

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ( Ministry) reconsideration decision dated October 10<sup>th</sup> 2013 whereby the Ministry denied the Appellant's claim for restitution of the underpayment of \$88.00 deducted from the Appellant's monthly maintenance cheque from May 2011 to April 2013 because the Appellant did not report to the Ministry a change in financial circumstances as required under section 11 of the Employment and Assistance for Persons With Disabilities Act. (EAPWDA)

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act- Section 11(1)

Employment and Assistance for Persons with Disability Regulation – Section 23(4) + (5)

Employment and Assistance for Persons with Disability Regulation – Section 29 (a)(i) and (b)(ii)

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## PART E – Summary of Facts

The evidence before the Panel consisted of the evidence recorded at the Reconsideration, and admissible oral evidence provided and submissions made by the Ministry representative, and admissible oral evidence provided by the Appellant and submissions made by the Appellant's advocate at the hearing.

At Reconsideration it was found that the Appellant had advised the Ministry of a change in financial status on April 24<sup>th</sup> 2013 and that the Ministry reversed, for May 2013, the deduction of \$88.00 that had been deducted from the Appellant's maintenance cheque monthly since May 2011, although the Appellant stated that she had received no monies in respect of maintenance except for one payment of \$300.00 in February 2013. The Ministry stated that it was the Appellant's error that the \$88.00 had been deducted from the Appellant's maintenance cheque as the Appellant had not reported a change in financial status.

The Ministry confirmed that \$300.00 was credited to the Appellant from the Family Maintenance Enforcement Program (FMEP) in February 2013, that it has the ability to reclaim payments made in error for an unspecified number of years, and that annual reviews of files are no longer completed. The Ministry confirmed that the \$88.00 deduction was shown on the stub portion of the monthly maintenance cheque and that the onus was on the Appellant to report any change in status. The cheques from FMEP may go directly to the Appellant although FMEP is required to report this directly to the Ministry. The Ministry had no such report. It was also noted that the deduction had started in 2010 however there was no report on file from FMEP as to any payments made directly to the Appellant.

The Ministry referred to section 23(5) of the EAPWDR whereby the family unit is not eligible for any assistance in respect to a service provided or a cost incurred before the calendar month in which the assistance is requested.

The Ministry referred to section 29(a)(i) and (b)(ii) to support their finding that monthly reporting is a requirement and that notification of a change in financial status is required to affect a change from the previous month.

The Appellant and Appellant's advocate stated that the Appellant had not received any payment from FMEP from August 2011 to February 2013 when \$300.00 was received. The Appellant assumed that FMEP was in contact with the Ministry and that the Ministry was informed of what payments were being collected or not collected for child support.

The Appellant's advocate referred to section 23 (4) of the EAPWDR whereby the Ministry may have discretion in correcting errors in reporting changes in financial status up to 12 months prior to the date of payment.

The Appellant said that the Appellant's medication was a factor in the Appellant's inability to determine whether the Appellant was receiving the proper amount of maintenance each month.

The Appellant confirmed the correct spelling of the Appellant's name.

The Panel found the additional oral testimony of both parties to be admissible as it supported the information before the Ministry at the time of Reconsideration.

[REDACTED]

**PART F – Reasons for Panel Decision**

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for reimbursement of an underpayment of disability assistance for the months of August 2011 to April 2013 in accordance with section 11 of the EAPWDA and sections 23 and 29 of the EAPWDR.

The relevant section of the EAPWDA is section 11(1) :

**(A) 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.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the

The relevant sections of the EAPWDR are sections 23(4), 23(5), 29(a)(i), and (b)(ii)

23 (4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible for disability assistance;

(b) 12 calendar months before the date of payment.

(5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

**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

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.C. Reg. 332/2012)

(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.

The position of the Ministry, as set out in the Reconsideration Decision and the oral testimony provided at the hearing, is that the Appellant is not eligible for reimbursement of an underpayment because, although the Appellant states that the Appellant did not receive any payment from FMEP or from the person required to make payments under the program, the Appellant did not report a change in financial status at any time during the period from 2010 to February 2013. The Ministry asserts that it has no ability to correct underpayments in months prior to the date in which a change in status is reported.

The Appellant's position is that the Ministry should have been aware that the underpayment existed and it should have been recognized as such when there was no report from FMEP that payments were being made. The Appellant was ill and on medication and was unaware of the deduction. The Appellant contends that the Ministry does have discretion in correcting an underpayment under section 23(4) of the EAPWDR.

The panel finds that the Ministry was reasonable in concluding that the Appellant had not met the reporting requirements in section 11 of the EAPWDA and section 29 of the EAPWDR. However, the panel also finds that the Ministry was unreasonable in determining that it had no discretion to correct a past underpayment that was a result of this failure to meet the reporting requirements in section 29. The Panel finds that the Ministry had an obligation to review the request for reimbursement of an underpayment of \$88.00 per month under section 23(4) of the EAPWDR, which provides some discretion for the Ministry to "backdate payments up to 12 months before the date of payment". The Ministry representative reasoned that the Ministry was not able to determine the Appellant's eligibility for the \$88.00 deduction to be discontinued retroactively in the absence of a report from the Appellant

under section 29. The Panel finds that this amounts to a fettering of discretion where the evidence from the Appellant, including verbal evidence that the Appellant was not receiving any monies directly from the payor and the submitted letter dated April 13<sup>th</sup> 2012 from FMEP confirming that they could not locate the payor, suggests that the Appellant was not receiving any maintenance monies that would justify the deduction. The Ministry does not dispute this evidence. The letter may be considered a notice of change in financial status as of April 13<sup>th</sup> 2012.

The Panel finds that the Ministry should reconsider the decision and address this section in determining whether the Appellant should be able to collect \$88.00 for 12 months less amounts already received.