

APPEAL NUMBER  
2021-0170

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated August 23, 2021, which found that the Appellant received an overpayment of \$30,966.48 and must repay this amount to the Ministry.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Sections 11(1), 18 and 19  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 15 and 29

## Part E – Summary of Facts

The Appellant is a sole recipient of disability assistance (DA) whose file was opened in November 2008.

The following is a summary of the information provided by the Ministry in the RD:

- The Appellant had not initiated any contact with the Ministry between January 20, 2016 and July 27, 2018;
- In February 2020, the Ministry received an anonymous allegation that the Appellant received DA for approximately two years while she was detained in a foreign Country (the First Foreign Country) and while she resided in another foreign Country (the Second Foreign Country);
- On March 2, 2020, the Appellant told the Ministry that:
  - She had travelled to the First Foreign Country in 2016 for a family member's graduation, but she did not have the required visa;
  - She was subsequently held in detention in the First Foreign Country for 6 months, and "*near the end of 2016*" she was deported to the Second Foreign Country where she stayed for 18 months; and,
  - She tried to contact the Ministry from the Second Foreign Country by phoning the Ministry's toll-free telephone number but was unable to call that number from the Second Foreign Country.
- The Appellant also provided the Ministry with copies of the following documents:
  - A train ticket dated March 26, 2016 from a city in British Columbia (BC) to a city in the First Foreign Country (the Train Ticket);
  - A transfer document confirming that the Appellant was transferred from the First Foreign Country to the Second Foreign Country (the Transfer Document);
  - A July 7, 2016 court order from a court in the First Foreign Country confirming that the Appellant was ordered removed from the First Foreign Country to the Second Foreign Country, "*with an alternative order of removal to Canada*";
  - A travel itinerary document showing that the Appellant left a city in the First Foreign Country on August 25, 2016 and arrived in the Second Foreign Country on August 26, 2016 (the First Travel Itinerary Document); and
  - A travel itinerary document showing that the Appellant arrived in a city in BC from the Second Foreign Country on June 22, 2018 (the Second Travel Itinerary Document).

The evidence before the Ministry at the time of the RD included:

- The Appellant's Request for Reconsideration (RFR), received by the Ministry on August 12, 2021, in which the Appellant wrote:
  - She will sue the Ministry because she is the victim of systemic racism;
  - If her passport had been given to her in 2016, she would not have been detained in the First Foreign Country for almost 6 months;

- The only toll-free Ministry contact phone number available to her was not reachable from the Second Foreign Country; and,
- The amount of DA she normally receives does not cover her monthly rent of \$1,200 and she has therefore been homeless or had to live in shelters many times, and she has been on the BC Housing Management Commission waiting list for 14 years;
- A copy of the Train Ticket;
- A copy of an airline boarding pass in the name of the Appellant, dated June 22, from a city in a foreign country to a city in BC;
- A copy of the First Travel Itinerary Document;
- A copy of the Transfer Document;
- A copy of the Second Travel Itinerary Document; and,
- A Ministry overpayment chart in the name of the Appellant showing individual overpayment amounts for each month from June 2016 through June 2018 inclusive, in the total amount of \$30,966.48, with the “*Overpayment Reason*” given as “*Out of Province*” (the Overpayment Chart).

***Additional Information Submitted after Reconsideration***

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant states that the reason she is appealing the RD is “*systemic racism*” and that her rights are not being recognized.

At the hearing the Appellant said that she was not objecting to the Ministry’s RD because she would have to repay the over-payment amount. She stated that the Ministry would only recover \$10 a month from her future DA amounts and that would not result in undue hardship. She objected to the decision for two reasons: on principle, because it would “*affect (her) dignity*”, and because if she ever applied for additional supplements or assistance to which she might be entitled in the future, the Ministry would review her file, see that she was repaying a previous overpayment, and deny her those additional benefits.

The Appellant also stated that the anonymous allegation that the Ministry received regarding the Appellant having received DA even though she had been out of BC for 2 years was retaliation for an allegation the Appellant had made about another Ministry client having received benefits to which they were not entitled.

In response to a question from the Panel, the Appellant said that she originally came to Canada as a refugee and that her current legal status in Canada was that of a permanent resident. She stated that she had tried unsuccessfully to obtain a visa to travel to the First Foreign Country. She said that she was unable to board the train without a visa. She explained that she took a bus instead because she was able to travel to her first destination in the First Foreign Country by bus without having to show a visa until she arrived at her first destination.

In response to other questions from the Panel, the Appellant said that she did not try to contact the Ministry for the 5 months and 2 weeks that she was in detention in the First Foreign Country, she did not have legal representation while in detention, and that she asked a judge in the First Foreign Country to have her deported to the Second Foreign Country because she felt unsafe in the detention facility. She also said that she did not want to return to Canada, even though she was given that option, because of systemic racism in Canada and because she could not afford the high cost of rental accommodation in her home community. She added that she had been unable to secure affordable housing from the BC Housing Management Commission despite being on a waiting list for years.

At the hearing, the Ministry relied on its RD. In response to a question from the Panel, the Ministry said that the Appellant was not required to file monthly reports because recipients do not have to make a report unless there are changes in a recipient's assets, income, employment or educational circumstances, etc., as set out in EAPWDR Section 29. In response to a follow-up question from the Panel about the circumstances under which a recipient might be contacted by the Ministry to confirm their continued eligibility for benefits when they do not have to report monthly, the Ministry stated that when a recipient turns 64 years of age their file is flagged for contact to ensure that the recipient applies for federal Old Age Security and the Annual Income Supplement when they turn 65.

In response to another question for the Panel, the Ministry said that it does not take past actions into account when a client applies for additional benefits to which they are entitled.

### ***Admissibility of Additional Information***

The Panel considered the written information in the NOA to be argument.

The Panel admits the verbal evidence provided by the Appellant at the hearing confirming that she left BC by bus rather than by train to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. The Panel notes that, while the RD states, in part, "*The bus ticket and travel itinerary you provided confirm that you left B.C. on March 26, 2016 ...*", the Ministry did not provide the Panel with a copy of the bus ticket in the written evidence it provided for this appeal. The Panel finds it necessary to admit this additional information in accordance with Section 22(4) of the EAA because it explains how the Appellant was able to leave Canada without the necessary immigration documents.

The Panel admits the Appellant's verbal evidence at the hearing that she made no attempt to contact the Ministry while she was in detention in the First Foreign Country for approximately 6 months as it is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal.

The Panel also considers the reasons given by the Appellant at the hearing as to why she decided to go to the Second Foreign Country rather than return to British Columbia at the end of her period of detention in the First Foreign Country to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, and therefore admits this evidence.

The Panel does not admit the Appellant's evidence presented at the hearing regarding the reason why she believes that the Ministry received what it referred to in the RD as an "*anonymous allegation*" as the Panel determined that it has no bearing on the RD and is therefore not reasonably required for a full and fair disclosure of all matters relating to the decision under appeal.

## Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD, which found that the Appellant received an overpayment of \$30,966.48 and must repay this amount to the Ministry, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The Ministry's position is that the Appellant did not request the Ministry's approval to be outside of B.C. for more than 30 days, nor did she inform the Ministry of her whereabouts while she was detained in the first Foreign Country, while she resided in the Second foreign Country, or upon her return to BC in June of 2018. Therefore, pursuant to EAPWDR, Section 15, the Appellant was not eligible for DA from June 2016 through June 2018 and is liable to repay the amount of the overpayment provided for that period as required under EMPWDA, Section 18.

The Appellant's position is that she objected to the Ministry's RD because it would affect her dignity, and because if she ever applied for additional assistance in the future the Ministry would deny her the additional benefits because of the overpayment.

### ***The Panel's Decision***

Section 15 of the EAPWDR says that a DA recipient who is outside BC for more than a total of 30 days in a year ceases to be eligible for DA unless the Ministry has given prior authorization for the continuation of DA to permit the recipient to participate in a formal education program, obtain medical therapy prescribed by a medical practitioner, or avoid undue hardship.

The Panel notes that the Appellant left British Columbia in March 2016. The Ministry stated in the RD that the Appellant told the Ministry in March 2020 that her original plan was to attend a family member's graduation and "*visit for a few weeks and if (she) liked it, ... (she) planned to stay there*". Even though the Appellant indicated that there was a possibility that she might decide not to return to BC within a few weeks, it can reasonably be assumed that the Appellant did not originally intend to leave BC for more than 30 days, and therefore did not think that she would need to meet one of the criteria for continued eligibility for DA and obtain the prior authorization from the Ministry for an absence of more than 30 days.

The Appellant stated at the hearing that she had not been able to obtain a travel visa to go to the First Foreign Country. The Appellant said that she knew that if she took a bus, she would not have to clear immigration until she arrived at her first destination in the First Foreign Country. When she arrived, because she did not have the required international travel documentation, she was arrested and sent to a detention facility. The Panel notes that the Appellant should have understood that trying to enter a foreign country without proper authorization might have resulted in immediate deportation or detention. If the Appellant had been immediately returned to Canada in March 2016, EAPWDR Section 15 would not have applied. However, because she was detained for more than 30 days, she could not return to BC within the prescribed time limit. The Panel also notes that when the Appellant was deported after approximately six months, she chose not to return to BC, where she was still receiving DA at the time, but to go to the Second Foreign Country for two years instead.

The Appellant said at the hearing that she had access to a telephone while in detention but did not attempt to advise the Ministry of her situation. If she had contacted the Ministry at that time, the DA overpayments would not have been made for an additional 18 months. Regardless, pursuant to EAPWDR Section 15, prior approval of the Ministry is required for continued DA benefits where a recipient is out of BC for more than 30 days. As the Appellant did not receive permission from the

APPEAL NUMBER  
2021-0170

Ministry, the Panel finds the Ministry reasonably applied the legislation in the circumstances of the appellant.

*Conclusion*

Having reviewed and considered all the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant received an overpayment of \$30,966.48 and must repay this amount to the Ministry, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

## APPENDIX A - LEGISLATION

The Sections of the EAPWDA that are relevant in this Appeal are as follows:

### **EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT**

#### **Reporting obligations**

**11 (1)** For a family unit to be eligible for disability 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 specified 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 ...

#### **Consequences in relation to outstanding arrest warrants**

**14.2 (1)** No disability assistance, hardship assistance or supplement may be paid to or for a family unit on account of an applicant or recipient for whom a warrant for arrest has been issued under

- (a) the *Immigration and Refugee Protection Act (Canada)*, or
- (b) any other enactment of Canada in relation to an indictable offence, and

on whom the warrant has not been executed ...

#### **Overpayments**

**18 (1)** If disability assistance ... 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 Sections of the EAPWDR that are relevant in this Appeal are the following:

### **EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION**

#### **Effect of recipient being absent from BC for more than 30 days**

**15** The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance ... unless the minister has given prior authorization for the continuance of disability assistance ... for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

#### **Reporting requirement**

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

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi); ...

(b) the information required is all of the following, as requested in the monthly report form specified by the minister:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income; ...



APPEAL NUMBER  
2021-0170

**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)

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

**Part H – Signatures**

PRINT NAME

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2021/09/24

PRINT NAME

Sameer Kajani

Signature of Member

Date (Year/Month/Day)

2021/09/24

PRINT NAME

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2021/09/24