 of this regulation, and  
(B) received and used for the purposes set out in the business plan;
- ~~(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's~~  
(A) Autism Funding: Under Age 6 Program, or  
(B) Autism Funding: Ages 6 — 18 Program;
- (xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
- (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxx) a refund provided under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;
- (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiv) money withdrawn from a registered disability savings plan;
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,
- (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, 3.1 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

### **Deductions from earned income**

**2**The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for  
(i) income tax,

- (ii) employment insurance,
- (iii) medical insurance,
- (iv) Canada Pension Plan,
- (v) superannuation,
- (vi) company pension plan, and
- (vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

3(1) Subject to subsections (2) and (2.1), the amount of earned income calculated under subsection (3) is exempt for a family unit.

(2) If an application for disability assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for disability assistance unless

(a) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, or

(b) a member of the family unit received income assistance under the *Employment and Assistance Act* for the calendar month immediately preceding that first calendar month.

(2.1) A new family unit described in section 3.1 (3) (b), (4) (b), (10) (b) or (11) (b) that does not provide written notice to the minister in accordance with section 3.1 (3) (c), (4) (c), (10) (c) or (11) (c), as applicable, may claim an exemption under this section except in relation to the calendar month in which the new family unit forms.

(3) The exempt amount for a family unit that qualifies under this section is to be calculated as follows:

(a) in the case of a family unit that includes only one recipient who is designated as a person with disabilities, the exempt amount is calculated as the lesser of

(i) \$800, and

(ii) the family unit's total earned income in the calendar month of calculation;

(a.1) in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, the exempt amount is calculated as the lesser of

(i) \$1 000, and

(ii) the family unit's total earned income in the calendar month of calculation;

(b) in the case of a family unit that includes two recipients who are designated as persons with disabilities, the exempt amount is calculated as the lesser of

(i) \$1 600, and

(ii) the family unit's total earned income in the calendar month of calculation.

#### 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) subject to subsection (2.1),

- (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, or
- (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

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;

(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.

(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.

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

#### Schedule A

#### Maximum amount of disability assistance before deduction of net income

1(1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service*

Act.

**Monthly support allowance**

2(0.1) For the purposes of this section:

**"deemed dependent children"**, in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

**"maximum adjustment"**, in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

(a) the family unit were entitled to receive the national child benefit supplement for the calendar month,

(b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and

(c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act* (Canada);

**"warrant"** has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08

**Monthly shelter allowance**

4(1) For the purposes of this section:

**"family unit"** includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

**"warrant"** has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

The appellant's position is that she did not personally benefit from the amount of money that the ministry has determined to be an overpayment. The appellant stated that her husband made her sign a receipt for double the amount of money she actually received. The appellant noted that asset limits and earnings exemptions have changed since 2013 and that if she were in receipt of disability assistance today, she would be permitted an annual earnings exemption of \$9,600 rather than the \$800 per month she was permitted to claim as an exemption in 2013. The appellant argued that the amount of money she received from her husband should not be considered as child support, as her son was over the age of 19 at that time, but rather money owed to her for unpaid child support from previous years.

The ministry position is that the appellant received earned and unearned income in excess of her disability assistance rate and failed to report it. As a result, she received disability assistance for which she was not eligible. Therefore, the overpayment must be repaid.

The panel is aware of the difficult family circumstances described by the appellant and the emotional strain this has caused her. The panel also notes that the applicable legislation has been amended since 2013 and was not made retroactive. Therefore, the panel must consider the legislation in force during the period of time the appellant was receiving disability assistance.

The appellant stated that the amounts listed in the ministry's Overpayment Chart were accurate with respect to the deposits to her bank account. Based on the information reviewed, the panel determined that the appellant received income in excess of her disability assistance rate of \$1,242.08 for several months during the period of September, 2012 to March, 2013, totalling \$4684.51. There is no indication that the appellant reported this income as required under section 11(1), EAPWDA. Section 24, EAPWDR, which states that disability assistance may be provided to a family unit in an amount that is not more than the amount determined under Schedule A.

The panel finds that the ministry reasonably determined that the appellant received income in excess of her disability assistance rate during the period of September, 2012 and March, 2013 which is not exempt as earned or unearned income under Schedule B, EAPWDR and that she is required to repay this amount in accordance with section 18(1) of the Employment and Assistance for Persons with Disabilities Act.

The panel confirms the ministry's decision.

The appellant's appeal is not successful.

[Redacted]

<b>PART G – ORDER</b>	
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	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b> <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME Reece Wrightman	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019 April 1

PRINT NAME Sandra Chan	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019 April 1
PRINT NAME Nancy South	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019 April 1