

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 12, 2019, which found that \$100 must be deducted from the appellant's disability assistance each month as a deduction for debts owed. The ministry determined that the appellant is liable to repay an offence overpayment as the result of a criminal code offence of which the appellant was convicted, as stated in section 19(3) of the Employment and Assistance for Persons with Disabilities Act and section 74(3) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 74.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated January 14, 2019 advising him that he is subject to a repayment of \$100 per month as a result of his conviction of an offence under the Criminal Code, with Overpayment Charts for the period September 2008 to December 2016.
- A letter from the ministry to the appellant dated January 14, 2019 advising him that he was overpaid assistance in the amount of \$131,534.00.
- A copy of a Conditional Sentence Order in the appellant's name for a charge of fraud dated December 11, 2018.
- A Probation Order in the appellant's name, dated December 11, 2018.
- A Conditions Attachment in the appellant's name.
- A Restitution Order dated December 11, 2018 ordering the appellant to pay restitution of \$50,000 to the benefit of the ministry.
- The appellant's Request for Reconsideration, date illegible, in which the appellant wrote \$100 a month is too much for him due to other expenses.

The appellant wrote in his Notice of Appeal that he is at high risk of becoming homeless and due to his rent, Hydro and vet bills he is barely making ends meet. He requested that his \$100 deduction be reduced to \$50.00 per month.

The ministry, in the Reconsideration Decision, wrote that the appellant has provided no evidence that he is at risk of becoming homeless or that the \$100 deduction would result in danger to his physical health nor that he resides in a special care facility, therefore the exemptions in section 74.1(3) of the EAPWDR do not apply to him.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision which found that \$100 must be deducted from the appellant's disability assistance each month as a deduction for debts owed. The ministry determined that the appellant is liable to repay an offence overpayment as the result of a criminal code offence of which the appellant was convicted, as stated in section 19(3) of the *Employment and Assistance for Persons with Disabilities Act* and section 74(3) of the *Employment and Assistance for Persons with Disabilities Regulation*.

Legislation**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*].

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**Deductions for debts owed**

74 (1) In this section and section 74.1:

"**Act offence**" means an offence under the Act or the *Employment and Assistance Act*;

"**benefit month**", in relation to a family unit, means a calendar month for which the family unit is eligible for an amount of assistance under the Act or the *Employment and Assistance Act*, and, for certainty, consecutive benefit months need not be consecutive calendar months;

"**criminal code offence**" means an offence under the *Criminal Code* in relation to obtaining money, under the Act or the *Employment and Assistance Act*, by fraud or false or misleading representation;

"**offence overpayment**" means an overpayment that is or was provided to or for a family unit as a result of a criminal code offence or Act offence for which a recipient in the family unit has been or is convicted, whether the conviction occurred before or after the date this section came into force;

"**overpayment**" means

- (a) an overpayment described in section 18 (1) [*overpayments*] of the Act or section 27 (1) [*overpayments*] of the *Employment and Assistance Act*;

- (b) an amount of assistance provided under the Act to or for a family unit on a repayable basis, other than a supplement under section 56 (2) [*supplement to pay a security deposit*] or 56.1 (2) [*supplement*];

to pay a utility security deposit] of this regulation,

(c) an amount of assistance provided under the *Employment and Assistance Act* to or for a family unit on a repayable basis, other than a supplement under section 58 (2) [supplement to pay a security deposit] or 58.1 (2) [supplement to pay a utility security deposit] of the *Employment and Assistance Regulation*, or

(d) a debt referred to in section 33 [indebtedness under former Act] of the Act or section 42 [indebtedness under former Act] of the *Employment and Assistance Act*.

(2) For a family unit that includes one or more recipients who are liable for one or more overpayments, the minimum amount that is to be deducted for the purposes of section 19 (1) (b) [liability for and recovery of debts under Act] of the Act is \$10 each benefit month.

(3) For a family unit that includes one or more recipients who are liable for one or more offence overpayments, the minimum amount that is to be deducted for the purposes of section 19 (1) (b) of the Act for a benefit month is

(a) \$100 for each recipient in the family unit whose conviction for a criminal code offence or Act offence resulted in an offence overpayment, or

(b) if the balance of the amounts of offence overpayments in relation to a recipient in the family unit is less than \$100, that balance in relation to that recipient.

(4) A deduction under subsection (3) in relation to an offence overpayment provided to or for a family unit as a result of a criminal code offence

(a) begins for the first benefit month following the date the recipient is convicted of the criminal code offence, and

(b) continues for each consecutive benefit month until the amount of the offence overpayment is repaid.

(5) A deduction under subsection (3) in relation to an offence overpayment provided to or for a family unit as a result of an Act offence

(a) begins for the first benefit month following the date the recipient is convicted of the Act offence, and

(b) continues, unless the amount of the offence overpayment is earlier repaid,

(i) after a first conviction of the recipient for an Act offence, until the deduction has been made for 12 consecutive benefit months in relation to the first offence overpayment,

(ii) after a second conviction of that recipient for an Act offence, until the deduction has been made for 24 consecutive benefit months in relation to the second offence overpayment, and

(iii) after a third or subsequent conviction of that recipient for an Act offence, until the amount of the third or subsequent offence overpayment is repaid.

(6) Despite subsections (1) to (5), if the amount of assistance for which a family unit is eligible for a benefit month is less than

(a) the applicable amount in respect of the family unit's supplement under section 54.2 [persons with disabilities transportation supplement], plus

(b) the minimum amount to be deducted under this section,

the minimum amount that is to be deducted for the purposes of section 19 (1) (b) of the Act for the benefit month is an amount that is equal to

(c) the amount of assistance for which the family unit is eligible for the benefit month, minus

(d) the applicable amount in respect of the family unit's supplement under section 54.2 [persons with disabilities transportation supplement].

(7) Despite subsections (4) (a) and (5) (a), if the conviction referred to in those subsections occurred before the date this section came into force, a deduction under subsection (4) or (5) begins for the first benefit month following the date this section came into force.

Exemptions from minimum deductions

74.1 (1) Sections 56 (3) and 56.1 (3) do not apply to a family unit for a benefit month if

(a) the family unit receives disability assistance under section 8 (1) or (2) [people receiving special care] of Schedule A for the benefit month, or

(b) section 74 (3) applies to the family unit for that benefit month.

(2) Section 74 (2) does not apply to a family unit for a benefit month if

(a) the family unit receives disability assistance under section 8 (1) or (2) of Schedule A for the

- benefit month, or
- (b) section 74 (3) applies to the family unit for that benefit month.
- (3) Section 74 (3) does not apply to a family unit for a benefit month if
- (a) the family unit receives disability assistance under section 8 (1) or (2) of Schedule A for the benefit month,
 - (b) the minister is satisfied that the family unit is homeless or at risk of becoming homeless,
 - (c) the minister is satisfied that a deduction under that section would result in danger to the health of a person in the family unit, or
 - (d) a recipient in the family unit is liable for an offence overpayment but the person convicted of the criminal code offence or Act offence that resulted in the offence overpayment is not a member of the family unit for the benefit month.

The appellant's position is that he is in danger of becoming homeless due to the payments for rent, Hydro and vet bills he makes each month and he barely makes ends meet. He asked for a reduction of his repayment deduction to \$50 per month.

The ministry's position is that the applicable legislation, section 73(3) requires a minimum amount of \$100 per month to be deducted in the appellant's circumstance, which is that he is liable for an offence overpayment as the result of a conviction for a Criminal Code offence.

The panel notes that in the circumstances of the appellant, where he is liable for an "offence overpayment", defined in section 74(1), EAPWDR as an overpayment provided to or for a family unit as a result of a Criminal Code offence for which a recipient in the family unit has been convicted, he is subject to a *minimum* deduction of \$100 for a benefit month in accordance with the provisions of section 74(3), EAPWDR. The panel notes that there is no provision in this section to reduce the minimum deduction except as provided for in section 74.1. The exemptions listed in this section include a family unit receiving special care, if the minister is satisfied that the family unit is homeless or at risk of becoming homeless or if the minister is satisfied that a deduction would result in danger to the health of a person in the family unit.

The panel finds that the ministry reasonably determined that the appellant is subject to the minimum deduction from his disability assistance stated in section 74(3), EAPWDR as he was convicted of an offence under the Criminal Code related to fraud. The panel finds that the ministry reasonably determined that the exemptions under section 74.1, EAPWDR do not apply to the appellant as he is not in receipt of disability assistance under sections 8(1) or (2) of Schedule A, EAPWDR and he has not demonstrated that he is homeless or at risk of becoming homeless nor that a deduction under section 74(3) would result in danger to his health.

The panel confirms the ministry decision.

The appeal is not successful.

APPEAL NUMBER

PART G – ORDER

THE PANEL DECISION IS: (Check one) ☒ UNANIMOUS ☐ BY MAJORITY

THE PANEL ☒ CONFIRMS THE MINISTRY DECISION ☐ 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? ☐ Yes ☐ No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) ☒ or Section 24(1)(b) ☐

and

Section 24(2)(a) ☒ or Section 24(2)(b) ☐

PART H – SIGNATURES

PRINT NAME

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 May 2

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 May 2

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 May 2