

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated December 28, 2022, in which the ministry found that the appellant was not eligible for disability assistance (“DA”) for October and November 2015 because they had unearned income from a student living allowance that was not exempt under section 1 and Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined that the appellant received an overpayment of \$1,812.42 DA that must be repaid pursuant to sections 18 and 19 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”).

The ministry also determined that it is unable to conduct a reconsideration of the decision to deduct the living allowance from the appellant’s DA for August and September 2015 and December 2015-December 2019 (excluding April 2016) because there was no decision to deny, discontinue, or reduce the appellant’s DA as required under section 16 of the EAPWDA.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – EAPWDA – sections 16, 18 and 19

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – sections 1, 9, 24, and 29, and Schedules A and B

The full text of the legislation is available in the Schedule after the decision.

Part E – Summary of Facts

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

1. Information from the ministry's record of decision indicating the following:

- the appellant is a sole recipient of disability assistance ("DA");
- on August 6, 2015, the appellant advised the ministry that they were starting post-secondary school in September 2015 and will receive funds from their First Nation. The ministry advised the appellant to report any monies received on the monthly report ("stub") and provide supporting documents.
- on March 10, 2016, the appellant submitted a confirmation of enrollment for September 8-December 7, 2015, and January 4-February 25, 2016, indicating that they withdrew before the end of the term. The appellant provided bank statements confirming that they received funds from the First Nation: \$985 per month for August 2015-February 2016, excluding November 2015 for which the appellant received \$1,085.
- on March 22, 2016, the ministry determined that the funding was a living allowance that was not exempt under the legislation. The ministry determined that the appellant was not eligible for April 2016 assistance and created a service request to determine if an overpayment had occurred because the appellant did not report the previous month's income;
- on January 17, 2017, the ministry initiated a review of the appellant's file and on November 20, 2017, received a letter from the First Nation indicating that the appellant received a monthly living allowance for August-December 2015; January-March 2016; August-December 2016; January-March 2017; and August-October 2017. The letter included a breakdown of the amount of that was issued for each month.
- on December 21, 2017, the ministry determined the appellant had received an overpayment of DA of \$16,438.78 for the period August 2015-December 2017 because of the living allowance received between August 2015 and October 2017 (the "Initial Overpayment Amount"). A debt was added to the appellant's file;
- in April and June 2018, the ministry sent the appellant a letter requesting information about the funding they received for the school year starting in August/September 2018. The ministry asked for details including the amount of funding approved and what the funding was for (tuition, books, living allowance, etc.).
- on June 6, 2018, the appellant submitted confirmation of their acceptance into a post-secondary program as well as a course schedule, student record, and applications for sponsorship/sponsor funding by the post-secondary school and the First Nation. The appellant submitted a memo from the First Nation confirming the

living allowance of \$960 per month while attending school from September 2017-April 2018 (the appellant would not be in school from May-August inclusive);

- on July 11, 2018, the ministry reviewed the appellant's file and determined that the funds the appellant received from the First Nation had been exempt since December 1, 2015. A service request was created to determine if the appellant had an underpayment for DA because of the ministry error;
- on November 8, 2018, the ministry reviewed the appellant's file for a possible underpayment arising out of deductions from the appellant's DA from March 2018 to May 2018. The worker noted that the appellant was attending post-secondary school and received funds from the First Nation. The ministry explained that these funds were deducted from DA in error because ministry policy states that effective December 1, 2015, student funding is exempt for disability clients. The ministry determined that the October and November 2015 overpayment was valid, but the months between December 2015 and December 2017 will need to be removed from the total debt. The ministry's financial branch will be notified to adjust the Initial Overpayment Amount (\$16,438.78) to \$1,812.84 (the "Adjusted Overpayment Amount");
- on April 17, 2019, the ministry received a letter from the First Nation confirming the living allowance for August-December 2015; January-March 2015; August-December 2016; January-March 2017; and August-October 2017. The letter included a breakdown of the amount issued for each month. The appellant also submitted a letter from the post-secondary school, confirming enrollment from September 2, 2015-present (letter dated August 15, 2017). The letter confirmed that the appellant was not a student from January 2000-September 2015 [*sic*, August 2015];
- on May 2, 2019, the ministry approved the adjustment of the Initial Overpayment Amount and issued the appellant a credit of \$215. The manager approved an additional cheque, 3,855 for the January-May 2018 underpayment (the "Underpayment Amount").
- on May 6, 2019, the ministry issued a cheque for the Underpayment Amount (\$3,855), indicating that this amount had been deducted from the appellant's January-May 2018 DA towards repayment of the Original Overpayment Amount (\$16,438.78 - calculated on December 21, 2017) which was incorrect. The ministry determined the appellant was not eligible for DA for October and November 2015 but as of December 1, 2015, the living allowance should not have been deducted from the appellant's DA.
- on May 7, 2019, the ministry's financial branch confirmed that the Original Overpayment Amount (\$16,438.78) on file had been reduced by \$14,625.94. The overpayment was therefore reduced from \$16,438.78 to \$1,812.84 (\$906.42 per month DA for October and November 2015).

- on February 23, 2022, the appellant contacted the ministry about the status of the underpayment which had been requested by the appellant. The ministry communicated the decision notes from 2019 and the results of that review. The appellant advised that the underpayment amount is incorrect, and the ministry “owes [them] thousands of dollars more;”
- on April 6, 2022, the appellant asked the ministry to review the file for money owed to them between 2015 and 2019 while they were attending school.
- on May 13, 2022, the ministry advised that the appellant was not eligible for additional backdated DA for the period September 2015-2019 because the ministry determined that a further underpayment did not occur. The ministry explained that it had already corrected its mistake by reducing the Initial Overpayment Amount (\$16,438.78) to the Adjusted Overpayment Amount (\$1,812.84) and issuing a cheque in May 2019 for the Underpayment Amount (\$3,855).
- on November 1, 2022, the appellant attended the ministry office to inquire into the status of the file review. The appellant advised that between September 2015 and 2019, they had income deducted while going to school despite having the disability designation. The appellant requested a reimbursement of the money that was deducted, stating that it should not have been deducted from their DA.
- on November 2, 2022, the ministry sent the appellant a message advising of the ministry’s previous decision from May 2019 where the worker found that the Initial Overpayment Amount was incorrect and was reduced to the Adjusted Overpayment Amount (\$1812.84). The ministry explained that there was still an overpayment of DA (2 months X \$906.42) for October and November 2015 because prior to December 1, 2015, the living allowance was not exempt;
- on November 2, 2022, the appellant replied to the message from the ministry indicating that they would like a reconsideration.
- on December 8, 2022, the appellant submitted a Request for Reconsideration (“RFR”);
- on December 28, 2022, the ministry completed a review of the RFR and found that the appellant was eligible for backdated DA (\$906.42) for April 2016 but was not eligible for DA for October and November 2015;
- the ministry states that its records confirm that the appellant received DA for every month from October 2015-December 2019 except for April 2016 when no assistance was issued;
- the ministry states that DA for January, March, April, and May 2018 was reduced by the amount of the living allowance the appellant declared. Although the ministry initially determined an overpayment for some of these months, the debt (other than \$1,812.84 for October and November 2015) was cancelled. The ministry states that it provided backdated DA of \$3,855 on May 7, 2019, to reimburse the appellant for

the Underpayment Amount that had been incorrectly deducted from DA between January and May 2018.

- The ministry notes that the appellant received DA for August and September 2015, and from June 2018-December 2019 without any deductions for the living allowance they received.

2. An RFR signed by the appellant on December 8, 2022, with a typed submission setting out their argument. In addition to argument, the RFR submission contains the following information:

- the appellant reports being “cut off of my disability benefit completely” the first year they attended post-secondary school;
- they had to live on “\$960 a month scholarship funding” from the First Nation. The appellant states that their rent was \$450 per month and the rest of the funding was used for meals.
- the appellant says that the ministry investigator in charge of the file, cut off the benefit completely in December 2015. The appellant reports not being allowed any DA until the school year was over in April 2016. The appellant says they received DA for only 4 months in 2015/16 when they were not in school. The same thing happened during the 2016/17 school year; they received DA only during the summer months. The appellant explains that they were then cut off for an entire 8-month school year when they moved to be closer to the post-secondary school. The appellant says that once again, they only received DA for 4 months in the summer. The appellant says that this pattern continued for the entire time they were in school. The appellant says they were then charged an overpayment of approximately \$17,000 for all the summers in which they received DA.
- the appellant filed a service request in 2019 for a reconsideration of all the funds that had been denied. The appellant confirms that they were paid back approximately \$3,700 and the \$17,000 overpayment was cancelled;
- the appellant explains that due to the Covid-19 pandemic, they suspected that they were being paid back in smaller increments (for 4 months of DA at a time) and that it could take another 4-5 years to receive the full amount owed for the 20 or more months of DA that had been denied while they received funding for school from the First Nation.
- the appellant notes that they received a letter from the ministry that said the ministry had reversed the decision and changed the policy so that people receiving funding from the First Nation were no longer penalized for going to school. Although the appellant could collect DA and receive the scholarship money at the same time when the ministry changed the policy, the appellant says that they were “not paid back at least 15 months worth of the benefit that was deducted when [the ministry] reversed their decision.”

- the appellant explains that they faced extreme financial strain that has led to a significant amount of debt and hardship. The appellant is requesting payment for the 15 months or so of DA that was deducted and not paid back. The appellant states that they completed the studies and would like to move forward and pay off all their bills. The appellant explains that the extremely difficult financial situation started in 2015 and they cannot understand the ministry's delay (other than the Covid-19 pandemic) in paying the remaining 15 months worth of benefits that were denied.

3. A letter from the ministry dated April 18, 2018, stating that the appellant's DA cheque will be held until the appellant provides confirmation of funding from the First Nation including the amounts approved, and details of what the funding is for (books, tuition, living allowance, travel). The letter states that a decision on eligibility for assistance will be made once all documentation is reviewed.

4. Documents from the post-secondary school (undated but received by the ministry on June 6, 2018) including confirmation of enrollment in a program; the appellant's course schedule; a sponsor application, and a sponsorship funding application.

5. A letter from the First Nation dated February 22, 2018, stating that the appellant receives a living allowance of \$960 per month while attending school from September 2017-April 2018. The letter confirms that the appellant will not receive any financial support from the First Nation for the months they are not in school: May, June, July, and August 2019 [*sic*, 2018]. The letter says that the appellant will graduate from the program in May 2020.

6. An application for post-secondary sponsorship from the First Nation, signed by the appellant on May 10, 2018, and indicating that the appellant is in the third year of a four-year program.

7. A copy of the appellant's student record/transcript of marks.

8. A letter from the First Nation dated November 20, 2017, confirming that the appellant received a living allowance for the following years and amounts:

- **2015:** August \$985, September \$985, October \$985, November \$1,085, December \$985 (total = \$5,025);
- **2016:** January \$985, February \$985, March \$985, August \$960, September \$960, October \$960, November \$960, December \$1,060 (total = \$7,866);
- **2017:** January \$960, February \$960, March \$960, August \$960, September \$960, October \$960 (total = \$5,760).

9. A letter from the post-secondary school dated August 15, 2017, confirming that the appellant has been enrolled since September 2, 2015. The letter states that the appellant was not a student from January 2000 up to September 2015.

10. A ministry overpayment chart for assistance months **August 2015-December 2017**. The chart includes the following information:

- **2015: August and September assistance months:** the chart indicates the appellant was eligible for \$906.42 per month DA (less a \$20 repayment). No living allowance is shown for these months and no overpayment is indicated.
- **2015: October, November, and December assistance months:** the chart shows a living allowance of \$985 (unearned income) for October and November 2015, and \$1,085 for December. The chart shows an overpayment for DA: \$906.42 for October and November 2015, and \$941.42 for December 2015.
- **2016: January, February, March, and April assistance months:** the chart shows a living allowance of \$985 (unearned income) for each of these months. The chart shows an overpayment of DA of \$906.42 per month. The chart also shows an eligibility override for April based on declared income.
- **2016: May, June, July, August, and September assistance months:** the chart indicates the appellant was eligible for \$906.42 per month DA for these months. No living allowance is shown for these months and no overpayment is indicated.
- **2016: October, November, and December assistance months:** the chart shows a living allowance of \$960 (unearned income) for each of these months. The chart shows an overpayment of \$960 per month DA. The chart indicates the appellant was eligible for \$23.42 DA for October and November, and \$58.42 for December; *[panel note: the eligible amount is calculated based on the difference between the appellant's DA rate and the amount of the living allowance: $\$983.42 - \$960 = \$23.42$ for October and November; and $\$1,018.42 - \$960 = \$58.42$ for December which had a higher DA rate]*
- **2017: January, February, March, and April assistance months:** the chart shows a living allowance of \$1,060 (unearned income) for January 2017, and \$960 per month for February, March, and April. The chart shows an overpayment for DA as follows:
 - \$960 for January: the appellant is eligible for \$23.42 DA;
 - \$983.42 for February: the appellant is eligible for \$0 DA;
 - \$960 for March: the appellant is eligible for \$23.42 DA;
 - \$658.42 for April: the appellant is eligible for \$0 DA. The chart indicates an override for April (comment: "no shelter issued");

- **2017: May, June, July, and August assistance months:** the chart indicates the appellant was eligible for \$1,033.42 per month DA for these months. No living allowance is shown for these months and no overpayment is indicated.
- **2017: September, October, November, and December assistance months:** the chart shows a living allowance of \$960 per month (unearned income) for each of these months. The chart indicates no overpayment for September (the appellant was eligible for \$1,033.42 DA). The chart shows an overpayment of DA for the remaining months as follows:
 - \$960 for October: the appellant is eligible for \$193.42 DA;
 - \$960 for November: the appellant is eligible for \$173.42 DA;
 - \$960 for December: the appellant is eligible for \$208.42 DA.
- The chart indicates a **total overpayment amount \$16,438.78**. The chart indicates the appellant was **eligible for \$10,536.50 DA for assistance months August 2015-December 2017**.

Additional evidence

With the consent of both parties the appeal was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* ("EAA"). The ministry sent an email to the Tribunal stating that its submission on appeal will be the reconsideration summary.

In submissions that were prepared after the reconsideration decision, the appellant states their argument and provides additional information that requires an admissibility determination under section 22 of the EAA:

Received with the Notice of Appeal on January 3, 2023:

1. A letter to the Tribunal dated January 3, 2023, in which the appellant reaffirms that they received a letter from the ministry explaining that the policy had changed, and people would not be penalized or disqualified from receiving DA and a living allowance at the same time while going to school. The appellant states that the overpayment of approximately, \$17,000, which the ministry reversed, was the DA that the appellant was allowed to receive during the summer months (5 summers) when not receiving any scholarship money.

The appellant states that they were disqualified from receiving DA for at least 16 months in total between 2015 and 2020: 4 months during their first year of study; 5 months the second year; 8 months the third year, plus one more year when they were cut off DA completely for another 4 months. The appellant added more details about the hardship

they faced, including having to rent inadequate housing and take out student loans to survive.

Received by the Tribunal on January 18, 2023

2. A letter to the Tribunal dated January 12, 2023, in which the appellant provides further argument and reaffirms that they were “completely cut off” DA.

3. A message from the ministry to the appellant dated May 6, 2019, with the title *Underpayment*. The ministry states that the appellant was either “not issued or under-issued assistance for support.” The ministry says that the Underpayment Amount (\$3,855) has been direct deposited. The ministry indicates that this is the amount of DA that the appellant was eligible for but had not received. The ministry confirms that due to policy changes, the Initial Overpayment Amount (\$16,438.78) on the appellant’s file will be reduced to the Adjusted Overpayment Amount (\$1,812.84).

4. A message from the ministry to the appellant dated November 1, 2022, with the title *Underpayment Info*. The ministry states that a decision was made on the appellant’s previous service request regarding an underpayment. The ministry’s decision is that there was no underpayment for the years 2015-2019. The ministry explains that the appellant had a previous underpayment because of student funding paid from December 2015-December 2017. A debt for the Original Overpayment Amount (\$16,438.78) was added to the appellant’s file but reduced to the Adjusted Overpayment Amount (\$1,812.84) on May 6, 2019, when the ministry determined that any overpayment should only be applied to the October and November 2015 assistance months when student funding “was NOT exempt.”

5. A message from the appellant dated November 2, 2022, in reply to the ministry. The appellant explained why they would like a reconsideration and provided the following information:

- they started post-secondary school in September 2015 and had the school funding deducted from DA from December through to the end of the school year (4 months). The appellant says that the same thing happened every year after that;
- the appellant says the ministry investigator then decided to take away the DA for an entire school year, “I was deducted an entire 8 months of my benefit.” The appellant says that the investigator also “back charged” for every summer when the appellant was not in school (4 months each year) which resulted in an overpayment of around \$17,000.

- in total, the appellant “got back \$3,700. That is all. I was deducted every year I was in school, for 4 months, 4 months, 8 months, and another 5 months – which is way more than I was paid back.”
- the appellant would like to know if their DA was paid to someone’s else’s file because the appellant was only paid (approximately) \$3,700 in 2019 and nothing else even though “way more than that was deducted.” The appellant says that they did not receive any funds when they were “cut off every year.” The appellant would like the ministry to find out who the benefits were given to.

Admissibility

The panel finds that the submissions provide additional detail and background information regarding the dates the appellant’s DA was impacted by the receipt of the living allowance and the ministry identifying that a mistake was made. The submissions show that the appellant and the ministry each have a different understanding of the situation; in particular, the number of months that the appellant’s DA was impacted. The panel admits all of the documents under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably determined that the appellant was not eligible for DA for October and November 2015 because the appellant had unearned income from a student living allowance that was not exempt under section 1 and Schedule B of the EAPWDR. Therefore, was the ministry reasonable in finding that the appellant received the Adjusted Overpayment Amount of \$1,812.42 DA and must repay that amount pursuant to sections 18 and 19 of the EAPWDA?

In addition, was the ministry reasonable in determining that it is unable to conduct a reconsideration of the decision to deduct the living allowance from the appellant's DA for August and September 2015 and December 2015-December 2019 (excluding April 2016) because there was no decision to deny, discontinue, or reduce the appellant's DA as required under section 16 of the EAPWDA?

Arguments*Appellant*

The appellant's position is that the ministry owes them an underpayment for DA that was deducted from the student living allowance from August 2015-December 2019, in addition to the Underpayment Amount (\$3855) that had been incorrectly deducted from DA between January and May 2018. The appellant acknowledges that the ministry was "reversing an approximately \$17,000 overpayment" but argues that the ministry should have paid back a lot more than the \$3,855 (approximately 4 months of DA) that was calculated for an underpayment.

The appellant acknowledges that the ministry issued DA for the summer months in which the appellant was not in school but argues that the ministry investigator "eventually got mad and charged me an overpayment of \$17,000 (approximately) for all of the summers he had allowed me, and he also charged an overpayment for one full school year (8 months)." The appellant argues that the ministry has not paid back those summer months or the additional 8 months in which the appellant should have received DA given the ministry's policy to no longer deduct the benefit from student funding.

The appellant argues that the ministry owes an underpayment for "four months of every school year since 2015" as well as for when the appellant was "cut off [the] disability benefit for the entire 8-month school year and charged a large overpayment." The appellant argues that given the policy change that allowed the appellant to receive DA and the student allowance at the same time, the ministry should pay back all the months the

appellant was in school as well as the summer months, and not just the January-May 2018 period for which the ministry determined an underpayment. The appellant argues that the ministry owes them the disability benefit for at least 16 months, and up to 20 months of benefit.

The appellant describes the “extreme hardship” they faced when not receiving DA and having to survive on just the living allowance. The appellant only had \$960 per month to live on and had to suffer in a tiny room as they were only allowed \$450 for rent. The appellant says the rest of the living allowance was spent on food, etc., and they had to neglect an excessive number of things that they would otherwise have if receiving both DA and the living allowance.

The appellant argues that the government “is denying the fact that they cut me off completely.” The appellant expressed feeling “intentionally financially victimized” for going to school and trying to improve their situation as a permanently disabled person. The appellant views the government’s actions in “cutting them off”; not admitting the length of time the appellant was underpaid; and not paying the benefits the appellant was entitled to as racist, and discriminatory against a disabled person. The appellant says that “by financially victimizing me, I was made vulnerable to racist attacks and violence regularly.”

The appellant says they are responsible for a large debt and had to give up their phone and laptop because they could not recover from the longstanding hardship. The appellant said they were hoping to receive the remaining underpayment that is owed so that they could pay off debts and make a new start.

Ministry

Regarding the appellant’s request for backdated assistance for October and November 2015, the ministry’s position is that the appellant has an overpayment because the appellant received DA for those months in addition to a living allowance from the First Nation, but the living allowance was not exempt prior to December 1, 2015. The ministry submits that the living allowance for those two months must be treated as unearned income to be included in the net income calculation.

The ministry argues that an exemption for other educational costs could not be applied to the living allowance because there was no evidence to show that the appellant had paid tuition or other school fees from the living allowance. Furthermore, the appellant did not have childcare costs.

The ministry argues that the appellant must repay the government the Adjusted Overpayment Amount (\$1,812.42) because the appellant was not eligible for DA for the months of October and November 2015. The ministry explains that the appellant was not eligible for DA for those two months, because at that time the living allowance (\$985 per month) was higher than the appellant's DA rate of \$906.42.

The ministry acknowledges that it calculated the Initial Overpayment Amount (\$16,438.78) for the period August 2015-December 2017 based on the living allowance the appellant received from the First Nation. The ministry acknowledges that the Initial Overpayment Amount (\$16,438.78) was calculated incorrectly because the living allowance was exempt from December 1, 2015 forward when the legislation changed to exempt certain education funding such as scholarships. The ministry was satisfied that the living allowance from the First Nation met the exemption for a scholarship.

The ministry submits that it corrected the error by reducing the Initial Overpayment Amount (\$16,438.78) to the Adjusted Overpayment Amount (\$1,812.84) for the two months that were not exempt and repaying the appellant the Underpayment Amount (\$3,855) which had been incorrectly deducted from DA from January-May 2018. The ministry's position is that the appellant has no further underpayment because the ministry corrected its mistakes in 2019.

In response to the appellant's arguments that they were cut off assistance for long periods, the ministry submits that the only month the appellant did not receive assistance for was April 2016. In the reconsideration decision, the ministry approved backdated DA of \$906.42 for April 2016.

The ministry argues that the appellant received DA for every other month between October 2015 and December 2019, including the Underpayment Amount (\$3,855) that was repaid to the appellant in 2019. The ministry notes that the appellant received DA from June 2018 to December 2019 without any deductions for the living allowance. The ministry therefore argues that it cannot reconsider the appellant's request to not deduct the living allowance for any months between September 2015 and December 2019 because the ministry had not denied, discontinued, or reduced the appellant's DA given the correction that was made in 2019.

Analysis***Request for backdated assistance for October and November of 2015***

Under subsection 1(1)(q) of the EAPWDR, “unearned income” means any income that is not earned income, and includes money received from education or training allowances, grants, loans, bursaries or scholarships. The appellant described the living allowance as a scholarship and the panel therefore finds that the ministry was reasonable to treat the allowance as unearned income.

The deduction and exemption rules for income are set out in Schedule B of the EAPWDR. Schedule B specifies what deductions are allowed from income and what income is exempt for the purpose of the net income calculation. The ministry is required to perform the net income calculation under section 24 of the EAPWDR to determine the monthly entitlement for DA.

Prior to December 1, 2015, Schedule B did not include an exemption for scholarship funds. Subsection 1(a)(l) was added to Schedule B effective December 1, 2015, to exempt “from income...education and training allowances, grants, bursaries or scholarships, other than student financial assistance.” Student financial assistance meant funding that is provided under government student loans programs. Therefore, a scholarship from a First Nation could be exempted from the net income calculation because it is not considered government student aid.

Under the older and newer versions of the legislation, section 1(d) of Schedule B says that “all unearned income must be included” except the deductions permitted under section 6 and any income exempted under sections 7 and 8. The deductions in section 6 of Schedule B are for employment insurance and rental income from suites and thus do not apply to scholarship funds.

The exemptions under sections 7 and 8 of Schedule B also do not apply to scholarship funds: section 7 applies to “disability-related costs” and includes details about trust funds, mortgages and other financial instruments. Section 8 gives the minister discretion to exempt education related costs from unearned income but only when the student had daycare costs or costs for tuition, books, student fees, and transportation.

Panel's decision***Request for backdated assistance for October and November of 2015***

The panel finds that the ministry was reasonable to conclude that the appellant has an overpayment for October and November 2015 and is not eligible for backdated DA for these two months. The information from the First Nation (letter of November 20, 2017) confirms that the appellant received a living allowance of \$985 for each of these months.

Under section 11 of the EAPWDA and section 29 of the EAPWDR, the appellant was required to report any changes in income that may affect the eligibility for assistance. The appellant was required by the legislation to report any income received in a certain month by the 5th day of the following month. The appellant was also required to report the source of the income.

The ministry's evidence is that the appellant did not report the funds prior to the October and November assistance months, so the ministry issued DA of \$906.42 per month. The appellant called the ministry in August 2015 to advise that they were starting school and would receive a living allowance, but the documents confirming enrollment and the funding received were not submitted the ministry until March 2016.

The late reporting resulted in the Original Overpayment Amount (\$16,438.78) because the EAPWDR that was in force prior to December 1, 2015, did not permit an exemption for scholarship funds. The panel finds that the ministry reasonably applied the legislation because subsection 1(a)(l) of EAPWDR Schedule B, which exempts scholarship funds "from income" was not in force until December 1, 2015.

For the reasons that follow, the panel finds that the ministry reasonably determined that the deductions, and exemptions from unearned income that are permitted under sections 6, 7, and 8 of EAPWDR Schedule B, do not apply to the appellant's living allowance.

The living allowance was scholarship money, not employment insurance, rental income, or a disability related cost as described in sections 6 and 7 of Schedule B. Furthermore, there was insufficient evidence to show that the appellant had any eligible education-related costs that could be exempted from the living allowance under section 8 of EAPWDR Schedule B. The ministry notes in the record that the First Nation paid the appellant's tuition and school fees, and the appellant did not have childcare costs while in school.

The panel finds that the ministry reasonably applied the legislation in finding that the appellant is liable to repay the government the Adjusted Overpayment Amount (\$1812.84). Sections 18 and 19 of the EAPWDA govern overpayments. Section 18 states that if an overpayment of assistance is issued, the recipient is "liable to repay to the government the amount or value of the overpayment provided for that period." The amount to be repaid

is not appealable under section 18(2) of the EAPWDA, and under section 19(1), the amount to be repaid may be deducted from any subsequent disability assistance.

The appellant argues they should not have to repay anything because they were cut off assistance for many months and the government owes an underpayment. However, the ministry's *Overpayment chart*, included in the record, shows an overpayment of \$906.42 for both October and November 2015. The chart is consistent with the ministry's evidence that the appellant was issued DA for these months.

The panel finds that the ministry's application of the legislation was reasonable in the circumstances of the appellant. The appellant received two months of DA that they were not eligible for. The appellant therefore has an overpayment for October and November 2015 and is required to repay the government \$1,812.84.

Analysis and panel's decision

Request to not deduct living allowance from disability assistance

The panel finds that the ministry was reasonable in determining that it is unable to conduct a reconsideration of the decision to deduct the living allowance from the appellant's DA for August and September 2015 and December 2015-December 2019 (excluding April 2016). Under the Reconsideration and Appeal Rights in section 16 of the EAPWDA in relation to DA, the minister can only reconsider a decision that results in a refusal to provide assistance; the discontinuance of assistance; or a reduction in the amount of assistance.

The ministry's evidence is that the appellant received DA for every month that they were in school, except for April 2016. The ministry says that the appellant will receive backdated assistance for April 2016 because the appellant was eligible for that month as well. The ministry therefore maintains that it did not make a decision to refuse, discontinue, or reduce the appellant's assistance.

The ministry acknowledges that it did reduce the appellant's DA for some of the months in which the appellant was eligible for both the living allowance from her First Nation, and assistance from the ministry. However, the evidence is that the ministry identified and corrected its error and paid the appellant the Underpayment Amount (\$3,855) for the period January-May 2018 in which the living allowance was incorrectly deducted from DA.

While the ministry's *Overpayment Chart* shows a reduced amount of DA or \$0 eligibility for many months between August 2015 and December 2017 with the Initial Overpayment Amount (\$16,438.78), the ministry's communications to the appellant confirm that the

Initial Overpayment (\$16,439.78) was reduced to the Adjusted Overpayment Amount (\$1,812.84). The ministry explained that the appellant was eligible for DA for all of the months the appellant was in school with the exception of October and November 2015.

The appellant maintains that they have not been paid DA for the summer months when not in school, or for one full school year (an 8-month period) because the ministry investigator “back charged” these periods after initially paying the appellant the benefit. The appellant says the ministry is refusing to admit that they have not paid the full entitlement. The appellant feels that they were lied to and treated in a racist and discriminatory manner.

The panel notes that it does not have the authority to consider human rights issues such as racism or discrimination. Section 19.1(f) of the *Employment and Assistance Act* says that the Tribunal is “without jurisdiction to apply the Human Rights Code.” As such, the panel can neither comment on or rule on the appellant’s allegations of racism or discrimination.

The appellant says that they are owed thousands more than \$3,855 for backdated assistance, but the appellant has not provided any bank statements to show that the ministry had deducted more than \$3,855 from DA. The ministry notes that the appellant provided bank statements that showed the living allowance deposited to the appellant’s account but unfortunately there are no copies of bank statements in the record that show deposits for DA.

The appellant did not submit any bank statements or their own accounting of their version of events. Based on the ministry’s communications about DA having been paid, and without an accounting of what DA the appellant alleges has not been paid, the panel finds that the appellant received all the assistance they were entitled to. As a result, the panel finds that the ministry has not made a decision that resulted in a refusal, discontinuance, or reduction in DA. The ministry’s decision to not conduct a reconsideration of its decision to deduct the living allowance was a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

The panel finds that the ministry’s decision was a reasonable application of the legislation because the appellant’s living allowance was not exempt from DA in October and November 2015. The ministry has corrected its errors for other months that the appellant was in school, and on a balance of probabilities, the appellant has been paid all the assistance they were entitled to. The panel confirms the reconsideration decision. The appellant is not successful in their appeal.

Schedule – Relevant Legislation

EAPWDA

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.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Part 3 — Appeals

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

(b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;

(c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;

(d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of

- (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

Part 4 — General Provisions

Overpayments

- 18** (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Liability for and recovery of debts under Act

- 19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
 - (b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

EAPWDR

Part 1 — Interpretation

Definitions

1 (1) In this regulation:

"student financial assistance" means funding provided to students under

- (a) the British Columbia Student Assistance Program,
- (b) the *Canada Student Financial Assistance Act*, or
- (c) a similar program provided by another province or jurisdiction;

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

- (q) education or training allowances, grants, loans, bursaries or scholarships;

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.

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);

And

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

(ii) change in income received by the family unit and the source of that income;

Schedule A

Disability Assistance Rates

(section 24 (a))

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	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	983.50

* Panel note: the version of the legislation that was in force prior to December 1, 2015 had \$531.42 in Column 3.

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

(2) The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

(a) the minimum set out in the following table for the family unit, and

(b) the lesser of

(i) the family unit's actual shelter costs, and

(ii) the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375

Schedule B

Net Income Calculation (*section 24 (b)*)

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24(b) [*amount of disability assistance*] of this regulation,

(a) the following are exempt from income:

(l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

* *Panel note, the version of the legislation that was in force prior to December 1, 2015 omitted subsection 1(a)(l).*

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

* *Panel note: the version of the legislation that was in force prior to Dec. 1, 2015 omitted section 3.*

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Exemptions - unearned income

7 (1) The following unearned income is exempt:... [*panel note: not applicable to the decision under appeal*]

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

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

Part H – Signatures

Print Name
Margaret Koren

Signature of Chair

Date (Year/Month/Day)
2023/02/13

Print Name
Daniel Chow

Signature of Member

Date (Year/Month/Day)
2023/02/13

Print Name
Greg Allen

Signature of Member

Date (Year/Month/Day)
2023/02/13