APPEAL #

PART C – Decision under Appeal

The decision under review is the ministry's reconsideration decision of November 20, 2012, which discontinued a general health supplement (the Supplement) provided to the appellant under section 62 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and Schedule C, section 2(3) of the EAPWDR. Specifically, the ministry determined that the appellant had ceased to be eligible for the Supplement when he ceased to receive disability assistance for a period of time due to receiving excess income from employment, and that the ministry had no discretion or authority to reinstate the Supplement.

PART D – Relevant Legislation

Employment and Assistance for Persons with a Disability Regulation, (EAPDWR), section 62
EAPWDR Schedule C, section 2(3)

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

- In 2001 the appellant became entitled to a health supplement in the amount of $467.51 under legislation that was then in effect – s. 2(3) of Schedule C of the then Disability Benefits Program Regulation. When the previous legislation was repealed and replaced by the EAPWDR in 2002, the appellant's health supplement was maintained as the Supplement by operation of s. 2(3) of Schedule C of the EAPWDR.

- From June 2012 to September 2012, the appellant became ineligible for disability assistance since he was earning income from employment in excess of the amount of the disability assistance rate. The appellant was advised by ministry staff to switch to "MSO", or "medical services only" status under s. 61.1 of the EAPWDR, meaning that even though the appellant was no longer in receipt of disability assistance in the form of amounts for shelter and support, he would continue to be eligible for medical services such as Pharmacare. He was told that this would "simplify his file," and that it would not affect his receipt of Schedule C supplements.

- In making the switch to MSO status, the ministry inadvertently – apparently because of a software problem - closed the appellant's file so that his medical coverage ceased. When the appellant brought this to the ministry's attention in June 2012 his file was reopened so that he could continue receipt of medical services only.

- In October 2012 the appellant reapplied for disability assistance as his employment income had dropped below the legislated threshold. At that time the appellant also asked the ministry to reinstate the $467.51 Supplement, and he was advised by the ministry that it did not have the discretion or authority to do so.

At the appeal hearing the appellant substantially relied on the evidence that had been before the minister on reconsideration. He added that at other times during the 11 years that he received the Supplement, he had reported earned income in excess of the disability assistance rate and had ceased receiving amounts for shelter and support, but he'd never previously been asked if he wanted to switch to MSO status, and had always continued to receive the Supplement. He also stated that he was advised by the ministry that the ministry hadn't previously realized what the Supplement was for, and had had to do some research to discover its history.

The panel admitted the appellant's testimony as evidence as it provides more detail regarding the history of his file, and constitutes oral testimony in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and submitted no new evidence.

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PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision of November 20, 2012, which discontinued the Supplement. Specifically, was the ministry's decision reasonably supported by the evidence, or was it a reasonable application of the legislation in the circumstances of the appellant?

The relevant legislation is as follows:

Employment and Assistance for Persons with Disabilities Act

1 (1) In this Act:

...

"disability assistance" means an amount for shelter and support provided under section 5 *[disability assistance and supplements]*; ...

EAPWDR

Eligibility for medical services only

61.1 For the purposes of this Division, a person may be eligible for medical services only if

(a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

(i) employment income earned by the person or the person's spouse,...

EAPWDR Schedule C

General health supplements

2(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

(a) the date the conditions on which the minister paid the benefit are no longer met;

(b) the date the person ceases to receive disability assistance.

* * *

The appellant's position is that conditions have not changed since he was found eligible for the Supplement in 2001. He still has the same medical condition that formed the basis for his eligibility. He has earned income in excess of the disability assistance rate at other times during the past 11 years without having it affect his receipt of the Supplement. The appellant says that if he'd known that the result would be loss of the Supplement he would never have agreed to the switch to MSO status. The appellant points out that he has never ceased to receive disability assistance in some form, since he has continuously been eligible for medical services. He says that the brief closing of his file was not because of anything he did, and it was not even a deliberate decision of the ministry, but rather the result of a software glitch. Finally, the appellant maintains that he is "grandfathered"

under the old legislation, so that he is exempt from the requirements of the current legislation.

The ministry's position is that the appellant ceased to be eligible for disability assistance when he earned income in excess, and that s. 2(3)(b) of Schedule C of the EAPWDR requires the Supplement to cease. The ministry maintains that the term "disability assistance" is defined in the *Employment and Assistance for Persons with Disabilities Act* as being amounts for shelter and support only, and that Schedule C supplements – including the Supplement – do not constitute disability assistance. The ministry says that it does not have the discretion or the authority to reinstate the Supplement. The ministry also says that the switch to MSO status is not made at the appellant's discretion, it arises "automatically" when a person satisfies the criteria in EAPWDR s. 61.1, as the appellant did when he earned income in excess of the rate of disability assistance.

Panel Decision

The panel has reviewed all of the evidence and the applicable law. It is clear to the panel that the basis for cessation of the appellant's receipt of the Supplement was not the appellant's concurrence with the ministry's suggestion that he switch to MSO status, nor was it the inadvertent and temporary closing of his file due to the software problem. The triggering event was his receipt of income in excess of the disability assistance rates, which caused him to become ineligible for disability assistance by operation of s. 24 of the EAPWDR. This set of circumstances satisfied the requirements of s. 2(3)(b) of Schedule C of the EAPWDR. Accordingly, the appellant's eligibility for the Supplement was terminated by the operation of this legislative provision, which ended the "grandfathering" aspect of s. 2(3). Despite the appellant's contention that his continuing receipt of medical services constituted receipt of disability assistance, the statutory definition of that term makes it clear that the appellant ceased to receive disability assistance in June.

It is unfortunate that a series of errors, omissions and misunderstandings by the ministry led the appellant to believe that cessation of the Supplement arose from discretionary decisions made either by him or by the ministry. The ministry suggested to the appellant that he should switch to MSO status, and that such a switch would not affect his eligibility for Schedule C supplements. In a sense that is correct for supplements granted under the current legislation, but not necessarily for supplements granted under the previous legislation. The ministry also apparently had not recognized that previous situations in which the appellant earned income in excess should have terminated the appellant's eligibility for the Supplement. However, none of these factors is relevant to, or changes, the operation of s. 2(3)(b).

The ministry was not relying on s. 2(3)(a) of Schedule C, so the fact that the appellant still suffers from the same medical condition that gave rise to the Supplement does not change the outcome. Also, the fact that the ministry previously overlooked the legislative link between income in excess and the Supplement does not give rise to a continuing right to receive the Supplement. The legislation does not give the ministry the discretion or the authority to reinstate the Supplement once it has been terminated by the operation of s. 2(3)(b).

The panel concurs with the ministry representative who acknowledged that the appellant's situation is unfortunate. However, the panel is bound to apply the law, and based on the foregoing analysis of the facts and the legislation, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision.