

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of March 18<sup>th</sup>, 2013 wherein the ministry determined the appellant was ineligible for disability assistance as stated under section 10(4) Employment and Assistance for Persons with Disabilities Act (EAPWDA) because he failed to submit all the information requested by the ministry under the authority of section 10 (2) EAPWDA. Further, that under section 28(1) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the ministry declared the appellant ineligible for assistance until the appellant complies with the direction.

### PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), section 10  
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 28

## PART E – Summary of Facts

At the commencement of the hearing the ministry requested that an EAW be permitted to sit in the hearing, as an observer, for training purposes. The appellant objected to the presence of the EAW stating it was a conflict. The EAW did not attend.

The evidence before the ministry at the time of reconsideration:

- December 2012 Shaw Cable bill;
- December 2012 BC Hydro bill;
- Bank statements from a credit union for period of May 2011 to January 2013
- Ministry Bank Profile form dated January 15<sup>th</sup>, 2013 completed by credit union.
- Note stating No rental receipts. L. Lord does not give receipts.
- Letter to appellant dated January 2<sup>nd</sup>, 2013 with Financial Eligibility Review Check List attached requesting the checklist of information be provided to ministry no later than January 16<sup>th</sup>, 2013.
- Request for Reconsideration dated April 7<sup>th</sup>, 2013 with a 5 page response from appellant to statements contained in the Decision to be Reconsidered portion of the Request for Reconsideration Form.

The appellant is a single recipient of disability assistance with a Persons with Disabilities designation (PWD). The appellant has been in receipt of assistance for several years and his last eligibility for review was also completed several years ago. On January 2<sup>nd</sup>, 2013 the ministry wrote the appellant requesting to speak to him about his eligibility as files are reviewed on an ongoing basis to confirm eligibility and to ensure the applicant is receiving all the assistance to which they are entitled. The ministry attached a checklist of information that the appellant was required to submit no later than January 16<sup>th</sup>, 2013. A copy of the letter was also sent to the appellant's Third Party Administrator (TPA). On January 4<sup>th</sup>, 2013 the ministry clarified with the TPA, in detail, the information that was being requested and that the eligibility review was mandatory. Some of the information that the ministry requested was submitted by the TPA, however, the TPA advised the ministry the remaining items would not be forthcoming because the appellant felt it was not needed. On January 22<sup>nd</sup>, 2013 the ministry requested further banking information that was shown on the bank profile. The ministry also requested information from the appellant regarding an undisclosed bank account revealed through an Equifax query made on January 29<sup>th</sup>, 2013. On February 28<sup>th</sup>, 2013 the TPA advised the ministry several attempts had been made to gather the requested information but the appellant refused to provide any information regarding the undisclosed bank account.

Prior to the hearing the appellant submitted the following documents to the Employment and Assistance Appeal Tribunal (EAAT) be considered by the panel:

1. Letter of appreciation dated April 17<sup>th</sup>, 2013 regarding a dependant of the appellant.
2. Letter dated April 18<sup>th</sup>, 2013 from a medical practitioner (MP) providing his diagnostic medical opinion with respect to the appellant's medical condition(s) and his disability status.
3. Letter dated April 18<sup>th</sup>, 2013 from the same MP providing his opinion on why the appellant should not wear a seat belt.
4. An email dated April 19<sup>th</sup>, 2013 from the appellant to the EAAT with the above noted letter attached. The email also advises where the appellant's son is living and some personal issues regarding the appellant's son.
5. An email dated April 19<sup>th</sup>, 2013 from appellant to EAAT requesting information on Appeal procedures and seeking assistance on obtaining information from the ministry.

At the commencement of the hearing the appellant submitted a letter for the panel's consideration that he

received from the ministry dated May 13<sup>th</sup>, 2013. The letter is providing instruction to the appellant on how to receive medical equipment, medical supplies and medical prescriptions.

The ministry commented that these documents are not relevant to the issue under appeal, however, did not object to the documents being received by the panel for consideration.

The panel finds the documents provided by the appellant do not contain information relevant to the issue under appeal and that these documents do not contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are not admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

At the hearing the appellant introduced evidence of past dealings with the ministry and the denial of travel assistance and medical benefits as well as monthly reporting matters. The appellant also raised issues where, in his opinion, the ministry was being overzealous and over bearing in the ministry's requests for information.

The panel finds this testimony from the appellant is not relevant to the issue under appeal and does not contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is not admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

At the hearing the appellant also testified that he had submitted bank records requested by the ministry 9 different times over different issues; that he has four dependants and each time the ministry wants bank records. The appellant testified that on this occasion he did not submit the records for the undisclosed bank account that were requested by the ministry because he felt the ministry's request was unreasonable and the bank fees were becoming excessive. In response to a question from the panel, the appellant stated he did not submit the requested 2011 Income Tax Assessment to the ministry because he could not obtain one from Revenue Canada in time.

The panel finds this testimony from the appellant does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The ministry called one witness. The witness, who is an EAW, testified that he is the EAW for all TPA files and is the contact for the local TPA. The witness testified that he completed the request for information form and sent the ministry's request to the appellant and the TPA. The letter of request included a paragraph outlining the action that may be taken if the person does not comply with the ministry's request. The witness testified that on two separate occasions the TPA contacted the witness and informed him that the information requested by the ministry had been requested from the appellant but the appellant had refused to provide this information. Responding to questions from the appellant the witness testified that he started his reviews with the longest standing file in the caseload and worked forward in conducting his reviews and goes through everything in the file. In a further response to the appellant, the witness testified that he learned about the undisclosed bank account by querying the Equifax program in the ministry office and not from another EAW. The witness testified that once he learned about the undisclosed bank account he requested the bank information and extended the appellant's deadline to comply with the ministry's request.

The panel finds the witness testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The ministry testified that eligibility reviews at one time were done on a yearly basis but had not been done for several years for many reasons. The ministry was now starting to conduct these reviews again and the reviews were commenced starting with the oldest file and proceeding forward. The ministry testified each

ministry office has access to an Equifax program and which provides them with information on which financial institutions or businesses that a client has had dealings. The ministry advised the program will not provide credit information or financial records that this information must be solicited from the client.

The panel finds this testimony from the ministry (representative) does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The panel makes the following finding of fact:

1. That the appellant has a Person with Disabilities designation (PWD) and is receiving disability assistance.
2. That on January 2<sup>nd</sup>, 2013 the ministry wrote to the appellant regarding an audit that would be conducted in accordance with section 10 EAPWDA legislation to determine his ongoing eligibility and was provided with a checklist of the information that the ministry required;
3. That the ministry requested further banking information from the appellant that was shown on the bank profile and also information regarding an undisclosed bank account;
4. That the ministry had requested a copy of the appellant's 2011 Income Tax Notice of Assessment;
5. The ministry advised the appellant that should he not comply with the ministry's request for information he would be ineligible for disability assistance until he complied with the ministry's request.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant was not eligible for income assistance as stated under section 10(4) EAPWDA because the appellant failed to submit all the information requested by the ministry under section 10(2) EAPWDA. Further, that under section 28(1) EAPWDR the ministry declared the appellant ineligible for assistance until the appellant complies with the ministry's direction.

The legislation considered:

### **Employment and Assistance For Persons with Disabilities Act**

#### **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.

### **Employment and Assistance For Persons with Disabilities Regulation**

Consequences of failing to provide information or verification when directed

Section 28(1) For the purposes of section 10 (4) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

The panel finds the documents provided by the appellant after the reconsideration decision was made and prior to the commencement of the hearing do not contain information relevant to the issue under appeal and therefore the panel will not consider the information contained in these documents.

The ministry argued that section 10 EAPWDA provides the ministry with the authority to conduct ongoing audits to determine if a recipient of disability assistance is eligible to receive disability assistance and, in conducting that audit, the ministry may direct a recipient to provide such information as necessary for the ministry to determine the applicant's ongoing eligibility. The ministry argued the appellant and his TPA were each provided with a checklist of information that the ministry needed to conduct the audit. The ministry argued the appellant and the TPA were also advised in writing that if the appellant failed to comply with the ministry's direction that the appellant may be declared ineligible for disability assistance. The ministry argued the TPA advised the EAW that she had made daily contact with the appellant regarding the requested information and had also advised the appellant that failure to comply with the ministry's direction would result in him being declared ineligible for disability assistance. The ministry argued that on February 28<sup>th</sup>, 2013 the TPA advised the EAW that the appellant refused to submit any information regarding the undisclosed bank account. The ministry argued the appellant also failed to submit other documents as directed, i.e. recent rent receipt, 2011 Income Tax assessment and other bank records. The ministry argued that the appellant had been given a reasonable amount of time to submit all the requested information through the TPA and did not comply with the ministry's request.

The appellant argued that the ministry's request was unreasonable and they were only trying to find different ways to frustrate him and make his life uncomfortable. The appellant argued that he tried to get the 2011 Income Tax Notice of Assessment from Revenue Canada but couldn't make contact with them in time to meet the ministry's request. The appellant argued that the ministry continually sent him to different banks for information and he continually provided the information to them but the ministry was only being unreasonable and would not look into other files for that information. The appellant argued the penalty in section 10 was neither explained to him nor to his TPA and that the information from the TPA is hearsay. The appellant argued the TPA should have been at the hearing to testify so he could question her.

Section 10(1) EAPWDA states the ministry has the legislated authority to conduct an audit on a recipient of disability assistance and section 10(2) EAPWDA directs a recipient of disability assistance to supply verification of any information received by the minister if that information relates to the eligibility of the family unit for disability assistance. Section 10(4) EAPWDA states that if a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance.

The evidence before the panel established that the ministry directed both the appellant and the appellant's TPA to submit certain documents to the ministry so the ministry could conduct an audit of the appellant's eligibility for disability assistance. The evidence further establishes that neither the appellant nor the TPA, on behalf of the appellant, submitted all the documents requested by the ministry. The evidence is the TPA requested these documents from the appellant on several occasions and the appellant told the TPA that he (the appellant) didn't feel the documents were necessary and that he (appellant) was refusing to provide them. The appellant in this testimony before the panel admitted that he did not submit all the documents requested by the ministry which included the 2011 Income Tax Notice of Assessment and the bank documents relating to an undisclosed bank account. The panel does not accept the appellant's argument that the ministry request for the bank documents was unreasonable and that he did not have sufficient time to obtain the 2011 Notice of Tax Assessment.

The panel finds the ministry's decision to determine the appellant did not comply with the ministry's direction under section 10(2) to supply the ministry with information within the time and in the manner specified was reasonable.

In reference to the consequences of failing to provide information when directed, section 28(1) EAPWDR states "For the purposes of section 10 (4) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction".

The panel finds that the ministry properly applied the provisions of section 28(1) EAPWDR.

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