

## PART C – Decision under Appeal

The decision under appeal is the Reconsideration decision of the Ministry of Social Development (the “Ministry”) dated August 29, 2012 (the “Reconsideration Decision”). The Reconsideration Decision denied the Appellant’s request that the Ministry waive the imposed \$25 monthly sanction (for three months) which was applied to the Appellant’s file pursuant to Section 28.1(a) of the Employment and Assistance with Persons with Disabilities Regulation (“EAPWD Regulation”). In particular, the Ministry found that the Appellant had submitted inaccurate/incomplete reporting of her income in not declaring family maintenance payments for the months of March and May, 2012 and had not provided evidence from her doctors to establish that she was medically unable to declare her income as required. As a result, assistance overpayments had been made.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWD Act”), Sections 11 and 14.1  
Employment and Assistance for Persons with Disabilities Regulation (“EAPWD Regulation”),  
Sections 28.1 and 29

## PART E – Summary of Facts

In denying the Appellant's request for reconsideration, the information before the Ministry included:

1. A completed Request for Reconsideration Form signed by the Appellant dated August 16, 2012 with attached letter of explanation. The Appellant stated in her reasons for request for reconsideration that she was aware that she had made a mistake in her inaccurate reporting of income but that she was going through a bad depression for the previous six months and had been attending at a victims abuse clinic. As a result of this bout of depression, her symptoms included:

- (a) Memory loss;
- (b) Disconnection from reality and a fear of leaving her home.

She concluded by stating that going to the Ministry to report her income or mailing it in was impossible due to all of these factors and requested "one very last chance".

2. The Appellant's attached letter of explanation which included the following:

- (a) The Appellant had called the main office to ask for an address to bring in her income information but was told that since she was on disability, she did not have to declare it;
- (b) She had difficulty reporting her income in person because she had injured her foot;
- (c) She thought the rules had changed and she did not have to declare her income because the Ministry had not called her.

3. The Appellant had been in receipt of assistance since 1998. There had been previous instances of inaccurate or incomplete reporting in September 2007, March 2008 and January 2011. In all of these previous cases, the sanction had been waived and the Appellant had been given the opportunity to report her income accurately and completely. On January 25, 2012, the Appellant acknowledged that she had an overpayment as a result of not declaring her family maintenance payments and was advised of the importance of declaring her income correctly and on time. On May 7, 2012 the Appellant contacted the Ministry and stated that she had not received the \$390.02 family maintenance payment in March which had been deducted from her May assistance. A cheque was provided to the Appellant to make up for this deduction. On July 10, 2012, it was determined that the Appellant had in fact received the \$390.02 which resulted in an overpayment of assistance. It was also determined that the Appellant had failed to declare \$784.16 of family maintenance received in May. On July 18, 2012, the Appellant signed Overpayment Notifications for the \$390.02 and the \$784.16. The Appellant was advised that a \$25 monthly sanction for three months would be applied to her file for inaccurate or incomplete reporting. At that time the Appellant submitted a letter requesting that the sanction be waived.

At the hearing of the Appeal, the Ministry representative relied on the Reconsideration Decision and the information cited above.

The Appellant did not deny the non-reporting of her income as described above. Aside from the reasons that she provided for non-reporting at the Reconsideration, she also tendered a letter from a family nurse practitioner dated September 5, 2012, (the "Medical Letter"). The Medical Letter had

been submitted with her Notice of Appeal filed on September 6, 2012.

Dealing firstly with the admission of the Medical Letter, the Ministry representative did not object to its admissibility at the appeal hearing. The Panel finds that the Medical Letter is in support of the information and records that were before the Minister when the decision being appealed was made and the Panel admits the new evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

The Medical Letter confirmed that the Appellant suffers from Post Traumatic Stress Disorder which was diagnosed in 2008 by a psychiatrist and that her symptoms of depression and anxiety are triggered by reminders of past trauma. It also indicated that during exacerbations of the depression, she has nightmares, memory lapses and has difficulty with following through on commitments. The family nurse practitioner last saw the Appellant in February 2012 and was told in September 2012 by the Appellant that she was recovering from a period of depression and anxiety.

The Appellant indicated in her letter attached to the Notice of Appeal that she confirms the description of her problem as outlined in the Medical Letter and that her symptoms affected her doing "the right thing, including reporting my income to the Ministry. I understand what I did wrong and I want to make it right...".

The Appellant also clarified in her attached letter and at the appeal hearing of events that occurred in May 2012 when she contacted the Ministry. She denied ever indicating on a telephone call with the Ministry that she did not receive \$390.02 family maintenance in March. She indicated that she called to ask for a food voucher only, not knowing she was entitled to \$390.02. The Ministry representative told her that she was entitled to this payment and since she had not received any maintenance in April, the Ministry was going to write a cheque for the difference.

Based on the materials submitted, the Panel's findings of fact are as follows:

1. The Appellant is a person with disabilities;
2. The Appellant had in previous incidents made inaccurate or incomplete reporting of income in September 2007, March 2008 and January 2011;
3. The Appellant acknowledged on January 25, 2012 that she had an overpayment as a result of not declaring her family maintenance payments and was advised of the importance of declaring her income correctly and on time;
4. The Appellant had failed to report family maintenance income of \$390.02 in March 2012 and \$784.16 received in May 2012.

## PART F – Reasons for Panel Decision

The issue to be determined on this appeal is whether the Reconsideration Decision, in the assessing of a \$25 three month penalty for the inaccurate reporting of the Appellant's income, was reasonably supported by the evidence or a reasonable application of the legislation.

The Reconsideration Decision stated that pursuant to Section 11(1) of the EAPWD Act and Section 29 of the EAPWD Regulation the Appellant failed to declare as required all income in a timely manner to the Ministry, in particular, family maintenance payments of \$390.02 in March 2012 and \$784.16 in May 2012. Pursuant to Section 28.1 of the EAPWD Regulation, a \$25 monthly sanction for three months was applied to the Appellant's file due to her inaccurate or incomplete reporting.

Sections 11(1) and 14.1 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWD Act") state as follows:

### **"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 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.

### **Consequences for providing inaccurate or incomplete information**

**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."

Sections 28.1 and 29 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWD Regulation") state as follows:

### **"Consequences for providing inaccurate or incomplete information**

**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,

(b) a second determination, for the next 6 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, and

(c) a third or subsequent determination, for the next 12 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.

(BC Reg. 193/2006)

#### **Monthly 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 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.

(v) any warrants as described in section 14.2 (1) of the Act. (B.C. Reg. 85/2012)

(B.C. Reg. 335/2007)"

In the Notice of Appeal and at the appeal hearing, the Appellant indicated that the Medical Letter provided the missing medical reason for the inaccurate/non-reporting of her income. She also indicated that she contacted the Ministry in May 2012 for a food voucher and not for a maintenance payment (\$390.02), contrary to what the Ministry had indicated.

In essence, the Appellant does not deny that she failed to report income as prescribed by the legislation but that as a result of suffering from a post-traumatic stress disorder (diagnosed in 2008), she suffered memory lapses which caused the failure to remember to report these payments. In that regard, she presents the Medical Letter.

The Appellant also states that there was some confusion during a telephone conversation with respect to her request for a food voucher as opposed to a request for an income maintenance payment. With respect to this latter point, the Panel is of the view that that it has no relevance and no merit as regards her reasons for non-reporting. The fact is that she did receive the maintenance payment of \$390.02 and not a food voucher.

The real issue is whether or not her medical condition alleviated the obligation to report. The Reconsideration Decision in part states:

"You have not provided evidence from your doctors to establish that you were medically unable to declare your income as required. Therefore the Ministry finds that a sanction for inaccurate or incomplete reporting will be applied to your file".

As described above, the Appellant had been receiving disability assistance as a single parent since

January 1998. There have been previous incidents of the Appellant's inaccurate or incomplete reporting, specifically, in September 2007, March 2008 and January 2011. In all of these cases, the sanction was waived and the Appellant was given another opportunity to report her income accurately and completely. As well, on January 25, 2012, the Appellant acknowledged that she received an overpayment as a result of not declaring her family maintenance payments and was advised of the importance of declaring her income correctly and on time.

The Panel notes that although the Medical Letter was written on September 5, 2012, the family nurse practitioner had not seen the Appellant between February 2012 and September 2012. As well, the letter does not specifically address the issue as to whether the Appellant was medically unable to declare her income as required for the periods that are the subject of this Appeal. In the result, we are of the view that this letter is of limited assistance. In addition, we consider that the numerous reasons provided by the Appellant for not accurately reporting her income are inconsistent and, accordingly, less than credible. We prefer the facts as outlined and relied upon by the Ministry in the Reconsideration Decision and discussed above.

Although the Panel acknowledges the Appellant's admission of wrongdoing and attempt to right these wrongs going forward, the Panel finds that the Appellant failed to report her income as required under the legislation.

Accordingly, the Panel finds that the Ministry's decision to assess a \$25 monthly sanction for three months to the Appellant's file for inaccurate/incomplete reporting of her income was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the Appellant. The Panel thus confirms the Ministry's decision.