

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated June 17, 2024, in which the Ministry determined that the Appellant was ineligible for the disability assistance that he received between November 2021 and February 2023, resulting in an overpayment of \$14,007.00 (the “**Overpayment**”). As a result, the Appellant is liable to repay the Overpayment.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – sections 11, 18 and 19
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – sections 1, 9, 24, and 29

Note: The full text is available after the Decision.

Part E – Summary of Facts

The Appellant's hearing was held in person on July 15, 2024. A Ministry representative attended the hearing by telephone. The Appellant did not attend the hearing.

(a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- The Appellant is the sole recipient of disability assistance and has been in receipt of disability assistance from the Ministry since September 1, 2021.
- On November 18, 2022, the Ministry received information indicating that the Appellant was receiving financial assistance from another province, Quebec. The Ministry sent a fax to Quebec's Ministry of Labor, Employment and Social Solidarity ("**MTESS**") requesting verification of whether the Appellant had an open assistance file in that province.
- On November 22, 2022, the Ministry received a faxed response from the MTESS advising the following:
 - The Appellant's welfare file in Quebec would be closed.
 - The Appellant's benefits payment from Quebec would be for \$1,400.00 for December 2022.
 - The Appellant's last benefits payment would be directly deposited into his bank account. MTESS also provided the Ministry with the last three digits of the Appellant's bank account number.
- On November 24, 2022, the Ministry spoke with an MTESS investigator who confirmed the information contained in MTESS' fax of November 22, 2024. The MTESS investigator advised that the Appellant's last benefits payment would be made on December 1, 2022, and his file would likely be closed at the end of December 2022 or in January 2023. The Ministry requested verification of the benefits the Appellant received from MTESS since he opened a file in British Columbia.
- On November 24, 2022, the Ministry received another fax from the MTESS showing that the Appellant had received the following amounts of financial assistance from Quebec on the following dates:
 - September 1, 2021: \$1,111.00;
 - October 1, 2021: \$1,111.00;
 - November 1, 2021: \$1,111.00;
 - December 1, 2021: \$1,111.00;
 - December 30, 2021: \$1,138.00;

- February 1, 2022: \$1,138.00;
 - March 1, 2022: \$1,138.00;
 - April 1, 2022: \$1,138.00;
 - April 27, 2022: \$1,871.00;
 - April 29, 2022: \$1,138.00;
 - June 1, 2022: \$1,400.00;
 - June 30, 2022: \$1,400.00;
 - August 1, 2022: \$1,400.00;
 - September 1, 2022: \$1,400.00;
 - September 29, 2022: \$1,400.00;
 - November 1, 2022: \$1,400.00; and
 - December 1, 2022: \$1,400.00.
- On December 16, 2022, the Ministry sent the Appellant a message using the Appellant's My Self Serve ("**MSS**") account wherein it requested documentation to verify the Appellant's eligibility for disability assistance. The Ministry asked for other information including a bank profile and a 90-day transaction history for any bank accounts identified by the MTESS.
 - On January 11, 2023, the Ministry spoke with the Appellant and advised that the information he provided indicated that he had been receiving financial assistance from the province of Quebec at the same time he was receiving disability assistance from the Ministry. The Appellant advised that he had spoken with the MTESS in the last 30 days and was told that he had to decide where to collect assistance, and that his file in Quebec had been closed. The Ministry advised the Appellant that he could not collect assistance in multiple provinces at the same time. The Ministry explained that, as per the information received from the MTESS, the Appellant received an overpayment of disability assistance. The Ministry advised the Appellant to submit a bank profile and statements from his bank to confirm the financial assistance deposits he received from Quebec.
 - On January 12, 2023, the Appellant sent a message to the Ministry using his MSS account wherein he advised that the bank account that he used to receive assistance from MTESS was closed. The Ministry requested verification that the Appellant's bank account was closed. The Ministry further advised that, if the Appellant's accounts had recently been closed, he was to provide bank statements for the period between October 14, 2022 until the date the account was closed.
 - On January 23, 2023, the Ministry spoke with the Appellant who advised that he had

closed all of his accounts except one, and that account had a balance of \$0.00. He stated that the accounts he previously used had were only open for six (6) months, and that he closed them because the Quebec government kept depositing funds into them. The Ministry advised the Appellant to submit bank statements from his bank to verify the financial assistance deposits he had received from Quebec. The Ministry explained that it would be pursuing an overpayment due to the Appellant's collecting assistance in both Quebec and British Columbia at the same time during the period of September 2021 to December 2022.

- On January 25, 2023, the Appellant submitted bank statements showing a transaction history from June 5, 2022 to December 5, 2022. These statements showed the following financial assistance deposits from Quebec:
 - \$1,400.00 received on June 30, 2022;
 - \$1,400.00 received on August 1, 2022;
 - \$1,400.00 received on September 1, 2022;
 - \$1,400.00 received on September 29, 2022;
 - \$1,400.00 received on November 1, 2022; and
 - \$1,400.00 received on December 1, 2022.
- On April 29, 2024, the Ministry sent the Appellant a MSS message with the following attachments:
 - A letter advising that the Ministry was conducting a review of the Appellant's file and, based on this review, believed that an overpayment totaling \$17,861.50 may have occurred. Before applying the overpayment to his file, the Ministry requested information from the Appellant.
 - An Overpayment Chart showing how the Ministry calculated the overpayment of \$17,861.50 received between September 2021 and December 2022.
- On May 23, 2024, the Ministry determined that the Appellant received an overpayment of assistance given the income assistance benefits he received from the province of Quebec during the period between April 2021 and December 2022. The Ministry sent the Appellant a MSS message with the following attachments:
 - A letter enclosing the Ministry's decision requiring the Appellant to repay an overpayment which accounted for funds he was not eligible to receive.
 - A copy of an Overpayment Chart.
 - A Reconsideration and Appeals brochure advising the Appellant of his right to Request a Reconsideration of the Ministry's decision.
- On June 3, 2024, the Appellant submitted his Request for Reconsideration. He

explained the following:

- He did not receive any Overpayment.
 - He did not receive any benefits from Quebec, regardless of what information the MTESS provided to the Ministry.
 - His social insurance number ("**SIN**") was fraudulently used to receive a housing subsidy; as a result, more than \$15,000.00 was stolen using his SIN.
 - The revenue agencies for Canada and Quebec were aware of the Appellant's situation; as a result, his file was flagged with the "identity protection department".
 - The Appellant opened a file with Service Canada's fraud department in New Brunswick.
 - The Ministry of Finance of Quebec owes the Appellant more than \$15,000.00 arising from a human rights settlement; however, the Appellant has yet to receive these funds.
 - The Appellant has no income.
 - He disputed every Notice of Assessment issued by the revenue agencies for Canada and Quebec because the info reported was not accurate; as a result, he made several complaints to the privacy commissions of Canada and Quebec.
 - The Ministry did not ask the Appellant to provide copies of the police reports he filed between 2015 and 2024. The Ministry did not ask the Appellant to provide a file number for each file he opened to sue the government (for tax appeal and other reasons).
- On June 17, 2024, the Ministry issued its Reconsideration Decision wherein it upheld the Overpayment for the following reasons:

"The money you received from Quebec financial assistance during the period of September 2021 to December 2022 is considered unearned income with no exemption under Section 1 of the EAPWD Regulation, and therefore must be included in your net income calculation..."

[Based on information from obtained from MTESS] the ministry is satisfied that you received Quebec financial assistance during the period from September 2021 to December 2022. Furthermore, the ministry is satisfied that the information received from MTESS on November 24, 2022 regarding the amounts of Quebec financial assistance you received, and the dates upon which you received these amounts, is accurate.

The ministry finds that you failed to declare your unearned income from Quebec

financial assistance each month for the period of September 2021 to December 2022 as required under Section 11 of the EAPWD Act and Section 29 of the EAPWD Regulation. As such, you received an overpayment of assistance for which you were not eligible to receive. The ministry has included a chart indicating how the amount of your overpayment has been calculated:

Month of income received	Amount of Quebec assistance received	Assistance month affected by income	Amount of assistance you received	Amount of assistance you were eligible to receive	Amount of overpayment
September 2021	\$1,111.00	November 2021	\$560.00	\$0	\$560.00
October 2021	\$1,111.00	December 2021	\$1,070.50 (includes \$35 Christmas supplement)	\$0	\$1,070.50
November 2021	\$1,111.00	January 2022	\$1,087.50	\$0	\$1,087.50
December 2021	\$2,249.00 (\$1,111.00 + \$1,138.00)	February 2022	\$1,035.50	\$0	\$1,035.50
January 2022	\$0	March 2022	\$1,035.50	\$1,035.50	\$0
February 2022	\$1,138.00	April 2022	\$1,445.50	\$307.50	\$1,138.00
March 2022	\$1,138.00	May 2022	\$1,315.50	\$177.50	\$1,138.00
April 2022	\$4,147.00 (\$1,138.00 + \$1,871.00 + \$1,138.00)	June 2022	\$1,315.50	\$0	\$1,315.50
May 2022	\$0	July 2022	\$1,315.50	\$1,315.50	\$0
June 2022	\$2,800.00 (\$1,400.00 + \$1,400.00)	August 2022	\$1,315.50	\$0	\$1,315.50
July 2022	\$0	September 2022	\$1,315.50	\$1,315.50	\$0
August 2022	\$1,400.00	October 2022	\$1,315.50	\$0	\$1,315.50
September 2022	\$2,800.00 (\$1,400.00 + \$1,400.00)	November 2022	\$1,315.50	\$0	\$1,315.50
October 2022	\$0	December 2022	\$1,350.50 (includes \$35 Christmas supplement)	\$1,350.50	\$0
November 2022	\$1,400.00	January 2023	\$1,315.50	\$0	\$1,315.50
December 2022	\$1,400.00	February 2023	\$1,615.50	\$215.50	\$1,400.00
Totals	\$21,805.00		\$19,724.50	\$5,717.50	\$14,007.00

Notes: the amounts of assistance received, as indicated in the table above, include your rates of support and shelter determined under Schedule A (with your minimum shelter allowance of \$75 beginning in the May 2022 benefit month, going up to a maximum shelter allowance of \$375 in February 2023), as well as a \$52 bus pass supplement beginning in December 2021, and a \$205 monthly nutritional supplement beginning in April 2022. You received two \$52 bus pass supplements in December 2021 (including a supplement for November 2021 paid in lieu), and two \$205 monthly nutritional supplements in the April 2022 benefit month (including a supplement for March 2022 paid in lieu).

The total amount of assistance that you were overpaid for the benefit months between November 2022 to February 2023 was \$14,007.50.

Therefore, in accordance with Section 18 of the EAPWD Act, you are required to repay the government \$14,007.50 because you were not eligible for it. Further, in accordance with Section 19 of the EAPWD Act you are liable to repay the debt because you were a recipient in the family unit at the time the overpayment occurred, and the repayment may be deducted from any subsequent disability assistance."

(b) The Appeal

On June 22, 2024, the Appellant filed a Notice of Appeal in which he wrote the following:

" Not only there is not overpayment but there is a 6000\$ missing for my shelter allowance.

I was living in BC for the specified period of time. As a bc resident I am entitled to receive bc in this province.

I have a bc identification card and a bc address."

The Appellant's in person hearing was held on July 15, 2024. However, the Appellant did not attend the hearing. Despite the Appellant's non-attendance, the Panel determined to proceed with the hearing in the Appellant's absence. In making its decision to proceed with the hearing, the Panel noted:

- the Appellant had requested an in-person hearing;
- this Tribunal issued an Appeal Record to the Appellant by registered mail as requested by him which confirmed the Appellant's hearing date, time and places which complies with sections 2.3 and 4.2 of the Tribunal's practices and procedures;
- as the Appeal Record was issued to the Appellant at the address provided by him, it is deemed to be delivered; the Appellant did not respond to numerous telephone calls or voicemails left by Tribunal staff as it relates to this hearing;
- the Appellant did not consent to other forms of communication that would have enhanced this Tribunal's ability to contact him; and
- this Tribunal had otherwise fulfilled its statutory requirements owed to the Appellant.

In all, the Panel finds that the above noted factors warrant that this appeal hearing should proceed in the Appellant's absence which is permitted by section 86 of the Employment and Assistance Regulation. As a result, the only submissions made to the Panel were from the Ministry.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. Upon questioning from the Panel, the Ministry advised:

- Where an individual receives benefits from two (2) provinces, it is normal course for the province in which the person resides to pursue the individual for an overpayment. In this case, as the Appellant currently resides in British Columbia, it is the Ministry (and not the province of Quebec) who must pursue the Appellant for the Overpayment.
- As it related the Appellant's allegations of fraud, the Ministry confirmed that the benefits he received from the province of Quebec went directly into Appellant's bank account, not another person's bank account. As a result, the Appellant's fraud allegations were not substantiated.

The Panel determined that the Ministry's submissions were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the Reconsideration Decision in which the Ministry determined that the Appellant was ineligible for disability assistance that he received for the period between November 2021 and February 2023, resulting in the Overpayment which the Appellant is liable to repay.

Appellant's Position

On review of the Notice of Appeal, the Appellant denies that he received the Overpayment. Rather, he is the victim of fraud.

Ministry's Position

The Ministry maintains that the Appellant is ineligible for disability assistance for the reasons stated in the Reconsideration Decision; as a result, its finding regarding the Overpayment should stand.

Panel Decision

Section 11 of the *Act* provides that, for an individual to be eligible for disability assistance, they must submit a form and notify the Ministry of any change in circumstances or information that may affect their eligibility for disability assistance.

Section 18 of the *Act* provides that, if disability assistance is provided to an individual that is not eligible for it, the recipient for which the overpayment is provided is liable to repay to the government the amount or value of the overpayment provided for that period.

Under section 19 of the *Act*, the amount that a person is liable to repay may be deducted from any subsequent disability assistance.

Under section 1 of the Regulation, "unearned income" means any income that is not earned income, and includes, financial assistance provided by another province or jurisdiction.

As set out in Section 9(2) of the Regulation, a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

As set out in Section 24 of the Regulation, a person's income (calculated under Schedule B of the Regulation), must be deducted from their disability assistance (calculated under Schedule A of the Regulation).

Section 29 of the Regulation requires a recipient of disability assistance to report any change in circumstances or information that may affect their eligibility for disability on the 5th day of each month.

Sections 2 and 4 of Schedule A of the Regulation specify the maximum allowable rate of support and shelter for the size of the family unit.

Schedule B of the Regulation clarifies how net income is calculated for the purposes of determining eligibility for disability assistance. In short, all unearned income must be included, except permitted deductions and any income exemptions.

On review of the available evidence, the Panel finds that the Appellant received financial assistance from the province of Quebec between September 2021 and December 2022 which impacted the amount of disability assistance he was entitled to receive from the Ministry between November 2021 and February 2023. To the extent that the Appellant submits that he was a victim of fraud and did not actually receive financial assistance from Quebec between September 2021 and December 2022, the Panel finds that there is no evidence to support such an allegation. Rather, the Ministry undertook efforts to confirm the Appellant's receipt of financial assistance from the province of Quebec including communicating with the MTESS and reviewing the Appellant's banking records which confirmed that the MTESS deposited financial assistance into the Appellant's bank account directly. As a result, it cannot be said that the Appellant did not receive financial assistance from the province of Quebec.

Pursuant to section 1 of the Regulation, unearned income is defined as including financial assistance provided by another province. In the case of the Appellant, the Panel finds that the Appellant did receive financial assistance from Quebec and, as a result, was required to report such assistance to the Ministry as required by section 29 of the Regulation; however, the Appellant did not do so.

Pursuant to section 9(2) of the Regulation, the Panel finds that, for those months where the Appellant's income received from the province of Quebec is equal or exceeds the amount of disability assistance he was entitled by virtue of the Regulation, he was not entitled to receive disability assistance from the Ministry for those months in which the financial assistance he received from the province of Quebec equalled or exceeded the amount of disability assistance for which the Ministry determined that Appellant was otherwise eligible.

Given the above, the Panel finds that Appellant did not report his unearned income from Quebec for the period between September 2021 to December 2022 which impacted the disability assistance that he was eligible to receive between November 2021 and February 2023. In other words, the Panel finds that the Appellant did not comply with section 11 of the *Act* and section 29 of the Regulation. As a result of the foregoing, the Panel find that the Appellant received an overpayment of disability assistance and, therefore, is liable to repay province of British Columbia in the amount of \$14,007.00.

Conclusion

The Panel finds that the Ministry's decision to find that the Appellant was ineligible for the disability assistance between November 2021 and February 2023, and liable for repayment of the Overpayment was a reasonable application of the legislation in the circumstances.

The Appellant is not successful on appeal.

Legislation

Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41

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.

Overpayments

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

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

Liability for and recovery of debts under Act

19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b)deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2)Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3)An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4)A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002

Definitions

1 (1)In this regulation:

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

- (a)money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b)cooperative associations;
- (c)war disability pensions, military pensions and war veterans' allowances;
- (d)insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e)superannuation benefits;
- (f)any type or class of [Canada Pension Plan](#) benefits;
- (g)employment insurance;
- (h)union or lodge benefits;
- (i)financial assistance provided under the [Employment and Assistance Act](#) or provided by another province or jurisdiction;

Limits on income

- 9** (1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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);
 - (ii) a family unit receives earned income as set out in paragraph (b) (vi);
 - (iii) a family unit receives unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) as set out in paragraph (b) (vii), and
 - (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;

(vii) the amount of unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) received by the family unit in the calendar month.

[en. B.C. Reg. 335/2007; am. B.C. Regs. 85/2012, Sch. 2, [s. 4](#); 332/2012, s. 1; 226/2014, s. 1; 151/2018, App. 2, [s. 9](#); 270/2019, App. 2, [s. 5](#); 268/2020, App. 2, [s. 2](#).]

2024-0242

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

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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2024/07/15

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2024/07/15

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2024/07/15