

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of March 6<sup>th</sup>, 2012 wherein the ministry determined that the appellant failed to report changes to her income under section 11(1) Employment and Assistance for Persons with Disabilities Act (EAPWDA) which affected her eligibility for Income Assistance and resulted in a sanction, under section 28.1(a) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), being applied on the appellant's file in compliance with section 14.1(2) EAPWDA. The sanction was \$25 for 3 calendar months.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 10, 11(1), 14.1  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 29, 28.1

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included:

- Request for reconsideration dated February 9<sup>th</sup>, 2012
- Letter dated January 12<sup>th</sup>, 2012 from ministry to the appellant outlining the sanction.

On December 5<sup>th</sup>, 2005 the appellant moved into her current residence as a tenant. In September 2008 the appellant purchased a 25% ownership in the home and in June 2010 increased that interest to 50%. The home is a two-level with the lower level being a self-contained suite. The self-contained suite was rented between October 2008 and March 2010 and the appellant did not report receipt of the rental income. As a result of a file review the ministry determined the appellant was not eligible for disability assistance due to the receipt of her combined income from the rental of the suite and CPP which was in excess of the support and shelter allowances. In December 2011 the ministry advised the appellant she had received an overpayment of assistance and the overpayment would have to be repaid to the ministry. On January 12<sup>th</sup>, 2012 the ministry advised the appellant a reduction sanction of \$25 a month for 3 calendar months had been applied to her file for failing to completely and accurately report income. On February 15<sup>th</sup>, 2012 a Reconsideration Decision confirmed the appellant had not reported rental income to the ministry and that the appellant had received an overpayment of disability assistance which must be repaid to the ministry.

At the hearing the appellant testified there was no "intent" on her part not to comply with EAPWD Regulation and that the sanction was applied to her file because the ministry believed the income from the rental suite in a home co-owned by her and her business partner partly (50%) belonged to her. The appellant testified the rental income belonged to her partner as he owned the rental suite. The appellant believed that rental income was considered "passive" income and did not have to be reported to the ministry as income. The appellant testified that she deposited the rental money into the bank and it was for maintenance and repairs and to cover her partner's ½ of the mortgage payment. The appellant testified it was not until she met with the IO in November did she (they) realize the bank account was only in her name, a situation that was rectified immediately. The appellant testified she and her business partner relied on their lawyer and the bank to make sure everything was set up properly.

At the hearing the ministry relied on the facts in the reconsideration.

The panel finds the appellant's testimony is in support of the record and information that was before the ministry at the time of reconsideration and is admissible under section 22(4) Employment and Assistance Act.

## PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision of March 6<sup>th</sup>, 2012 wherein the ministry determined that the appellant failed to report changes to her income under section 11(1) Employment and Assistance for Persons with Disabilities Act (EAPWDA) that affected her eligibility for Income Assistance which resulted in a sanction under section 28.1(a) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) being applied on the appellant's file in compliance with section 14.1(2) EAPWDA. The sanction was \$25 for 3 calendar months.

The following legislation was considered:

### **Employment and Assistance for Persons with Disabilities Act (EAPWDA)**

#### **Information and verification**

##### **Section 10**

(1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

#### **Reporting obligations**

Section 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 prescribed by the minister, and
  - (ii) contains the prescribed information, and (B.C. Reg. 265/2002)
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

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

**Consequences for providing inaccurate or incomplete information**

Section 14.1 (1) The minister may take action under subsection (2) if the minister determines that

- (a) disability assistance, hardship assistance or a supplement was provided to or for a family unit that was not eligible for it,
- (b) the disability assistance, hardship assistance or supplement was provided to or for the family unit either
  - (i) on the basis of inaccurate or incomplete information provided by the applicant or recipient
    - (A) under section 10 (1) (e) [*information and verification*], or (B) in a report under section 11 (1) [*reporting obligations*], or
    - (ii) because the recipient failed to report as required under section 11 (1), and
  - (c) the minister's opinion, the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister.
- (2) In the circumstances described in subsection (1), the minister may reduce the disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.
- (3) The periods prescribed for the purposes of subsection (2) may vary with the number of determinations made under subsection (1) in relation to a family unit.
- (4) If a family unit that is subject to a reduction under section 15.1 of the *Employment and Assistance Act* qualifies for disability assistance or hardship assistance under this Act before the period prescribed for the purposes of section 15.1 (2) of that Act expires, the reduction is deemed to have been imposed under subsection (2) of this section. (B.C. Reg. 193/2006)

**Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)****Consequences for providing inaccurate or incomplete information**

Section 28.1

If the minister determines under section 14.1 (1) of the Act that the minister may take action under section 14.1 (2) of the Act in relation to a family unit, the disability assistance or hardship assistance provided to or for the family unit may be reduced by \$25 for

- (a) a first determination, for the next 3 calendar months for which disability assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month
  - (i) following the calendar month in which the minister made the determination, and
  - (ii) for which disability assistance or hardship assistance is provided to or for the family unit,

**Monthly reporting requirement**

Section 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 there is a change that is listed on paragraph (b), and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:
  - (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.

The ministry stated that under section 11(1) EAPWDA a person is required to report any changes to circumstances affecting eligibility and within the time frame specified within the EAPWDR and in the form prescribed by the minister, section 29 EAPWDR. The ministry stated that under section 14.1(1) EAPWDA when a person receives assistance when they were not eligible due to incomplete or inaccurate reporting they may be subject to a sanction as set out in section 14.1(2) EAPWDA. The ministry argued that the appellant did not report rental income that she claimed did not belong to her but was deposited into a bank account in her name and one that only she had access. The ministry argued the appellant's combined income resulted in her

receiving income assistance (overpayment) when she was not eligible. The ministry argued that on February 15<sup>th</sup> 2012 a Reconsideration decision confirmed the appellant received disability assistance when she was not eligible and that the appellant is required to repay the overpayment to the ministry. The ministry determined that since the appellant failed to report the changes to her income the ministry properly applied a sanction to the appellant's file to reduce the amount of disability or hardship assistance to or for a family unit by \$25 for the next 3 calendar months as stated under section 28.1(a) EAPWDR in compliance with section 14.1(2) EAPWDA. The ministry argued the appellant knew to report her income earned from working although it was considered exempt and knew that she could earn up to \$500 a month without it affecting her assistance so did not accept the appellant's position that rental income was considered, in the appellant's opinion, "passive" and she did not have to report the rental income. The ministry stated there is no definition for "passive" income.

The appellant argued that she did not report the rental income as she did not believe the rental income belonged to her, that the rental unit belonged to the co-owner of the property and she believed that rental income was considered passive income. The appellant argued there must be "intent" before a law is broken and there was no intent on her part not to comply with the EAWPD Act or Regulation in reporting her income; that the fact the "house account" was only in her name was simply "a mistake" in that the co-owner of the property did not attend the bank and sign the signature card so the account reverted back into her name only. The appellant argued the IO was insensitive and intimidating toward her and aggressive in making his determination (imposing the sanction) without having all the facts. The appellant argued that when she met with the IO in November 2011 he informed her of the overpayment situation; this was again reviewed in December 2011 when he reviewed her additional expenses but there was never any mention of a sanction. The appellant argued that in January 2012 she received a letter advising her of the revised overpayment figure and that a sanction was being placed on her file. The appellant argued that section 14.1(2) EAPWDR states a reduction (sanction) "may" be applied and since there was no "intent" on her part to not comply with the law and that there was no "due process" by the ministry in making their decision to levy a sanction, the panel should dismiss the sanction that was placed on her file as she considers it as punitive and not corrective.

Section 11 EAPWDA and section 14.1 EAPWDR support the ministry's position that for a family unit to be eligible to disability or hardship assistance the minister must be notified of any change in circumstances or information and that failing to do so may affect the eligibility of the family unit and may result in consequences for providing inaccurate or incomplete information.

The panel finds that the appellant failed to notify the ministry of the change in her income between October 2008 and March 2010 that the ministry's decision to reduce the disability or hardship assistance provided for the prescribed amount and for the prescribed time was reasonable. The panel finds the ministry's decision to reduce the amount of the appellant's disability assistance or hardship assistance by \$25 a month or 3 calendar months was in compliance with section 28.1(a) EAPWDR.

The Panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and therefore confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.