

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of January 28, 2019 which determined that in accordance with section 10 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) the appellant received disability assistance for the period of September 2018 through December 2018 [totalling \$3641.83] which he was not eligible to receive; he is therefore liable to repay the resulting overpayment in accordance with section 18 of the (EAPWDA).

**PART D – RELEVANT LEGISLATION**

Sections 11, 18 and 19 of the EAPWDA;

Sections 1, 9, 24 and 29 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR);

Schedule A - sections 1, 2 and 4;

Schedule B - sections 1, 6, and 7.

**PART E – SUMMARY OF FACTS**

The appellant has been a sole recipient of disability assistance. His file opened February 21, 2013. He is currently in receipt of medical services only (MSO).

On December 31, 2018 the appellant was advised of the decision.

On January 16, 2019 the appellant submitted his request for reconsideration.

On January 28, 2019 the ministry completed the review of the appellant's request for reconsideration.

The ministry reported that it used an overpayment chart to determine how the overpayment was calculated. The ministry chart indicates he had received \$9020.14 Survivor benefits in July which affected his September disability assistance, \$1031.74 Survivor benefits in August which affected his October disability assistance, \$1031.74 Survivor benefits in September which affected his November disability assistance, and \$ 1375 winnings from a pool tournament and \$1031.74 Survivor benefits in October which affected his December disability assistance. The total overpayment amount was \$3641.83 due to undeclared CPP Survivor benefits and winnings from the pool tournament.

**Overpayment Chart 2018 Sep - 2018Dec:**

Asst.Month	Overpay Reason	Income Type	Actual Income	Declared Income	Assistance Amount	Eligible	Overpay Amount
18Sep	Unearned Inc.	CPP Survivor	\$9020.12 (18Jul30)	\$0.00	\$1185.42	\$0.00	\$ 1185.42
18Oct	Unearned Inc.	CPP Survivor	\$1031.74 (18Aug29)	\$0.00	\$1185.42	\$153.68	\$ 1031.74
18Nov	Unearned Inc.	CPP Survivor	\$1031.74 (18Sep26)	\$0.00	\$1185.42	\$153.68	\$ 1031.74
18Dec	Unearned Inc.	Pool Winnings	\$ 1375.00 (18Oct09)	\$0.00	\$ 392.93	\$0.00	\$ 392.93
Totals			\$ 13,490.36	\$0.00	\$ 3,949.19	\$ 307.36	\$ 3,641.83

On January 16, 2019 the appellant wrote that he was trying to make his transition from Social Services to CPP and there was a lot of confusion. He turned in all information that was needed and thought he was on CPP, social services had stopped paying him and he did not have to answer to anyone. A lot of information got lost through the channels.

In his Notice of Appeal dated February 6, 2019 the appellant wrote: "I don't believe I am fully responsible for the overpayment. I turned in everything that was required of me. I feel I was bounced from person to person at the office."

At the hearing the appellant provided a written submission wherein he stated: "The ministry ... requested that I apply for Canada Pension Disability and I did so. I also applied for Survivor Benefits because I am a widower. I took all the information to the Ministry Office to inform them about the process. They were notified that I was in receipt of back-payment of \$9020.14 and they photocopied that information. I am an honest person and I fully disclosed all benefits I received from Canada Pension Plan. I never filed out a stub previously on Persons With Disability and was not familiar with that form. At no time when I went to the office to submit the information about my benefits was I told that I would have to declare the same information on a stub. The ministry ... continued to deposit PWD benefits despite the fact that they had notice of my federal benefits. I was told initially that I did not have the right to appeal the overpayment issue. I am being asked to repay money due to a Ministry mistake and I believe I am a casualty of the Service BC and the Ministry combined. I was relying on the information from government workers at the counter and obviously they did not give me the full instructions regarding filling out monthly stubs and the effect of my federal benefits on my PWD."

APPEAL NUMBER

At the hearing the appellant re-iterated his story and stated he had expected the ministry to participate in person and did not agree to the ministry participating via teleconference. The transition to CPP took 8 months and was a nightmare. He believed the payments he received were from CPP and not from the ministry. He should not be held liable for the whole repayment - it was partly the ministry's fault. The cheque for his pool winnings was in his name but he split the money with his pool partner.

The ministry presented its reconsideration decision and emphasized that the appellant is required to report all income; he did not report his CPP income and did not inform the ministry of his pool winnings.

With the exception of the appellant's statements about splitting his winnings with his pool partner the panel admits the appellant's statements in his Notice of Appeal and at the hearing as being in support of the information and record that was before the ministry at the time of reconsideration. As there is no evidence that at the time of reconsideration the ministry had information on the appellant sharing his pool winnings with another person the panel cannot admit this information into evidence. The panel notes that this finding has no impact on the outcome of this appeal.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the ministry reasonably determined in accordance with section 10 of the EAPWDA that the appellant received disability assistance for the period of September 2018 through December 2018 totalling \$3641.83 which he was not eligible to receive, and that he is therefore liable to repay the resulting overpayment in accordance with section 18 of the (EAPWDA).

**EAPWDA****Reporting obligations**

**11** (1) For a family unit to be eligible for income 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**

### **Definitions**

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

...

(f) any type or class of Canada Pension Plan benefits;

...

(r) a lottery or a game of chance;

...

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

...

### **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);

...

(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:

...

- (ii) change in income received by the family unit and the source of that income;

...

**Schedule A****Disability Assistance Rates****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.

**Monthly support allowance**

**2** (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, ...

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	758.42

**Monthly shelter allowance**

**4** (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 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
1	1 person	\$375

**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, App. 2, s. 2 (a).]

(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 [*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) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(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 as established under the Drug Plans Regulation;

(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;
- (xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (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;
- (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;
- (lii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;
- (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

- (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;
- (liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;
- (liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;
- (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
- (lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;
- (lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
- (lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;
- (lviv) money that is paid or payable from a settlement under
- (A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or
- (B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;
- (lx) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (Canada),
- (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.

#### Appellant's position

The appellant argues that it was partially the ministry's fault that he received an overpayment because the ministry did not give the appellant all the necessary information and continued to deposit PWD benefits despite the fact that they had notice of his federal benefits. He thought the payments he received were from CPP and not from the ministry.

The transition from Social Services to CPP took 8 months and there was a lot of confusion. Communication with the ministry was difficult; he had to constantly speak to different ministry representatives and information got lost in the process. Government workers did not give him full instructions regarding filling out monthly stubs and the effect of his federal benefits on his PWD benefits. He never had to fill out a stub when he received assistance as a Person With Disabilities and was not familiar with that form. At no time was he told that he would have to declare information about his benefits on a stub. He fully disclosed all benefits he received from CPP and turned in all information that was required.

Furthermore, the ministry had entered the amount of his pool winnings incorrectly. The cheque he received was issued to him but he subsequently split the money with his pool partner.

#### Ministry position:

Section 11 of the EAPWDA states that for a family unit to be eligible for disability assistance, a recipient must submit a form and notify any change in circumstances or information that may affect the eligibility of the family unit and signed by the recipient.

Section 29 of the EAPWDR states that the report must be submitted on the 5<sup>th</sup> of each month and the information required includes changes in the family unit's assets, all income received and the source of the income. Under section 1 of the EAPWDR "unearned income" means any income that is not earned income and includes without limitations money or value received from any type or class of Canada Pension Plan (CPP) benefits, Federal Old Age Security (OAS) payments and a lottery or a game of chance.

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

Section 24 of the EAPWDR states that a person's income (calculated under Schedule B) must be deducted from their disability assistance (calculated under Schedule A). Schedule B explains that all unearned income must be deducted from disability assistance except that which meets the exemption criteria.

Schedule B sections 1, 6 and 7 list the exemptions from unearned income that are permitted for the purposes of calculating net income. In accordance with section 1 of Schedule B, money received from CPP, OAS and winnings from a game of chance are not listed as an income that may be exempted. In addition, section 7(1)(e) provides a tax exemption for a portion of Canada Pension Plan benefits, but it does not apply to a voluntary CPP tax deduction. Because some individuals are required to pay income tax on their CPP income, the EAPWDR includes a calculation to exempt the tax paid each month. The calculation is based on the tax amount (divided by 12 months) and the corresponding tax rate. It is an automatic calculation based on a data match with Service Canada's computer system. A file review confirms this exemption has been considered for the appellant's CPP income and is calculated as \$0.00 because his income falls below the taxable threshold amount determined in the Income Tax Act.

Schedule B section 6 of the EAPWDR states that the only deductions permitted from unearned income are any income tax deducted at source from employment and insurance benefits and essential operating costs of renting self-contained suites.

Under section 18 EAPWDA, if disability assistance is received by a person who is not eligible for it, that person must repay the government the amount or value of the overpayment provided for that period.

Under section 19 EAPWDA the amount that a person is liable to repay may be deducted from any subsequent disability assistance.

It is the ministry's position that the appellant has received an overpayment of assistance because he failed to declare all his Survivor's benefit and winnings from a pool tournament as required in accordance with section 29 of the EAPWDR. The ministry noted that appellant also received CPPD [CPP disability] payment in October that affects his December disability assistance, however, this payment was captured by the shared data match with Service Canada. These earnings are considered unearned income and are not exempt from his disability assistance.

Upon review of the overpayment chart and the appellant's bank statements showing the deposits into his account for Survivor benefits, winnings and CPPD payment, the ministry is satisfied that that the appellant's received disability assistance for the period of September 2018 through December 2018 totalling \$3641.83 which he was not eligible to receive.

Therefore, in accordance with section 18 of the EAPWDA he is required to repay the government \$3641.83.

Panel Decision

While the appellant argues that the ministry is partially to blame for the overpayment he received the panel finds that based on the evidence the ministry reasonably determined that from September 2018 through December 2018 the appellant received assistance he was not eligible to receive because he failed to declare his Survivors benefit and winnings from a pool tournament as required in accordance with section 29 of the EAPWDR.

The panel finds the ministry reasonably determined that the appellant's Survivors benefit and his pool winnings are moneys received from CPP and winnings from a game of chance and are therefore unearned income as defined in section 1 of the EAPWDR and are not permitted exemptions for the purpose of calculating net income as they are not among the unearned income exemptions listed in Schedule B, sections 1, 6, and 7. Therefore the ministry was reasonable when it included this unearned income in calculating net income for disability assistance eligibility in accordance with section 24 of the EAPWDR.

Consequently, the panel finds that the ministry reasonably determined that the appellant is liable to repay the resulting overpayment in accordance with section 18(1) of the EAPWDA.

Conclusion

After considering all the evidence and the applicable legislation the panel finds that the ministry's reconsideration decision which held the appellant liable to repay disability assistance for which he was not eligible was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the decision and the appellant is not successful on appeal.



<b>PARTG-ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRM THE MINISTRY DECISION <input type="checkbox"/> RESCIND 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"/> and 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"/>	

<b>PARTH-SIGNATURES</b>	
PRINT NAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/05/27

PRINT NAME Angie Blake	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/27
PRINT NAME Keith Lacroix	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/27