

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 26 June 2019, which determined that the appellant had received assistance in the amount of \$4766.5, for which she was not eligible between July 2015 and March 2016.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 1, 18, 19*

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule A as it applied between July 2015 and March 2016

*Employment and Assistance Act, SBC 2002, c 40 section 24 (EAA)*

**PART E – SUMMARY OF FACTS**

Evidence before the ministry at reconsideration consisted of the following:

The appellant was a recipient of disability assistance and receiving assistance that included her dependant child ("D") as part of the family unit. In March 2015 D turned 19. As D was still attending high school, the ministry determined that she could remain as a dependent child on the appellant's file until the end of the school semester in June 2015. The ministry failed to remove D from the appellant's file until March, at which time the ministry created a file service request to assess whether an overpayment had occurred.

In September 2018 the ministry completed that assessment and determined that there had been an overpayment. Specifically, the ministry determined that the appellant had received \$4766.57 for which she was not eligible between July 2015 and March 2016.

**Request for Reconsideration**

The appellant submitted a signed Request for Reconsideration dated 10 January 2019. At reconsideration, the appellant submitted a letter from a local housing society confirming that the appellant's two daughters lived with the appellant from June 2015 to April 2016. The appellant also submitted D's school transcripts and a copy of her BC Housing rent subsidy application dated May 6, 2015.

Additional information before the panel on appeal consisted of the following:

**Notice of Appeal**

In the Notice of Appeal dated 10 July 2019, the appellant states that she did not receive an overpayment.

**Appeal Submissions**

At the hearing, the appellant argued that while she appreciated that the ministry had written off the overpayment debt, she was still made to feel as though she had done something wrong. She argued that she had been trying to do the right thing and to ensure that her daughter was OK, that D felt protected and housed during a very hard time with her health. The appellant argued that she has been paying the bills for her daughter during this time and that they were never told that D could go to the ministry on her own after she turned 19; they believed D had to be under her mother's benefits. The appellant argued that she did not reap anything and is concerned that there is a black mark against her in the ministry's records. She argued that making her feel as though she's done something wrong is like bullying persons with disabilities.

The ministry relied on the reconsideration decision.

**Admissibility**

The panel finds that the information provided in the appellant's Notice of Appeal and Appeal Submission do not require an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*, as both are argument. The panel accepts this information as argument.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reconsideration decision that determined that the appellant had received an overpayment between July 2015 and March 2016 is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the EAPWDA are particularly relevant to this appeal:

### Interpretation

**1** (1) In this Act:

"**child**" means an unmarried person under 19 years of age;

"**dependant**", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

"**dependent child**", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"**family unit**" means an applicant or a recipient and his or her dependants;

...

(2) The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

### Reconsideration and appeal rights

**16** (3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18

(2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

...

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

### 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.

The following sections of the EAPWDR Schedule A, as it applied between July 2015 and March 2016, are particularly relevant to this appeal:

### 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);

...

((2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

- (a) the maximum adjustment, minus
- (b) the sum of
  - (i) the family bonus, if any, paid to the family unit for the preceding calendar month, and
  - (ii) the amount of the supplement, if any, provided to or for the family unit under section 59 [supplement for delayed, suspended or cancelled family bonus] of this regulation for the current calendar month.

(3) In calculating the adjustment under subsection (2), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from the family bonus must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

- (a) apply for the family bonus for the preceding calendar month, or
- (b) accept the family bonus for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada).

(5) If a family unit includes a person who

- (a) immediately before reaching 19 years of age was a dependent child in the family unit, and
- (b) reached that age while attending secondary school,

the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

- (c) the end of the school year in which the person reached the age of 19 years, and
- (d) the date the person stops attending secondary school.

[The panel notes that the quote of section 2(5) in the Reconsideration Decision was inaccurate and not as above, but finds it does not affect this decision.]

Section 24 of the EAA applies to this appeal, the particularly relevant portions state:

**24 (1)** After holding the hearing required under section 22 (3) [panels of the tribunal to conduct appeals], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

### **Appellant’s Position**

The appellant’s position is that there was no overpayment. The appellant did not contest the evidence leading to the assessment or calculation of the overpayment being due. She argued that it was unfair that the overpayment debt had happened at all and she objected to having her name attached to an overpayment debt that was for the sole purpose of caring for family. The appellant also expressed her unhappiness with what had happened. She stated that she is grateful for the support she receives but hopes that the ministry can pay more attention and find ways to be more supportive of families going through difficult times rather than making them feel victimized and like they have done something wrong.

At the end of the hearing the appellant stated that she understood from the ministry representative's assurances that the debt was "null and void", and that while there is a ministry file on the debt its existence is not a 'black mark' in the records nor does it impugn her integrity.

### **Ministry's Position**

The ministry's position is that there was an overpayment. The ministry argued that there is a legislated definition of "child" that cannot be changed and that a child who turns 19 while attending school is still a "dependent child". The ministry argued that EAPWR Schedule A, section 2(5) authorizes the ministry to issue support of \$123.50 per month, on the parent's file, for a dependent child until the end of the school year in which they turn 19, but not until the end of that dependent child's school life.

In the appellant's situation, there was a ministry error and the end date of June 2015, which was the end of the school year in which D turned 19, was never entered into the ministry's computer system. This error caused the overpayment and the appellant continued to receive assistance for D after the end of the school year. When the ministry discovered and calculated the overpayment, the appellant was notified and the ministry began to collect repayment at a rate of \$10 per month.

When the appellant requested a reconsideration, the reconsideration officer looked at the circumstances that led to the overpayment and referred the file to "debt operations and analysis" and the collection of the debt stopped. A decision was made to write off the debt, except for \$30 that had already been collected. The ministry representative explained that the ministry could not repay the \$30 that had been collected from the appellant because the ministry had no legal authority to do so. The ministry representative also explained that while there is a record of the overpayment debt having existed and being written off, there is no "black mark" on the appellant's file and the record of the debt does not exist elsewhere. For instance, it would not show up on a credit check if the appellant were to seek a loan. The ministry representative also provided the appellant with an apology for the hardship she had gone through and explained that the ministry has started a new process of referring overpayment debts arising due to ministry error to debt operations before the client is notified. The goal of this new process is to ensure that fewer people experience what the appellant endured.

### **Panel Decision**

In accordance with section 18(2) of the EAPWDA and section 24 of the EAA, the jurisdiction of the tribunal in an appeal regarding overpayment is limited to determining whether the ministry's decision that an appellant had received an overpayment is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The appellant did not appeal the ministry's determination as to the amount of the overpayment, and is not appealable in any event and is beyond the jurisdiction of the tribunal to consider.

The panel finds that the legislation clearly states that a dependent child who turns 19 while attending secondary school (high school) will be a deemed dependent child, but only until the sooner of the end of the school year in which the child turned 19 or that child ceases attending secondary school. There is no dispute that: a) D turned 19 in March 2015; b) D continued to attend secondary school until the end of the school year in June 2015; c) D ceased to be a dependent child, or deemed dependant child, at the end of the 2015 school year, which was in June 2015; and d) benefit payments to the appellant, for D, continued until March 2016. The panel finds the ministry's determination that the appellant received an overpayment for D as a dependent child between July 2015 and March 2016 to be reasonably supported by the evidence and a reasonable application of the legislation.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, determining that the appellant had received an overpayment in between July 2015 and March 2016, was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

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**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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/08/01

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/01

PRINT NAME

Margaret Koren

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/01