APPEAL NUMBER 2020-00024

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 8, 2020 in which the ministry found that the appellant had an overpayment of income assistance ("IA") between August 2015 and September 2017 because he had *earned income* (free rent in exchange for work) of $175 per month that should have been deducted from his IA rate. The ministry applied sections 1 and 28, and Schedules A and B of the Employment and Assistance Regulation ("EAR") that was in force from 2015 to 2017 to determine that the appellant had an overpayment.

The ministry further found that the appellant is required to repay $4,550 IA that he was not eligible for. The ministry found that the appellant has to repay the government pursuant to section 27 of the *Employment and Assistance Act* ("EAA") and section 18 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA").

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act - EAA* - sections 11, 19.1, 27, and 28

*Employment and Assistance for Persons with Disabilities Act* - EAPWDA - sections 18 and 19

Employment and Assistance Regulation - EAR - sections 1, 28, 33, and 77.1, and Schedules A and B

*Administrative Tribunals Act*, section 46.3

**PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's reconsideration decision indicating the appellant was informed of the overpayment decision on December 3, 2019 and submitted his
2. Request for Reconsideration ("RFR") on December 20, 2019. The ministry completed the review of the RFR on January 8, 2020.

The ministry record includes the following background information:

- The appellant is a sole recipient with Persons with Disabilities ("PWD") designation. His file has been open since July 9, 2015 and PWD designation was effective March 1, 2018.
- The appellant provided a residential tenancy agreement that showed he moved to his former residence on June 1, 2015. He was required to pay $450 per month rent. The appellant told the ministry he was looking after the property for the landlord. The appellant's duties included part-time yard work.
- On July 24, 2015, the ministry determined the appellant was eligible for IA. The appellant received $610 per month for the period August 2015 to September 2017. The IA included a $235 per month support allowance and $375 per month for shelter.
- On May 4, 2018, the appellant submitted a monthly report with a note that states the appellant is not paying rent. The appellant looks after the property in lieu of paying rent.
- On June 5, 2018, the ministry created a service request to review the appellant's file and determine if an overpayment occurred.
- On September 24, 2019, a ministry compliance specialist started the review of the file. As part of the review, the ministry received a letter from a community advocate ("Advocate A") who explained that the appellant was living in unsuitable conditions while looking after the property. The advocate confirmed with the landlord that the appellant received accommodations in exchange for the work he did. The landlord told the advocate that he would have charged the ministry shelter rate for rent, but "this was clearly a work/ accommodation trade arrangement."
- On November 8, 2019, the ministry determined that the value the appellant received in exchange for work ($375 per month) was considered "earned income." The ministry allowed the earning exemption of $200 per month and states that $175 per month should have been deducted from the appellant's IA. The ministry states that this income was not reported and therefore, between August 2015 and September 2017, the appellant received $4.550 that he was not eligible for.
- On November 21, 2019, the ministry received a second letter from Advocate A regarding the overpayment. The advocate informed the ministry of the appellant's "diverse abilities" and lack of supports. The letter explains that when the appellant was maintaining the property for the landlord, he paid for supplies and work-related travel out of pocket. The appellant was told to keep receipts but was never reimbursed. The appellant did not know about any self-employment programs so did not keep records to show expenses.

  The letter explained that the appellant is "borderline to extremely low functioning" (as assessed by a psychologist) and susceptible to being taken advantage of in the community. The appellant requests the overpayment to "be abolished and/or he be repaid by the ministry the difference between PWD and income assistance rates backdated to July 2015."

- In section 2 - *Decision to be Reconsidered*, the ministry notes the following:
  - In June 2018, the appellant had a conversation with ministry loss prevention staff and said that he did not have a rental obligation because he "worked in exchange for rent free living" and had been a caretaker at the property for several years.
  - The appellant was in receipt of the $375 per month shelter allowance during the time that he was living rent free. As the appellant was in receipt of "Employable Income Assistance", he was able to earn $200 each month (earned income) without any impact to his IA rate.
  - The ministry calculated the overpayment as though the appellant "was giving the landlord $375 per month in rent and the landlord was just returning the same amount back to [the appellant] as earned income for duties on site." This allowed the ministry to treat a portion of the overpayment as allowable earnings. The ministry explains that the alternative would have been to recapture $375 per month for the period August 2015 to September 2017 because the appellant was not paying rent to the landlord.

- On November 8, 2018, the ministry compliance officer received a call from Advocate A explaining why the appellant had an overpayment. The appellant told Advocate A that he was living rent-free at the property.
- The ministry explained that by approaching the file as an "earned income overpayment", the $375 per month shelter portion would be reduced to $175 per month, with the remaining $200 per month as an "employable earning exemption." The "earned income approach" has a balance owing of $4,550, "versus 28 months at $375 which totals $9,750." The ministry concluded that the appellant had an overpayment of $175 per month from August 2015 to September 2017.

**2.** The RFR, signed by the appellant on December 20, 2019, with an attached letter from Advocate A, and a psychological assessment report dated October 16, 2017:

- In her letter of December 20, 2019, the advocate provides argument for the reconsideration as well as more detail about the appellant's work in lieu of rent arrangement with the landlord. As a caretaker for the property, the appellant often had to commute 110 km to purchase supplies and he was never reimbursed for travel and other out of pocket expenses. The appellant had no heat at the residence during the fall/winter of 2014-2015 and there have been many occasions where the appellant's "kind-heartedness and excellent work ethic" could be taken advantage of by community members.
- In the psychological assessment report, the registered psychologist states that in January 2018, the appellant was told he would no longer be able to live at the property so he planned to move. The reports says that the appellant paid rent at the property for the first 2 years that he lived there, despite the fact that he was working for his board. The appellant was hoping to get some of the money back because community members told him it was not reasonable to be charged rent while working for free. The appellant had previously walked away from a family dispute over finances and did not get the assets he felt he was entitled to.

  The psychologist reports that the appellant has suffered from developmental problems since birth. The psychological testing for the assessment revealed that the appellant's overall adaptive functioning is within the *Very limited to Negligible range* and his IQ is within the *Extremely low* range. The appellant meets the criteria for *Mild Intellectual Disability* and is at risk of exploitation by community members (and was previously exploited by family). The appellant is a hard worker who requires ongoing support to prevent further exploitation; obtain suitable housing, and find and keep employment.

**3.** A letter from the ministry to the appellant dated September 24, 2019, stating that the disability assistance is being reviewed to make sure the appellant is receiving the correct amount of assistance and that his information is accurate and up to date. The ministry requests documents and states that the review may result in the calculation of an overpayment. The appellant will be advised of any changes to his assistance.

**4.** A letter from the ministry dated October 17, 2019, stating that more information is required as part of the review of the appellant's disability assistance. The appellant is asked to complete a *File Review Checklist* form.

**5.** A letter from Advocate A dated November 1, 2019, advising the ministry that the appellant has "very low literacy skills (reading and writing)", and requires assistance to gather and organize information about his past living situation. The letter states that the appellant moved to the residence in 2014 and applied for regular IA in September of that year. The appellant's neighbours helped him to eventually apply for PWD benefits. The appellant began living at the residence in the spring or summer of 2014.

The letter explains that when the appellant moved into the residence, there was no running water and also no heat until Fall 2014 when the landlord eventually turned on the power. The appellant had no running water or heat for the first 6 months that he lived there and in exchange for the sub-standard accommodation, the appellant was required to work as a caretaker and pay for expenses and supplies (related to his duties) out of his IA funds. The landlord advised Advocate A that it was "clearly a work/accommodation trade arrangement." There was no money exchanged for the work the appellant did at the property. In June 2018, the appellant moved to his current residence.

**6.** A letter from the ministry to the appellant dated November 8, 2019 (with attached *Overpayment Chart*), stating that upon review of the file, the ministry believes that an overpayment may have occurred. The letter states that the

appellant may have received assistance for which he was not eligible due to living rent-free in exchange for light maintenance work and other duties.

The ministry advises that if the overpayment is confirmed, the debt will be added to the appellant's file and deductions will be made from future assistance payments until the debt is repaid. The letter reminds the appellant of the obligation to accurately and completely report income and other circumstances on the ministry monthly report forms.

**7.** A ministry *Overpayment Chart* for assistance months August 2015 to September 2017. The chart shows an overpayment of $175 for each month with the same note for each entry, "client did not have rental obligation, worked for rent free accommodations." The chart shows a total overpayment of $4,550.

The *Comments* section states that the appellant was living in accommodations rent free in exchange for light duties. The overpayment was calculated by subtracting the $200 per month earnings exemption from the "$375 value of free rent", leaving $175 as the monthly overpayment amount.

**8.** A *Residential Tenancy Agreement* for the appellant's former residence, signed by the appellant and the landlord on June 1, 2015. The tenancy begins on June 1, 2015 on a month to month basis with payment of $450 due on the 15th day of each month.

*Additional information*

The appellant filed a Notice of Appeal with a hand-written statement which the panel accepts as argument. Subsequent to the reconsideration decision, the Tribunal received submissions from both the ministry, and the appellant requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*.

*Ministry's submission on appeal*

On February 19, 2020, the Tribunal received a letter from the ministry with four documents attached. The letter states that the reconsideration decision references a note from the ministry's intake interview with the appellant, as well as a monthly reporting stub and pay slips submitted on May 4, 2018. The documents were not attached to the reconsideration decision in error and are now being provided:

**1.** A *Monthly Report* for the appellant for cheque issue date, May 23, 2018, received by the ministry on May 1, 2018. The report indicates the appellant's entitlement is $1,185.42 (total PWD benefits) including $375 for the shelter portion.

The report contains hand-written notes, signed by the appellant and a Work BC case manager ("Advocate B") on May 1, 2018. The $375 shelter amount is circled, with a note beside it, "inaccurate shelter amount." At the bottom of the page the advocate writes: "The [appellant] is not paying rent. He looks after [the property] in lieu of paying rent. Why does the form say $375 'shelter portion'? The [appellant] is planning to move in June or July and will be paying rent at that time."

**2.** The appellant's pay stub for various labour jobs, for the period March 18 to 31, 2018, showing net pay of $164. A hand-written notation says that this amount was reported to the ministry in March 2018.

**3.** The appellant's pay stub for various labour jobs, for the period April 1 to 14, 2018, showing net pay of $278.89. A hand-written notation says that this amount was reported to the ministry on May 1, 2018.

**4.** A ministry case note dated June 22, 2015, stating that the appellant moved to British Columbia from another province to look after the landlord's property. The rent is $400 per month. The ministry will confirm the appellant's history with IA in the other jurisdiction. The note states that the client lives approximately 5 miles from the ministry office and "rides a pedal bike."

*Admissibility of ministry's additional evidence*

The appellant did not raise any objections to the ministry's submissions with the exception of the case note that states the appellant lived near the ministry office and uses a pedal bike for transportation. The appellant emphasized that this information is incorrect because the appellant's former residence was more than 100 km from the ministry's office and the appellant drives a vehicle, not a bike. The panel accepts the correction and finds as fact that the appellant lived a long distance from the ministry office and travelled there by car.

The panel finds that the monthly report is admissible as new evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal as set out in section 22(4) of the EAA. The report itself and the earnings reported is for the cheque issue date May 23, 2018, which is outside of the time period for the overpayment (August 2015 to September 2017). However, the notes that are hand-written on the report clearly refer to the appellant's "work in lieu of paying rent" arrangement with the landlord. This information is central to the ministry's finding that the appellant had *earned income* that should have been deducted from his IA.

The panel does not admit the two pay stubs into evidence because they are for earnings in March and April, 2018 which is outside of the time period for the overpayment (August 2015 to September 2017). The ministry does not explain how these later earnings are relevant to any *earned income* the appellant had between 2015 and 2017.

The panel admits the case note of June 22, 2015 under section 22(4) of the EAA as relevant to the decision under appeal and necessary for a full disclosure. The panel finds that the note is relevant to the ministry's determination that the appellant had *earned income* because the note states that the appellant moved to his former residence to work as a caretaker for the property.

*Appellant's submission on appeal*

On March 6, 2020, the Tribunal received a letter from Advocate A, confirming that the appellant arrived in British Columbia in 2015, rather than 2014 as submitted in documents related to the overpayment. The advocate attaches copies of airline tickets dated May 1, 2015 and writes that the appellant is certain this is the accurate date of arrival.

*Admissibility of appellant's additional evidence*

The ministry did not raise any objections to the panel admitting the letter and airline tickets into evidence and the panel admits them under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The appellant's arrival in British Columbia is relevant to the ministry's determination that the appellant had an overpayment for IA beginning in August 2015. The panel finds as fact that the appellant moved to British Columbia on May 1, 2015.

*Procedural matters*

The hearing was adjourned from February 13, 2020 due to the availability of the appellant's advocates and witnesses ("support team"). The appellant attended the hearing with Advocate B, two witnesses, and a friend/ support person ("friend"). Advocate B and the friend also provided witness testimony on the appellant's behalf.

The Tribunal granted the ministry's request to attend the hearing by telephone. At the hearing, the ministry disclosed that the representative for the hearing was the adjudicator who made the reconsideration decision.

*Oral submissions*

<u>Advocate A's evidence</u>

Advocate A was unable to attend the hearing so Advocate B coordinated the appellant's support team and explained that the witnesses had consulted with each other before the hearing and prepared their submissions together. As Advocate A was unable to attend the hearing, Advocate B read a submission from her dated March 10, 2020.

The submission is a mix of argument and evidence and describes Advocate A's first meeting with the appellant at a Work BC office in July 2015. She assisted the appellant with paperwork and helped him to complete his IA monthly report. The appellant said that he understood the paperwork but was also "unable to read the forms" and had difficulty knowing where to place his signature. Advocate A had a "strong inclination" that the appellant was experiencing "literacy issues" and she shared this observation with Advocate B, her colleague at Work BC.

*Admissibility of Advocate A's evidence*

The ministry raised no objections to the testimony. To the extent that the submission contains evidence; e.g., regarding the appellant's level of literacy, the panel admits the statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that the advocate's testimony is admissible because it provides information about the appellant's literacy level which is important to the appellant's arguments on appeal.

Advocate B introduced the two witnesses who provided their testimony on the appellant's behalf:

Witness A's evidence

Witness A is a friend of the appellant who presented a written submission dated March 13, 2020. The witness described meeting the appellant by chance when stopping by the appellant's residence. Witness A visited the appellant after that and helped the appellant whenever he could.

Witness A stated that the appellant was living in "deplorable conditions" with no water, no heat, no electricity, and no food. He noticed that the appellant had a strong devotion to the landlord but was in need of food, social interactions, and decent housing. Witness A states that "it was obvious" the appellant had a disability and could be easily taken advantage of.

Witness A brought the appellant food and offered him day employment. The appellant continued to believe that the landlord would turn on the electricity and send the appellant money (for work) as promised. The landlord had moved away to attend to other properties and had not paid the appellant for his work.

Witness A took the appellant to the nearest ministry office to apply for IA. The witness asked to speak to the worker "on the side" to briefly explain the appellant's "desperate situation" but the worker was "abrupt and dismissive" with the appellant and directed him to a computer even though the appellant did not know how to use a computer to complete the on-line application.

Witness A helped the appellant fill out any information the appellant could remember but they needed to return to the ministry office 4 or 5 times, and provide necessary documents. Witness A says he told the ministry that the appellant has a disability and needs supports but the workers were "rushed and curt" and uninterested in helping the appellant find disability resources. Witness A explains that the appellant needs time to process questions and also needs questions re-phrased in order to understand what is required.

The witness states that he left to work out of town and was not available to assist the appellant for some time, but connected the appellant with Community Living BC ("CLBC") supports after getting back in touch with him. The appellant was referred to a Work BC team who helped him apply for PWD, find suitable housing, and connect with employers. Witness A reports that the appellant is happier now, with a community of support which he did not have while working for the landlord.

*Admissibility of Witness A's evidence*

The ministry raised no objections to the testimony. The panel admits Witness A's statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that the witness's testimony is admissible because it describes the appellant's living situation during the time frame for the overpayment. The witness provides information about the appellant's level of functioning/interactions with the ministry which are important to the appellant's arguments on appeal.

Witness B's evidence

Witness B is the appellant's former employment counsellor and a current member of his support team. She presented a written submission dated March 13, 2020, which is a mix of argument and evidence.
Witness B states that she became acquainted with the appellant in July 2015 when the appellant initiated services through the Employment Program of BC. The appellant expressed an interest in being trained for a specific occupation and Witness B completed the intake form and initial interview over the phone with the appellant.

Witness B says that throughout the intake process she became curious as to the appellant's ability to participate fully in the program. The appellant did not disclose that he had a disability or any literacy issues but he displayed confusion over many of the questions. The witness directed the appellant to employment services at Advocate A's centre and asked Advocate A for her opinion regarding the appellant's capacity to participate independently in programming. The appellant was then referred to Advocate B who assists clients with diverse abilities.

*Admissibility of Witness B's evidence*

The ministry raised no objections to the testimony. The panel admits Witness B's statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that Witness B's testimony is admissible because it provides information about the appellant's level of functioning which is central to the appellant's arguments on appeal.

Advocate B's evidence

Advocate B worked with the appellant as a specialized employment counsellor for clients with diverse abilities. She explained the appellant's (and his support team's) position on the overpayment. The panel accepts those submissions as argument.

Advocate B provided additional background information regarding the appellant's living situation. She said that before the appellant moved to British Columbia he was receiving IA in another jurisdiction where the shelter portion was always paid directly to the landlord on the appellant's behalf. When the appellant moved to the residence in British Columbia, he had no idea that he was supposed to pay rent directly to the landlord. The appellant was under the impression that the ministry was paying the rent on his behalf.

In response to a question from the panel about the appellant's PWD application, the advocate confirmed that the appellant did not apply for PWD sooner despite his disability. After the initial assessment for training through Work BC, the appellant "dropped out of the course" and was not involved with Work BC again until 2017. The advocate explained that there was a "lapse in services" between 2015 and 2017 while the appellant was working for the landlord.

*Admissibility of Advocate B's evidence*

The ministry raised no objections to the testimony. The panel admits Advocate B's statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that Advocate B's testimony is admissible because it describes the rent payment arrangement the appellant had historically. The appellant's past experience with rent payments can help explain how an overpayment may have occurred.

Appellant's testimony

The appellant provided argument which the panel accepts, and confirmed that he has issues with literacy and never had the help he needed in school with reading and writing. In response to a question from the panel, the appellant confirmed that he has his driver's license and got a used truck from Witness A after his car became unusable. The appellant stated that he "waited 6 months to get on IA" after moving to British Columbia and he only sent in his monthly report to the ministry when Advocate A or someone was available to help him fill it out.

*Admissibility of appellant's evidence*

The ministry raised no objections to the testimony. The panel admits the appellant's statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that the testimony is admissible because it provides information about the appellant's level of literacy which is central to his arguments on appeal. The appellant's information about monthly reporting is relevant as an issue raised by the ministry at the reconsideration.

Friend's testimony

The friend attended the hearing as the appellant's support person and provided argument as well as some brief evidence. The friend stated that she provides services to clients of CLBC and knows the appellant in that capacity. She confirmed that the appellant is able to maintain a driver's license despite his disability; that he thought the ministry was paying rent directly to the landlord on his behalf; and until he had CLBC services and other supports, there could be a lapse of 6 months before he submitted his monthly report to the ministry.

*Admissibility of friend's evidence*

The ministry raised no objections to the testimony. The panel admits the friend's statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that the friend's testimony is admissible because it provides information about the appellant's disability and the difficulty he experienced with completing the monthly report forms. These matters are important to the appellant's arguments on appeal and to the issue of income reporting that was raised by the ministry.

Ministry's testimony at the hearing

The ministry provided argument on appeal stating that the ministry stands by the reconsideration decision. The ministry explained that clients usually complete ministry applications virtually or over the phone. To determine what a client's needs are, the ministry relies heavily on what the applicant tells them.

The ministry received the appellant's *Residential Tenancy Agreement* which indicates that he was paying rent to the landlord. The ministry therefore continued to issue the IA shelter allowance until they received information that the appellant was working in exchange for shelter. The ministry then launched an investigation to determine if there was an overpayment.

In response to questions regarding the ministry's service to clients, the ministry explained that the front counter staff may not be trained to assess whether a client has a disability, and although the ministry offers a self-employment program, the client must be receiving the Persons with Persistent Multiple Barriers ("PPMB") allowance to qualify. The appellant was not offered PMMB because clients need to be on assistance for a certain length of time in British Columbia to qualify for the PPMB allowance.

*Admissibility of ministry's evidence*

The appellant raised no objections to the ministry's testimony except by way of argument on appeal. The panel admits the ministry's statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal under section 22(4) of the EAA. The panel finds that the ministry's testimony is admissible because it provides information about the ministry's client service and application processes which are important to the arguments on appeal.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry reasonably determined the appellant had an overpayment of IA between August 2015 and September 2017 because he had *earned income* (free rent in exchange for work) of $175 per month that should have been deducted from his IA rate. Did the ministry reasonably apply sections 1 and 28, and Schedules A and B of the EAR that was in force from 2015 to 2017 to determine that the appellant had an overpayment? Was the ministry's finding that the appellant is required to repay $4,550 IA reasonably supported by the legislation, specifically section 27 of the EAA and section 18 of the EAPWDA?

The ministry based the reconsideration decision on the following legislation:

**EAA**

**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 affirmed by the signature of each recipient.

**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

**Liability for and recovery of debts under Act**

**28 (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).

**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

**(c)** 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).

**EAR**

**Definitions**

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

**"earned income"** means

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

**Amount of income assistance**

**28** Income 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.

**Monthly reporting requirement**

**33 (1)** For the purposes of section 11 (1) (a) *[reporting obligations]* of the Act,

(a) the report must be submitted by the 5th day of each calendar month, 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. 95/2012:…

**(iii)** all income received by the family unit and the source of that income;

**(iv)** the employment and educational circumstances of recipients in the family unit;

**Eligibility for self-employment program**

**77.1** To be eligible to participate in a self-employment program established or funded by the minister under section 7 of the Act, a recipient must qualify under section 2 of this regulation as a person with persistent multiple barriers to employment.

**Schedule A**

**Income Assistance Rates**

***(section 28 (a) )***

**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 (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 | Family unit composition | Age or status of applicant or recipient | Amount of support |
|---|---|---|---|
| **1** | Sole applicant/recipient and no dependent children | Applicant/recipient is under 65 years of age | $235.00 |

**Monthly shelter allowance**

**4 (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 | Family Unit Size | Maximum Monthly Shelter |
|---|---|---|
| **1** | **1 person** | **$375** |

**Schedule B**

**Net Income Calculation *(section 28 (b) )***

**Deduction and exemption rules**

**1** When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,

**(a)** the following are exempt from income:

[P*anel note: amounts that include government benefits, injury settlements/awards, and other sources of income/ monies are the exemptions listed in clauses i to xlii*]

**Deductions from earned income**

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

[P*anel note: income tax and other deductions at source are listed in subsections (a)(i) to (vii)*]

**Exemption - earned income**

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

**(6)** The exempt amount for a family unit that qualifies under this section is calculated as follows:

**(a)** in the case of a family unit to which subsection (3) applies, the exempt amount is calculated as the lesser of

**(i)** $200, and

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

**Small business exemption**

**4 (2)** Earned income of a recipient of income assistance is exempted from the total income of the recipient's family unit if

**(a)** the recipient is participating in a self-employment program, and
**(b)** the earned income is derived from operating a small business under the self-employment program in which the recipient is participating

***

The following legislation is relevant to the appellant's arguments:

**EAA**

**Application of *Administrative Tribunals Act***

**19.1** The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

**(f)** section 46.3 *[tribunal without jurisdiction to apply the Human Rights Code]*;

***Administrative Tribunals Act***

**Tribunal without jurisdiction to apply the *Human Rights Code***

**46.3 (1)** The tribunal does not have jurisdiction to apply the *Human Rights Code*.

**(2)** Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

**Analysis**

Overpayment - August 2015 to September 2017

*Arguments*

Ministry

The ministry's position is that the appellant has an overpayment of $4,550 because he received "value" (i.e., free rent) for the work that he did for the landlord that is equivalent to $175 per month net income. The ministry calculated the overpayment by allowing the $200 per month earning exemption that is available to the appellant under section 3(6) of Schedule B of the EAR, and subtracting that amount from the ministry's shelter rate of $375 per month.

The ministry notes that the appellant received the $375 per month shelter allowance while he worked at the property even though he was not paying rent. The ministry argues the appellant received IA that he was not entitled to because the landlord confirmed that the appellant was not paying rent and said that if the appellant had not been looking after the property in exchange for rent the landlord would have charged the $375 per month for the appellant's accommodations.

The ministry argues that the value the appellant received in exchange for work meets the definition of *earned income* under section 1(1) of the EAR. The ministry argues that *earned income* of $175 per month should have been deducted from the appellant's IA in accordance with section 28 of the EAR.

The ministry argues that the appellant has to repay the ministry under section 27(1) of the EAA and section 18(1) of the EAPWDA which says that if the person receives IA or disability assistance that they are not eligible for, they are "liable to repay to the government the amount or value of the overpayment provided for that period." The ministry notes that it may deduct the debt from the client's regular assistance payments pursuant to section 28(1) of the EAA and section 19(1) of the EAPWDA.

The ministry argues there is no exemption available to the appellant for self-employment because "section 77.1 of the EAR says to be eligible to participate in the ministry's self-employment program you must qualify under section2 of the EAR as a person with persistent multiple barriers to employment." Similar to this, the ministry argues the appellant is not eligible for the small business exemptions under section 4(2) of EAR Schedule B to reduce the amount of earned income because he was not participating in the ministry self-employment program between August 2015 and September 2017.

The ministry notes that the appellant is requesting that the overpayment be abolished and/or the ministry should pay the appellant the difference between the PWD and IA rates backdated to July 2015. At the hearing, the ministry stated that they have no discretion under the legislation to waive the overpayment debt. In the reconsideration decision, the ministry states that "it is important to note" that the decision is about whether the appellant was overpaid IA between August 2015 and September 2017, and if the appellant is requesting backdated disability assistance prior to his PWD designation in March 2018, the matter would need to be assessed by ministry staff separately.

Appellant

The appellant disagrees with the ministry's decision but does not dispute the ministry's calculation of an overpayment due to the arrangement he had with the landlord to live at the residence rent free in exchange for work on the property. The appellant's position is that he entered into an overpayment situation unintentionally because he needs "intense support" to read and understand information due to his disability and had very little help and support at the time of the overpayment. At the hearing the appellant said that he "didn't mean to do it." He did "not know what he was getting into" when he started working for the landlord; his rent had always been paid by social services directly to the landlord.

In her letter for the reconsideration, Advocate A argues that "it is critical for the ministry to consider circumstances that have lead [the appellant] to be in this unfortunate situation of a possible overpayment." The advocate argues that the ministry should take into consideration the appellant's "diverse abilities" and lack of community and family supports during the time he was working for the landlord. The advocate submits that the repayment requirement is a financial hardship the appellant cannot endure as he is living on a restricted PWD budget.

In her letter to the ministry of November 1, 2019, and the March 10, 2020 submission for the appeal, Advocate A notes the appellant's "very low literacy skills." The earlier letter also describes how the landlord took advantage of the appellant by providing inadequate accommodations and not reimbursing the appellant for out of pocket costs for the work the appellant did at the property.

Witness A argues that the appellant's disability was "obvious" and although the witness did all he could to communicate to the ministry that the appellant needed extra supports, the workers "were not passionate about helping" and "took no interest" in offering the appellant the supports he needed. The appellant "got nowhere with the lady behind the counter" and was never referred to the appropriate person even though Witness A "did let the worker know" that the appellant "was having a hard time with literacy and confusion."

Witness B, as well, was concerned about the appellant's "capacity to participate independently in services" and when she realized "that something was amiss", she referred the appellant to Advocate B who assists persons with diverse abilities. The friend who acted as the appellant's support person at the hearing argues that "the fact the appellant should have been on PWD all along should play into the ministry's decision"; the ministry "should look at all the factors" when making a decision about the overpayment.

***Panel's decision re: overpayment***

The panel finds that the ministry was reasonable in finding the appellant had an overpayment of $4,550 IA between August 2015 and September 2017. The appellant understands that he was working at the landlord's property during this period in lieu of paying rent. The appellant therefore had "value received in exchange for work or provision of a service" under the definition of *earned income* in subsection 1(1)(a) of the EAR.

It is unfortunate that the appellant "had no idea that he was supposed to pay rent directly to the landlord" when he was offered accommodations and work at the landlord's property shortly after moving to British Columbia. The panel accepts that the appellant misunderstood the shelter allowance entitlement because his rent was always paid by Social Services while the appellant lived outside British Columbia.

Nevertheless, the appellant was not submitting regular monthly reports to the ministry as required under section 33(1) of the EAR. The ministry was under the impression that the appellant was paying rent to the landlord of $450 per month as evidenced by the *Residential Tenancy Agreement* between the landlord and the appellant. The agreement was signed by both parties on June 1, 2015 and effective from that date forward. The ministry continued to issue the $375 per month shelter allowance to the appellant between August 2015 and September 2017, rather than deducting it from his IA.

There is some conflicting information about when the work in lieu of rent arrangement began. The appellant moved to British Columbia on May 1, 2015 (as evidenced by the airline tickets the panel admitted into evidence) and was living at the residence from June 1, 2015 forward (per the tenancy agreement). But the psychological assessment from 2017 says that the appellant was "paying rent for the first two years despite the fact that he was working for his board."

The ministry said that the appellant told them he was looking after the property for the landlord, but the work in lieu of rent arrangement was not confirmed until the ministry received the appellant's monthly report on May 1, 2018, with notes signed by the appellant and Advocate B. These notes state that the appellant "is not paying rent" because he is looking after the property "in lieu of paying rent." Letters from Advocate A in November and December 2019 further explain the "work/accommodation trade arrangement" the appellant had with the landlord.

Given the appellant's level of functioning as described in the psychological assessment (*borderline* to *extremely low* reasoning and comprehension scores) the panel gives more weight to the note/letters that were signed by the advocates, indicating the appellant was not paying rent while working for the landlord. The information in the psychologist's report that the appellant paid rent for two years is not only at odds with the information from the advocates, the landlord confirmed the "work/accommodation trade arrangement", and the appellant acknowledged at the hearing that he was living rent free at the property. The panel accepts the information in the ministry *Overpayment Chart* that shows the appellant was not eligible for the IA shelter allowance between August 2015 and September 2017 because "the client did not have a rental obligation" for that period.

The panel finds that the ministry reasonably applied the legislation to determine that the appellant had an overpayment of $175 for each of those months, with a total overpayment of $4,550. Section 28 of the EAR sets out the calculation for IA; i.e., the recipient's net income must be deducted from the IA rate for their family unit. The rates for different family sizes/compositions are set out in Schedule A of the EAR. The IA rate for a single recipient with no dependents was $610 per month in 2015 - 2017 including the support and shelter allowances.

Schedule B of the EAR lists exemptions and deductions from net income that are available to recipients who qualify. The ministry found that the appellant had net income of $375 per month based on the landlord's confirmation that the appellant would have paid $375 per month rent if he had not been working as a caretaker for the property. The ministry applied the $200 per month earnings exemption pursuant to subsection 3(6)(a)(i) of Schedule B, reducing the appellant's net income to $175 per month.

The panel further finds that the ministry was reasonable in finding that the appellant is liable to repay the overpayment amount ($4,550). Section 27 of the EAA and section 18 of the EAPWDA (for PWD recipients) clearly set out that the overpayment is "a debt due to the government" and the ministry may deduct the amount owing from subsequent assistance payments. The panel is sympathetic to the appellant's financial restrictions but the ministry has no discretion under the legislation to waive the debt.

Appellant's human rights argument

Advocate B argues, on behalf of the appellant and his support team, that the ministry "was remiss in not recognizing that the appellant needed additional support at the time he applied for IA [July 2015]. She argues that the BC *Human Rights Code* is relevant to the ministry's decision because it "prevails over ministry policy and practice as well as other legislation."

Advocate B notes that the ministry strives to treat clients in a non-discriminatory manner. She argues that accommodation based on disability should have been assessed in light of the appellant's literacy issues and confusion in understanding ministry requirements. She said the ministry recognizes that some clients may not want to self-identify, "so staff must be proactive in helping them complete the application or apply for PWD." The advocate argues the appellant has a need for "substantial accommodation for disability" and he "entered an overpayment situation due to his inability to understand the process based on his disability."

Advocate B explains that the psychological assessment that was done in 2017 for the appellant's CLBC application "confirms the three professional opinions of the Work BC staff" regarding the appellant's "challenges and low function" as well as his poor adaptive functioning ("very limited to negligible range"). The advocate notes that the appellant was also identified by community members as vulnerable to exploitation.

Advocate B asks, "where was the due diligence?" on the part of the ministry to ask appropriate questions at every step of the application. Based on Witness A's testimony about alerting the ministry to the appellant's disability but "being put off by curt workers and long line ups", the advocate concludes that "there was no consideration among front line staff." The advocate argues that the ministry failed the appellant in their duty to accommodate "by not helping him read the documents, understand the residential tenancy agreement, etc."

The advocate argues that the ministry "initiated the overpayment because the ministry failed on principles of administrative fairness." The advocate explains that under Chapter 210 of the BC *Human Rights Code*, the appellant must not be denied accommodation for disability.

*Ministry's reply*

At the hearing, the ministry acknowledged there are "issues with the application process" because when applications are completed virtually or over the phone "it limits the ministry's opportunity to see the extent of the client's struggles." In an ideal world, the client would be able to speak to an intake worker but front line staff are not trained to recognize a disability and the ministry "is unable to make accommodations unless they have information about the disability." In any event, the reconsideration "is about an overpayment" and "there are avenues to connect with the ministry about the level of service, due diligence, etc."

***Panel's decision re: human rights jurisdiction***

The panel determines it does not have the authority to decide the reasonableness of the ministry's decision based on the BC *Human Rights Code*. Advocate B argues that the *Human Rights Code* is relevant because "it prevails over ministry policy and practice as well as other legislation" but the Tribunal has no authority over human rights under the EAA. Specifically, section 19.1 of the EAA states that section 46.3 of the *Administrative Tribunals Act* ("ATA") applies to the Employment and Assistance Appeal Tribunal. Subsection 46.3(1) of the ATA clearly states that "the tribunal does not have jurisdiction to apply the *Human Rights Code*."

*Conclusion*

The panel finds that the ministry was reasonable in finding that the appellant had an overall overpayment of $4,550 between August 2015 and September 2017 and that the appellant is liable to repay $4,550 as a debt owed to the government for IA that he was not eligible for. The panel finds that the ministry's decision is reasonably supported by the evidence and is a reasonable application of the legislation. The appellant received IA that he was not eligible for and the ministry has no discretion to waive the repayment obligation. The panel does not have the authority to consider the BC *Human Rights Code* when determining the reasonableness of the ministry's decision. The panel confirms the 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<br>Margaret Koren | |
|---|---|
| SIGNATURE OF CHAIR | DATE (YEAR/MONTH/DAY)<br>2020-03-25 |

| PRINT NAME<br>Bill Haire | |
|---|---|
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY)<br>2020-03-25 |
| PRINT NAME<br>David Kendrick | |
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY)<br>2020-03-25 |