

APPEAL NUMBER
2020-00046

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated February 6, 2020 which held that the appellant received income assistance and disability assistance when the family unit was not eligible for it and that the appellant is liable to repay the government for the amount of the overpayment. The ministry determined that the cause of the overpayment was that the appellant failed to declare they were residing in a marriage-like relationship and failed to declare the earned income of the family unit.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), sections 27 and 28;
Employment and Assistance for Persons with Disabilities Act (EAPWDR), sections 18, 29.

PART E – SUMMARY OF FACTS

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

1. The appellant received income assistance from July 2009 to March 2010;
2. The appellant received disability assistance from April 2010 June 2013;
3. The appellant resided in a marriage-like relationship from December 2007 to May 2013;
4. The maximum monthly support allowance for a family unit from July 2009 to March 2010 was \$877.22;
5. The net income of the family unit from July 2009 to March 2010 was at least \$2,705.24 per month;
6. The maximum monthly disability allowance for a family unit from April 2010 to June 2013 was \$1270.56;
7. The net income of the family unit from April 2010 to June 2013 was at least \$2,705.24 per month;
8. The appellant was entitled to Canada Pension Plan Disability (“CCPD”) income from July 2009 to June 2013;
9. On December 15, 2010, the ministry received a payment on behalf of the appellant from Human Resources Development Canada (HRDC) of \$6,672.86 representing a backdated CPPD payment from July 2009 to December 2010;
10. The ministry did not receive any further payments from HRDC on behalf of the appellant; and
11. In May 2013 the appellant informed the ministry that they had been in a marriage-like relationship from December 2007 to May 2013.

PART F – REASONS FOR PANEL DECISION

The primary issue at appeal is whether the ministry's decision that the appellant received income assistance and disability assistance when the family unit was not eligible for it and that the appellant is liable to repay the government for the amount of the overpayment was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The panel notes that there is no dispute regarding the appellant's qualification for income assistance and disability assistance and the issue is whether there was no entitlement to the payments received because the family unit's net income exceeded the maximum amount of income assistance or disability assistance. Therefore, this appeal does not address whether the appellant qualified for assistance.

The panel notes that both the *Employment and Assistance Act* (the "EAA") and the *Employment and Assistance for Persons with Disabilities Act* (the "EAPWDA") specifically state that this tribunal has no jurisdiction or authority regarding "the amount a person is liable to repay" and this appeal addresses only whether the appellant was provided with income assistance or disability assistance when they were not eligible for it.

The Relevant Legislation

The EAA provides the statutory authority and conditions under which the ministry may provide income assistance. The *Employment and Assistance Regulation* (the "EAR") provides further particulars regarding income assistance, including the maximum amount of income assistance and the effect of earned income on the provision of income assistance.

The EAPWDA and the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR") provides the same statutory regime as it applies to disability assistance.

EAA

Overpayments

27 (1) If income 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 17 (3) [*reconsideration and appeal rights*].

EAR

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,

(b) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 1 (a).]

(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

(d) money or value received from providing room and board at a person's place of residence, or

(e) money or value received from renting rooms that are common to and part of a person's place of residence;

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

(a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

...

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

Limits on income

10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Schedule A – Income Assistance Rates (between July 2009 and March 2010)

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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 (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);

"warrant" has the meaning of a warrant in section 15.2 [*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
7	Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age	\$307.22

Monthly shelter allowance

4 (1)For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2)The monthly shelter allowance for a family unit to which section 15.2 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

Schedule B – Net Income Calculation

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.

Exemption — earned income

3 (1)Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

(2)A 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 income assistance unless a member of the family unit received disability assistance or income assistance in at least one of the 6 calendar months immediately preceding that first calendar month.

(3) to (5)Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 16.]

(6)The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:

(a)\$400, if the family unit is not described in paragraph (b), (c) or (d);

(b)\$600, if the family unit

(i)includes a recipient who

(A)has a dependent child, or

(B)provides care to a supported child, and

(ii)is not described in paragraph (c) or (d);

(c)\$700, if

(i)the family unit includes a recipient who

(A)has a dependent child, or

(B)provides care to a supported child,

(ii)the child has a physical or mental condition that, in the minister's opinion, precludes the recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week, and

(iii)the family unit is not described in paragraph (d);

(d)\$700, if the family unit includes a person who has persistent multiple barriers to employment.

(7)Repealed. [B.C. Reg. 122/2019, App. 1, s. 13.]

EAPWD

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.

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

EAPWDR

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.

Schedule A – Disability Assistance Rates (between March 2010 and June 2013)

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);

"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

...

Item	Column 1 Family Unit Composition	Column 2 Age or Status of Applicant or Recipient	Column 3 Amount of support
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$700.56

Monthly shelter allowance

4 (1)For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"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 Monthly Maximum Shelter
2	2 persons	\$570

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.

The Appellant's Position

The appellant's submission in the Notice of Appeal is that he voluntarily disclosed to the ministry that they had been in a marriage-like relationship. The appellant further states that they are requesting "the ministry to consider their own administrative/clerical error which transpired around December 2010, which significantly affects the said 'overpayment' total" and "the total overpayment would inherently be less than presently formulated by the ministry".

At the hearing, the appellant confirmed that they were not disputing the ministry's determination that they resided in a marriage-like relationship. The appellant further agreed that the ministry's calculation of the family income was correct.

The appellant's position at the hearing was that the ministry had made an error by not properly considering the CPPD payment that it had already received as a back payment and failed to apply it against the overpayment to reduce the balance owing. The appellant did confirm to the panel that they received CPPD payments in January 2011 through to May 2013.

The Ministry's Position

The ministry reinforced its position on reconsideration. In particular, that the net income of the appellant's family unit exceeded the appellant's entitlement to income assistance or disability assistance.

The ministry described the reporting expected from the appellant and the nature of the agreement between the appellant and the ministry that resulted in the payment to the ministry from HRDC of \$6,672.86 on December 15, 2010.

The ministry referred the panel to the Overpayment Chart in the appeal record to substantiate that the appellant received an overpayment of income assistance and disability assistance. However, the ministry was unable to explain to the panel whether the \$6,672.86 payment was credited against the overpayment amount. The ministry representative undertook to reassess the calculation to determine whether credit was due.

The Panel's Decision

Income Assistance

There is no dispute that the maximum amount of monthly income assistance the appellant could have been entitled from the period of July 2009 to March 2010 was \$877.22 as a two-applicant family unit. There is no dispute that the appellant received monthly income assistance as follows (because they did not declare they were in a two-applicant family unit):

1. July 2009 of \$443.23;
2. August to November 2009 of \$610.00;
3. December 2009 of \$645.00; and
4. January to March 2010 of \$610.00.

The appellant admits that the monthly net income of the family unit over that period was at least \$2,705.24 per month. Consequently, the net income of the family exceeded the entitlement to income assistance.

EAR section 10(2) states that a family unit is not eligible for income assistance if the net income of the family unit exceeds the entitlement to income assistance. The panel confirms the ministry decision that the appellant received income assistance from July 2009 to March 2010 when the family unit was not eligible for it and that the appellant is liable to repay the government the amount of the overpayment.

Disability Assistance

There is no dispute that the maximum amount of monthly disability the appellant could have been entitled to from the period April 2010 to June 2012 was \$1,270.56 as a two-applicant family. There is no dispute that the appellant received monthly disability assistance as follows (because they did not declare they were in a two-applicant family unit):

1. April 2010 to November 2010 of \$906.42;
2. December 2010 to \$941.42;
3. January 2011 to November 2011 of \$906.42;
4. December 2011 of \$941.42;
5. January 2012 to November 2012 of \$906.42;
6. December 2012 of \$941.42; and
7. January 2013 to June 2013 of \$906.42.

The appellant admits that the monthly net income of the family unit over that period was at least \$2,705.24 per month. Consequently, the net income of the family exceeded the entitlement to disability assistance.

EAPWDR section 24 states that disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the maximum entitlement less the family unit's net income. The panel confirms the ministry decision that the appellant received disability assistance from April 2010 to June 2013 when the family unit was not eligible for it and that the appellant is liable to repay the government the amount of the overpayment.

Conclusion

The panel finds the ministry decision dated February 6, 2020 reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

APPEAL NUMBER
2020-00046

The panel confirms the ministry's reconsideration decision and the appellant is not successful on appeal.

APPEAL NUMBER
2020-00046

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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Jan/10

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

APPEAL NUMBER
2020-00046

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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Mar/11

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Mar/13

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Mar/11