

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 6, 2013 that imposed a sanction of a \$25.00 reduction for 3 calendar months to the appellant's disability assistance further to s.28.1 of the EAPWDR as a consequence of the appellant failing to completely and accurately report an inheritance received by him and his spouse further to s.11 (1) and s.14 (1) of the EAPWDA and s.29 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, (EAPWDA), s. 11, 14.1 and 18
Employment and Assistance for Persons with Disabilities Regulation(EAPWDR), s. 1, 6, 24, 28.1, and 29

PART E – Summary of Facts

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

- The appellant is currently receiving disability assistance as a two parent family. The appellant's file opened in May 1991 and most recently re-opened in April 2013.
- Bank statements of the appellant for the period November 30, 2012-December 31, 2012 and October 31, 2012-November 30, 2012. The latter statement indicates a deposit of \$ 84,779.07 on November 9, 2012.
- July 9, 2013 request for reconsideration form section 2 completed by the ministry that noted the following:
 - December 7, 2012 the appellant submitted his January declaration report and reported employment income only. The ministry noted he had failed to declare CPP income and the ministry attempted to contact the appellant.
 - December 19, 2012 the appellant contacted the ministry and was advised both he and his spouse in regards to the CPP income are required to report all income. No sanction was applied by the ministry for this. Specific notes on the ministry file read as follows: "Client states he thought he didn't need to declare CPP because the ministry receives data match. Clarified for client that he needs to declare any and all income and both he and his spouse need to sign the stub. Client understands."
 - December 27, 2012 the appellant attended a ministry office and discussed a large retroactive old age security payment received in October and was advised by the ministry that his old age security and Canada pension plan payments would need to be reviewed, The appellant was advised to submit a bank statement to verify these funds.
 - December 28, 2012 the appellant attended a ministry office and amended his January declaration report. In addition to the employment income the appellant also declared is CPP income for November, but did not declare the inheritance funds of \$84,779.07 received in November, 2012.
 - May 9, 2013 the ministry began a compliance review of the appellant's file.
 - On July 9, 2013 the ministry determined the appellant had received disability assistance in January 2013 that he was not eligible for. The appellant had failed to report an inheritance of \$ 84,770.07 received in November 2012 which caused an overpayment of \$459.82 for his January 2013 assistance as the appellant failed to take the necessary steps to ensure the accuracy or completeness of the information before submitting his January declaration report a sanction in the form of a reduction to his disability assistance would be applied. The appellant on this date was advised both in writing and verbally of the ministry decision to apply the sanction. The ministry determined this as the appellant's first sanction and because it was a first occurrence a monthly reduction of \$25.00 per month would be imposed for 3 months.

- July 23, 2013 request for reconsideration form section 3 completed by the appellant that includes a letter from his advocate dated July 18, 2013 and a personal letter (undated) from the appellant. The appellant's advocate writes that the appellant advises them that his spouse asked the ministry in October 2012 about declaring income and was advised that she had 3 months to dispose of the inheritance monies that she received. The letter indicates that the appellant and his spouse used the monies to pay a bill which is not in dispute, but that the overpayment was due to incorrect information. The advocate argues that the appellant advised the ministry of his inheritance once and was given incorrect information, and then was still given an assistance cheque for January 2013 and believed he was not required to declare the inheritance. He also noted on a separate matter that he was informed that any monies received from the federal government are recorded also in the provincial government systems and that he would not need to report any monies received from the federal government. The appellant also reports that he is not aware of changes until it is brought to his attention when he gets his monthly bank statements. The appellant writes that he is "not able to see or read his bank statements very well because of my limited eyesight" He also states "I only check the backs of my statements to see if the cheques I wrote have gone through my account. When I need a balance I go to the bank and ask for a balance. I am not able to read the print out. I ask them to please write the balance on the slip so I am able to read the balance." The appellant believed he had 3 months to declare the income from the inheritance. The appellant was told he had 3 months to decide what he was going to do with the inheritance and that he told the ministry he was going to pay off debts and did so before the 3 months expired.

The appellant's Notice of Appeal (NOA) dated August 29, 2013 in which he states "There was a misunderstanding between myself and the ministry; as well, MSDSI did not take into consideration my legal blindness to see the papers properly. Because of my poor eyesight, I needed assistance completing these forms" was admitted into evidence under section 22(4) of the Employment and Assistance Act as written testimony in support of the information and record before the ministry at reconsideration.

The appellant did not attend an earlier hearing and questioned whether the panel could re-hear the matter. As that hearing was completed and a decision made, the panel has no jurisdiction to re-hear the matter.

With respect to this hearing, the appellant testified that he had spoken to and advised the ministry about the inheritance received by his wife in November, 2012. He was told by the ministry that he had 3 months to disperse the funds and that after he would be penalized. He also showed the ministry all his bills that would be dealt with by the funds. The appellant further reported that in January sometime he declared verbally again the matter of the inheritance and was asked to sign something, but could not recall what it was and was given his January disability assistance. The appellant pointed out that he has difficulty reading and has to take off his glasses at times or to underline things. At the hearing, he demonstrated how he writes his cheques in Braille. He also noted that he had submitted to the ministry his CNIB identification to show that he is registered with it. In response to a question by the panel, the appellant reports that he has completed ministry declaration forms in the past and gets help dealing with these when it is needed. With regard to help regarding the matter of this appeal the appellant indicated his wife's health prevented this.

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At the hearing the ministry stood by the record. The ministry reports that the appellant was advised that he was required to declare all income and to do so and sign the monthly declaration form ("stub") and that he had previously been advised to declare any and all income and that this was understood by him.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that determined the appellant had failed to completely and accurately report an inheritance received by him and his spouse under s. 11 (1) and s.14.1 of the EAPWDA and s. 29 of the EAPWDR and under s. 28.1 of the EAPWDR applied a reduction sanction of \$25.00 for 3 calendar months.

The EAPWDA states:

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) 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.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

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) in 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.

(2) In the circumstances described in subsection (1), the minister may reduce the disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

(3) The periods prescribed for the purposes of subsection (2) may vary with the number of determinations made under subsection (1) in relation to a family unit.

(4) If a family unit that is subject to a reduction under section 15.1 of the *Employment and Assistance Act* qualifies for disability assistance or hardship assistance under this Act before the period prescribed for the purposes of section 15.1 (2) of that Act expires, the reduction is deemed to have been imposed under subsection (2) of this section.

The EAPWDR states

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.

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 one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (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;
- (vi) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 3.1 of Schedule B, the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 7.1 of Schedule B, the amount of unearned income that is compensation paid under sections 29 and 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

The ministry's position is that the appellant received inheritance monies in November 2012 that he did not declare on his monthly declaration stub. As a result, it determined that the appellant had not been eligible to receive the income assistance that he had received and had received an overpayment. An overpayment that must be repaid. The appellant and his spouse had been advised on December 19, 2012 of the requirement to completely and accurately report income concerning a separate matter involving federal government CPP income received by the appellant to which no sanction was applied. However, the ministry concluded that a reduction sanction would apply to the appellant for failing to completely and accurately report the inheritance funds received by him and his spouse in November 2012.

The appellant argues that he advised the ministry on 2 occasions of the inheritance. In first instance, he was told he had 3 months to dispose of it or he would be penalized and, in the second instance was told to sign something which he did and was given his January assistance. He understood this to mean he did not have to declare the inheritance monies. Further, because of his poor and limited eyesight he requires assistance completing and reading forms.

The panel finds that it was reasonable for the ministry to determine that the appellant and his spouse received unearned income in the form of an inheritance as defined under the EAPDWR that should have been reported to the ministry pursuant to s.11 of the EAPDWA. The panel finds that the ministry reasonably determined that the appellant was in receipt of disability assistance that the appellant was not eligible for due to inaccurate or incomplete reporting pursuant to s.14.1(1) of the EAPWDA. Despite the appellant's argument regarding his poor and limited eyesight and needed assistance in both reading and writing documents, his own written and verbal testimony suggest that he does get help when he needs it when reading or completing documents. In addition, the panel notes the appellant was clearly advised both verbally and in writing on December 19, 2012 regarding the need to report and declare all income and, in light of this, amended his January 2013 declaration report to include previously undeclared CPP income, but did not declare the inheritance funds. Although the appellant argues he did not think he was required to report these funds, the evidence suggests otherwise: the ministry's advice on December 19, 2012 and the ministry's file records documenting this advice clearly indicate that he needs to declare any and all income, something the file records indicate he understood at the time. The panel finds, therefore, that the ministry was reasonable as a result of the appellant's actions to apply a 3 month reduction sanction of \$25.00 per month pursuant to s.14.1(2) of the EAPWDA and section 28.1 of the EAPWDR.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant and confirms the ministry decision.