APPEAL #

PART C – Decision under Appeal

The decision being appealed is the Ministry's April 13, 2012 reconsideration decision denying the Appellant disability assistance because the Appellant and his wife failed to pursue income in the form of child maintenance payments owing to his wife under a court order and which, in the Ministry's opinion, would enable him to be completely or partially independent of disability assistance, as required by section 13 of the Employment and Assistance for Persons with Disabilities Act and section 27 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWD) Section 13.

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR) Section 27.

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PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from Ministry files indicating that:
   - The Appellant has Persons with Disabilities designation but is not currently receiving disability assistance.
   - In November 2007 the Appellant's wife signed an Assignment of Maintenance Rights (AOMR) giving the Ministry legal authority to pursue child maintenance payments on her behalf.
   - In April 2008 the Supreme Court ordered the wife's ex-spouse to pay her monthly child maintenance and in November 2008 the wife's income assistance file was closed temporarily. A copy of the first page of the court order is in the Ministry record.
   - In December 2011 the Appellant's and his wife's income assistance file was converted to Medical Services Only status because his wife was receiving arrears of family maintenance payments exceeding ministry rates for assistance.
   - January 11, 2012 the Appellant was advised that his file had been closed and he was not eligible for Medical Services Only (MSO) status because the household monthly income was from child maintenance.
   - On January 18, 2012 the Appellant asked that the MSO be reinstated because the maintenance amount would be changing. The Appellant's advocate stated that the amount of child maintenance would be changing because the father was asking for the amount to be lowered. The Ministry worker explained that the Appellant had to access the maintenance income. Having the maintenance amount lowered was the client's decision but the Ministry would look at that as disposing of assets/income and it would not mean that the Ministry would provide income assistance benefits or MSO.
   - The Ministry assistance worker noted that it was his/her opinion that "the client didn't understand. Client seems to believe that if they lower the maintenance income amount then the clients would receive income assistance benefits."
   - On January 19, 2012 the Ministry assistance worker called the Appellant and his advocate, confirming that the Family Maintenance Enforcement Program (FMEP) maintenance income received by the wife means they are ineligible for income assistance due to income excess.
   - On January 19, 2012 in a call from the Appellant and his advocate the assistance worker again confirmed the information previously provided.
   - In a February 7, 2012 application intake interview with the Appellant and his wife, the wife advised the Ministry worker that she was no longer receiving child support maintenance. The children both went to live with their father in 2010. The father was paying what he owed from previous years, but now he wants her to pay. The Appellant's wife gave information about the new agreement and said she would provide a copy.
   - On February 10, 2012 the Appellant's wife gave the Ministry a copy of a signed and witnessed Child Support Agreement which had not been filed in court. The agreement dated January 24, 2012 states that the father of the wife's children owed her $21,368.79 and she owed the father $7,794.61 for the time her children were with the father. The father would apply the maintenance she owed to that point and up to February 2015 against his arrears so that by February 1, 2015 the father would owe $343.93. The Appellant's wife would then start paying child support for one of the children.
   - On February 14, 2012 the Ministry received legal advice that because the original 2008 child support order was issued by the Supreme Court, the January 2012 Child Support Agreement

was not valid until it too was filed in court. To have a Supreme Court order amended the parties have to apply to the court for a variance.

- On February 15, 2012 the Appellant was advised he was not eligible for income assistance because of the failure to accept income from child support back pay owed to the Appellant's wife.

2. Appellant's March 5, 2012 request for reconsideration with a statement signed by him and his wife. They wrote that they did not understand that they were disposing of or not accepting property. The Appellant's disability and his wife's medical conditions and medication impair their ability to comprehend the situation. They struggle to understand written or spoken information. They stated that the father of the children convinced the Appellant's wife that the January 2012 agreement was in her and her children's best interests. They also wrote that the father threatened her several times to sign the agreement. The father has a long history of abuse towards her. The Appellant's wife attached an August 4, 2004 victim statement to a judge in which she detailed incidents of verbal and physical abuse, and of threats against her. The Appellant and his wife also wrote that to understand the implications of the January 2012 agreement they consulted with the FMEP on January 24, 2012. They stated that they were told that if the wife and children's father wrote their own agreement it would sort out their money problems, but there was no mention of the impact on the Appellant's PWD income assistance. They indicated that they also consulted with a volunteer advocate who also did not make them aware of the implications of the January 2012 agreement on their PWD standing. They submitted that it was not their intention to refuse money or to dispose of assets. They did not understand the implications, they had been threatened by the father of the children, they were confused by conflicting advice and they thought they were doing the right thing.

For this appeal the Appellant's advocate provided the following information about the Appellant's circumstances. The Appellant and his wife had received income assistance before 2012. In February 2012 they reapplied for assistance but were denied. The Appellant's wife has two children from a previous relationship. She was awarded $759 a month for child maintenance in April 2008 by the B.C. Supreme Court. The advocate submitted a copy of that decision. The father did not make consistent payments and by 2012 he was in arrears for about $13,000. In January 2012 the children went to live with their father who then "began to aggressively coerce [the Appellant's wife] into "signing off" the arrears owing by stating that collection of the arrears was hurting the children as he would be unable to provide food or shelter for them." The advocate also wrote that the children's father claimed that any arrear payments would just have to go back to him as child support from the wife. The advocate submitted that the relationship between the two parents was historically abusive and violent, and the Appellant's wife often feels threatened. The children's father convinced the mother that because she would owe him support for at least the next three years they should call it even. He would not pay the arrears and she would not pay future maintenance. The mother signed the January 24, 2012 agreement to this effect, a copy of which the advocate submitted.

The advocate wrote that all of this information was sent to the Ministry. The advocate also attached copies of the following two letters dated May 23, 2012 which she wrote on the wife's behalf:
1. The advocate wrote to the Ministry's employment and income assistance section advising that the Appellant's wife has resumed trying to collect child maintenance arrears. In that letter, the advocate advises that the Appellant's wife did sign an "agreement" cancelling all the child maintenance arrears owing to her. However, the parties drafted the documents without legal advice and without provision for future changes to needs. The wife's position now is that the "agreement" should have no force and

she has contacted the FMEP to resume collections.
2. The advocate wrote to the FMEP enclosing a copy of the 2008 court order and advising that with the January 2012 "agreement" the enforcement program stopped collections and closed the file. The advocate indicated that she was writing at the request of the wife, that the "agreement" should not be recognized, that the wife did not seek legal advice before signing and she was not fully aware of the many consequences of the document. The wife asks that FMEP re-open her file and resume collections from the father.
The advocate also submitted a copy of a letter she wrote to the father advising that the wife would be resuming collections for outstanding child maintenance and suggesting that he seek legal advice.

The Panel finds that the additional information submitted by the advocate on behalf of the Appellant, except for the May 23, 2012 letters, relate to information that the Ministry had at the time of reconsideration regarding outstanding child maintenance arrears, the January 2012 agreement and the wife's explanations about that agreement. Therefore the Panel admits that information as being in support of the evidence that was before the Ministry at the time of reconsideration pursuant to section 22 (4) of the Employment and Assistance Act.

With respect to the information from the advocate that the Appellant's wife is now pursuing collection of maintenance, the Ministry submitted that this is new information submitted by the Appellant regarding a change of circumstances since the reconsideration decision was made. The Panel finds that at the time of reconsideration the Ministry had information that the Appellant's wife was not pursuing the maintenance payments owing, but it did not have information that she contacted the FMEP to resume collection of the maintenance. Therefore the Panel finds that information about resuming the collection of maintenance payments, including the 3 letters dated May 23, 2012 written by the advocate is new information not in support of the evidence that was before the Ministry at the time of reconsideration. Therefore the Panel does not admit this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The advocate also provided written argument on behalf of the Appellant which is set out in Part F- Reasons for the Panel Decision. The Ministry provided a submission for this appeal as a supplement to its reconsideration decision. That is also set out in Part F- Reasons for Panel Decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant disability assistance because the Appellant and his wife failed to pursue income in the form of child maintenance payments owing to his wife under a court order and which, in the Ministry's opinion, would enable him to be completely or partially independent of disability assistance, as required by section 13 of the EAPWDA and section 27 of the EAPWDR.

The following sections of the EAPWDA set out the requirements regarding accepting or disposing of property, income or assets which apply to this appeal:

Consequences of not accepting or disposing of property

13 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of disability assistance, hardship assistance or supplements;

(b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(3) In circumstances described in subsection (1), the minister may

(a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person ineligible for disability assistance or hardship assistance for the prescribed period.

The following sections of the EAPWDR set out the effects of failing to pursue income or assets applicable to this appeal:

Effect of failing to pursue or accept income or assets or of disposing of assets

27 (1) For the purposes of section 13 (3) (a) *[consequences of not accepting or disposing of property]* of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the amount of a reduction is $100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

(a) if the income, assets or other means of support are still available, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available, for one calendar month for each $2 000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 13 (3) (b) of the Act for disability assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the period of ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each $2 000 of the value of the forgone income, assets or other means of support.

In its reconsideration decision the Ministry reviewed the information it had regarding the Appellant's wife's child maintenance circumstances, noting that the wife obtained a court order in April 2008 for

child maintenance and that the wife gave the Ministry legal authority to pursue maintenance payments on her behalf. The Ministry also noted that the Appellant and his wife were advised more than once that choosing not to pursue maintenance payments would make them ineligible for disability assistance under section 13 of the EAPWDA. The Ministry determined that, by creating and signing the new Child Support Agreement of January 2012, the Appellant's wife did not pursue maintenance owing, and therefore she was refusing or failing to pursue income that she and the Appellant were entitled to. In the Ministry's opinion, the Appellant and his wife knowingly reduced the family maintenance payments in order to be eligible for income assistance. Therefore the Ministry found that the Appellant was ineligible for disability assistance under section 13.

For this appeal the Ministry further submitted that the Appellant advised the Ministry of his and his wife's intention to change the maintenance agreement to make them eligible for income assistance. The Ministry argued that by submitting the Child Support Agreement letter dated January 24, 2012, the Appellant and his wife confirmed their intention not to pursue the family maintenance arrears. The Ministry further submitted that at the time of reconsideration, the Appellant and his wife were not actively pursuing the collection of family maintenance arrears owing. The Appellant and his wife have now submitted new information regarding a change in circumstance since the reconsideration decision and the Ministry suggested that if circumstances have changed, the Appellant should reapply for assistance so a new eligibility decision can be rendered based on new circumstances.

For the reconsideration decision the Appellant submitted that it was not their intention to refuse money or to dispose of assets. They did not understand the implications of the January 2012 agreement. They were confused by conflicting advice and they thought they were doing the right thing. They also explained about how their disabilities affect their ability to understand written and verbal communications. For this appeal, the Appellant argued that the January 2012 agreement signed by his wife should be deemed invalid because it was signed without legal advice, was not formally witnessed and was signed under threats and coercion from the children's father. The Appellant also argued that his wife is doing what she can to have the collection of arrears enforced, although only recently. He submitted that she is doing this in great fear of her former spouse and with concern for the well-being of her children. The Appellant also submitted that his wife did not appreciate that the maintenance arrears were actually an asset or income, and therefore her actions should not be characterized as a failure to pursue such income. Although it may appear that he and his wife knowingly reduced the arrears with the intent to make them eligible for income assistance, the Appellant argued that is not the case. The Appellant submitted that the January 2012 maintenance agreement has a multitude of effects, the bulk of which were not understood by him or his wife. Also the Appellant argued that because his wife is currently trying to collect the arrears owing, he should become eligible for disability assistance as they are now pursing this income.

The Panel notes that in its reconsideration decision the Ministry considered all of the information provided by the Appellant and his wife regarding the status of the child maintenance payments, the January 2012 agreement and the information it had about its meetings and contacts with the Appellant and his wife. There is also evidence that the Appellant and his wife did not necessarily understand all of the effects of the January 2012 agreement, evidence from the Appellant and his wife and in the Ministry's files regarding its assistance worker's contact with them. However, the Panel finds that based on the evidence the Ministry reasonably determined that when the wife signed the January 2012 agreement she understood that the child maintenance payments would stop or be

reduced. Therefore the Ministry also reasonably determined that the Appellant and his wife failed to accept or pursue income or assets in the form of child maintenance payments as required by section 13 of the EAPWDA and section 27 of the EAPWDR.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments. Therefore the Panel confirms that decision.