

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated January 14, 2013 which found that the appellant is not eligible for disability assistance for September 2012 due to the appellant having assets in excess of the allowable amount under Section 9, 10(2)12,(2-3) and Schedule B (1-3),(5),(6),(7-9) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act, Section 3 and 5.  
Employment and Assistance for Persons with Disabilities Regulation Sections 9, 10(2),12(2)(3)  
Employment and Assistance for Persons with Disabilities Regulation, Schedule B(1-3),(5),(6),(7-9)

## PART E – Summary of Facts

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

1. A 16 page letter from the appellant dated December 24, 2012 submitted with reconsideration request.
2. Ombudsperson Complaint Form sent to BC Ombudsperson from appellant dated November 28, 2012.
3. A letter (4 pages) dated November 26, 2012 to ministry supervisor regarding the original decision made by the ministry regarding denial of appellant's disability assistance for September, 2012.
4. A letter from appellant's dentist with proposed course of treatment for gingival recession and grafting including total estimated fee for procedure and receipt for partial procedure.
5. Receipts and a bank draft for a number of retail stores for items purchased by the appellant from August to November, 2012 including a credit card statement for purchase of bedroom furniture at a cost of \$1470.50 purchased September 1, 2012 and paid for by the appellant on October 29, 2012.
6. A note and a transfer/ tax form from appellant's mother stating that mother purchased a 1977 Dodge motor home from the appellant for \$500.00.
7. The appellant's bank balance statement dated August 30, 2012 for \$6,026.88, and October 5, 2012 for \$5,000.00.
8. Employment and Assistance for Persons with Disabilities review (6 pages) dated September 12, 2012
9. A letter dated August 28, 2012 from a ministry investigative officer requesting a meeting with the appellant on September 13, 2012 regarding the appellant's eligibility for disability assistance.
10. A 4 page final budget for renovations for the appellant's home totaling \$97,673.34 (no date)
11. Ministry notes report, December 2011 to May 2012 (5 pages)
12. Ministry history report for appellant from November 2011 to May 2012 (7 pages)
13. Authorization sent to ministry dated November 28, 2011 from appellant giving an advocacy organization authority to act as appellant's representative.
14. A letter dated November 27, 2012 from appellant to a MLA asking for assistance in ministry's denial of disability assistance.
15. A flow chart on the treatment of lump sums of money/failure to report lump sums of money.
16. A report (June 13, 2012) from Residential Tenancy Branch, dispute resolution services regarding dispute between appellant and landlord, stating the Residential Tenancy Act does not have jurisdiction over this matter.
17. A letter to the appellant dated April 24, 2012 from ministry asking the appellant to submit a copy of the probate/disbursement documents from father's estate.
18. A note from the appellant to the ministry dated May 14, 2012 asking for a decision on appellant's eligibility.
19. A service request form sent to ministry from appellant requesting income assistance for August 29, 2012 under PWD status.
20. Communicating decisions document (6 pages) dated November 9, 2012.
21. Types of Assets document dated July 20, 2011.
22. Request for Reconsideration dated January 14, 2013.

The appellant submitted the following evidence after the reconsideration decision but before the date of hearing which consisted of:

- An 8 page letter dated January 18, 2012 from the appellant stating why she disagrees with the ministry; reconsideration decision. The appellant states that the ministry has failed to consider all the facts, evidence and supporting documentation provided in the reconsideration package and has not been fair or reasonable in calculating her total assets after the first month of receiving the inheritance. The appellant stated that she received her last cheque June 27, 2012 and was not entitled to receive the July 25, 2012 cheque, as it was the month in which her asset was received and treated as income. She stated that she should have received her August 29, 2012 cheque automatically instead she received a letter from the ministry dated August 29, 2012 requesting an eligibility review date of September 13, 2012. She stated that the ministry closed her file upon the second month, (between August 29 and September 25 2012) after receiving the inheritance from her father. The appellant stated that all of her purchases, renovations and services spent from the inheritance money were for the most part completed by the end of August , 2012, however final payments due to delays and credit card statements dates were not finalized until September 5, 2012. She states that some credit card purchases made at the end of August and September were not received until mid October. She states that not considering her credit card transactions make the ministry decision prejudicial and unjust. The appellant states that she should not be penalized because she uses credit cards. She states that her bank statement for her new account which was set up for her inheritance, shows the account had an opening balance July 3, 2012 of \$203,599.20 and on August 30, 2012 it had a balance of \$6,026.88 and on September 5, 2012 it had a balance of \$5,000. The appellant states that it was her intention to complete her renovations and other services and purchases within the 1<sup>st</sup> month's pay period of July 25-August 29, 2012 when the appellant was not collecting ministry assistance. She states that her asset level was within the allowable limit of \$5,000 making the appellant eligible for September benefits. She states that the ministry is being unreasonable in not accepting all of the evidence supporting this fact which she states she provided in bank statements, credit card statements, final invoices and actual receipts. The appellant states that she has provided sufficient evidence and supporting documentation to show that the claims are true and reasonable. She states that the ministry has not handled her file properly, accurately or according to the ministry's own policies and procedures practiced by the ministry.
- A summary of facts from the appellant dated February 4, 2013 listing all documents, meetings and conversations between appellant and ministry and a number of other individuals from June 27, 2102 to January 30, 2013 (8 pages) as well as a BC Employment and Assistance rate table and appellant's calendar for December 2013 with notes of meetings, conversations with ministry and other individuals. In this document the appellant states that her retail purchases made between August 8 and August 30, 2012 were made on a credit card and the ministry did not factor the credit card transactions into the August 30, 2012 bank statement of \$6,026.88. The appellant states that her bank balance minus the credit card transactions as of the end of August was \$5,000 and this should be the amount the ministry uses for her assets for August 30 2012. The appellant also describes what administrative fairness means and states that ministry staff should abide by these principles at all times, The appellant states that the most important requirement of administrative fairness at the original decision stage is providing the client with adequate reasons for a decision.

- A summary of facts dated February 7, 2013 listing accounts of bank statements, credit card statements, purchase receipts, and appellant's accounts of meetings with ministry.
- A release of information (EAAP) form dated February 12, 2013 authorizing designated advocate to attend hearing and assist appellant with her appeal.

The ministry did not object to the admission of the appellant's additional evidence and the panel agreed that the contents in the documents were in support of the information available at the time of reconsideration. Therefore the panel admitted this additional evidence pursuant to section 22(4) of the Employment and Assistance Act.

In her Request for Reconsideration the appellant stated that it was her understanding that she would only be denied one month of assistance in the process of receiving her inheritance. She stated that she knew in the first month her money would be considered income and she would not receive disability assistance from the ministry, but she assumed that in the subsequent two months the money would be exempt as an asset and she would be eligible for assistance. She states that had the ministry handled her situation of receiving a lump sum of money, such as an inheritance in the manner in which they had originally communicated to her and in accordance with the ministry policy and procedures, she should have been eligible for her August 29, 2013 cheque. The appellant stated that on July 3, 2012 she received the inheritance from her father's estate for \$203,599.20. The same day the appellant deposited \$100,000 into a Registered Disability Savings Plan (RDSP). In July and August 2012 the appellant spent money on household and disability related items, eye and gum surgery, as well as house maintenance and renovations. She stated that she declared the lump sum of her inheritance on the July 5, 2012 cheque, therefore she states that she was not entitled to a cheque on July 25, 2012 for the August pay period, but she should have been eligible for a cheque on August 29, 2012 for the September pay period.

At the hearing the appellant stated that not considering her credit card statements to factor into her asset total made the ministry decision prejudicial and unjust. The appellant stated that by September 1, 2012, \$1,983.83 was spent on her credit card that was not reflected on her bank statement, which shows that on August 30 the balance was \$6,026.88. She stated that if the credit card transactions were considered the actual bank balance would be \$4,043.05 by September 5, 2013. The appellant stated that the ministry was acting on incorrect information. She stated that on September 1, 2012 she was well within her allowable limit of assets and at no time did the ministry communicate to her that she was over her limit for assets. The appellant went through the timelines and summary of facts in chronological order from June 27, 2012 to January 30, 2013 speaking about detailed retail purchases, bank statements, phone conversations and meetings with ministry, and written documentation from the ministry and appellant. She said that at the September 13, 2012 meeting with the ministry to review her eligibility for disability assistance the ministry worker did not tell her she was ineligible for assistance. She stated that her file was closed on September 21, 2012 and she lost her September benefits. The appellant stated that the ministry has an unequal balance of power and mislead the appellant into believing she would be eligible for her September 2012 disability assistance.

At the hearing the ministry relied on its reconsideration decision of January 14, 2013 which denied the appellant disability assistance for September 2012 due to the appellant having excess assets of the allowable amount. She stated that after the September 2012 meeting with the appellant she did not make any conclusions on the appellant's eligibility for disability assistance for September as she

did not have all the appellant's receipts and credit card purchases at that time She stated that the appellant had assets of \$6,026.88 on August 30, 2012 and assets of over the \$5,000.00 limit on September 4, 2012 and thus was not eligible for disability assistance for September 2012. She stated that the legislation does not take into consideration any debt or credit card payment in determining assets. The ministry apologized for miscommunication on the part of the ministry regarding not sending the appellant a decision letter.

The panel makes the following findings of facts:

- The appellant has a Person with Disability designation since March 2003 and is in receipt of assistance for herself and her dependent child.
- The appellant received an inheritance of \$201,599.20 on July 3, 2012 and was ineligible for assistance in August 2012, due to the income received
- The appellant had a bank balance of \$6,026.88 on the August 30, 2012 bank balance statement.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant was not eligible for disability assistance for September 2012, pursuant to Section 9, 10(2), 12(2)(3) and Schedule B, (1-3), (5), (6), (7-9) of the EAPWDR, as a result of excess assets, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section's 3 and 5 of the Employment and Assistance for Persons with Disabilities Act provide:

### **Eligibility of family unit**

3. For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act or the regulations.

### **Disability assistance and supplements**

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation

### **Asset Limits**

Section 10(2)

10(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or a sole recipient has no dependent children and has assets with a total value of more than \$3 000;
- (b) an applicant or recipient has one or more dependents and the family unit has assets with a total value of more than 5 000.

### **Assets held in trust for person with disabilities**

Section 12(2), (3)

If a person referred to in subsection (1) complies with subsection (4), up to \$100 000, or a higher limit if authorized by the minister under subsection(3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:

- (a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus
  - (b) any capital subsequently contributed to a trust referred to in paragraph (a), is exempt for the purposes of section 10 (2) asset limits.
- (3) if the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$100 000, the minister may authorize a higher limit for the person for the purposes of subsection (2).

Part 1 definition of the EAPWDR states asset means:

- (a) equity in any real and personal property held in trust,
- (b) a beneficial interest in real or personal property held in trust
- (c) or cash assets;

Cash assets in relation to a person means,

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
  - (i) a savings institution, or
  - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant.

Schedule B of EAPWDR :

#### **Deduction and exemption rules provides in part**

1 When calculating the net income of a family unit for the purposes of section 24(b) (amount of disability assistance) of this regulation,

- (a) the following are exempt from income: income earned from a dependent child, family care rate, family bonus, child tax benefit, goods and service tax credit, redress payments, settlements and individual payments by government of Canada and government of British Columbia, rent subsidy, refund provided under PharmaCare, child care subsidy, money withdrawn from a registered disability savings plan, working income tax benefit,

#### **Deductions from earned income**

2. The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan, and union dues.

#### **Exemption-earned income provides in part**

3. (1) Subject to subsections (2) and (2.1), the amount of earned income calculated under subsection (3) is exempt for a family unit.

(2) If an application for disability assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family becomes eligible for disability assistance unless

- (a) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act.

#### **Withdrawals and expenditures from reserve account**

5. The amount of any expenditure or withdrawal out of a separate account described in section 4(2)(b)(ii) of this Schedule, is earned income for all purposes of this regulation unless

- (a) the expenditure or withdrawal is for the payment of permitted operating expenses of the small business referred to in section 4(2) of this Schedule, and

(b) in the case of a withdrawal, the amount withdrawal is used within one month after the date of withdrawal to pay permitted operating expenses of the small business referred to in section 4 (2)( b) (1) of this Schedule.

**Deductions from unearned income**

6. The only deductions permitted from unearned income are the following:
- (a) any income tax deducted at source from employment insurance benefits;
  - (b) essential operating costs of renting self contained suites.

**Exemptions unearned income (in part)**

7. (d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) (assets held in trust for person with disability) of this regulation if the payment is applied exclusively to or used exclusively for
- (iv) a registered disability savings plan

**Applications of deductions and exemptions**

- (9)(1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:
- (a) the date the income is payable;
  - (b) the period for which the income is payable;
  - (c) the date the income is reported to the minister;
  - (d) the date the minister receives notice of the income .

The appellant argued that the ministry should have considered that all of her purchases of home renovations and services spent from the inheritance money were for the most part completed by the end of August, 2012 and final payments that were made by a credit card were not listed on the August 30 bank statement due to the timing of the credit card statement. The appellant stated that the ministry should have taken into account the charges on the credit card in assessing her assets. The appellant stated the ministry did not follow its own policy and procedures regarding administrative fairness in dealing with her. She stated that there was miscommunication on the part of the ministry and they did not answer phone messages or inform her of the decision on her appeal.

The ministry argued that the appellant was ineligible for disability assistance for September 2012 as she had assets in excess of the allowable limit listed in EAPWDR Section 10(2) which states that a family unit is not eligible for disability assistance if an applicant or recipient with one or more dependent has assets with a total value of more than \$5,000.

Section 12(2) states that any capital contributed to a trust for person with disabilities is exempt for the purpose of section 10(2) asset limits. The appellant transferred \$100,000 to a RSDP on July 2, 2012 which she was eligible to do as an asset held in trust and this money is exempt for the purposes of section 10(2) asset limits.

Schedule B (7)(d)(iv), exemptions from unearned income states that a payment made from a trust to or on behalf of a person referred to in section 12(1) ( assets held in trust for person with disability) of this regulation is exempt from calculating the net income of a family unit if the payment is applied exclusively to or used exclusively for a Registered Disability Savings Plan. The appellant applied \$100,000 of her inheritance to a RDSP on July 3, 2012.



Schedule B (1-3),(5),(6),(7-9) deductions and exemption rules provide that when calculating the net income of a family unit for the purposes of section 24(b), amount of disability assistance, all items listed in this schedule are exempt from the appellant's income and have been deducted by the appellant.

Section 10(2) of the EAPWDR states the family unit is not eligible for disability assistance if an applicant or a recipient has one or more dependants and the family unit has assets with a total value of more than \$5,000. The appellant's bank statement of August 30, 2012 had a balance of \$6,026.88. The credit card purchases for bedroom furniture of \$1470.50 that were bought toward the end of August 2012 were not paid for on the appellant's credit card until October 29, 2013. Therefore the panel finds that the ministry was reasonable to use the August 30, 2012 bank statement to determine the amount of money in the appellant's bank account. The credit card statement cannot be considered in determining the appellant's assets, as Section 10 of the EAPWDR does not take into consideration any debt or credit card payment in determining assets. The appellant's bedroom furniture purchased by credit card was not paid for or deducted from the appellant's bank balance until after September 1, 2012. Given the definitions of asset and cash asset in Section 1 the \$6,026.88 was a cash asset.

By policy the ministry will exempt assets for up to 2 months after receipt if they were intended to be placed in trust or a RDSP. The excess funds that are the subject of this appeal were not intended to be placed in a trust or RDSP.

With respect to the appellant's arguments on administrative fairness the ministry acknowledges that it did not respond in a timely manner regarding the decision of the appellant's September benefits and the appellant's right to appeal. The ministry apologized to the appellant for any inconvenience or misunderstanding regarding communication on the part of the ministry. However, the panel finds that the appellant was not prejudiced regarding the outcome of this appeal.

The panel finds the ministry was reasonable in denying the appellant's disability assistance for September 2012 due to the appellant having assets in excess of the allowable amount of \$5,000.

Accordingly, the panel finds that the ministry's decision at reconsideration was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel confirms the ministry's decision.