

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of January 2, 2014 to apply a sanction (\$25 reduction) to the appellant's file for twelve months. As there were more than three sanctions against the appellant on file, the ministry's made its determination under Section 28.1 (c), Employment and Assistance for Persons with Disabilities Regulation. The ministry determined under Sections 11(1) and 14.1, Employment and Assistance for Persons with Disabilities Act, that the appellant was provided disability assistance he was not eligible to receive due to inaccurate or incomplete reporting. Consequently the ministry determined that the appellant's disability assistance would be reduced as provided for under Section 14.1(2), Employment and Assistance for Persons with Disabilities Act.

**PART D – Relevant Legislation**

Sections 11(1) and 14.1, Employment and Assistance for Persons with Disabilities Act

Section 28.1, Employment and Assistance for Persons with Disabilities Regulation.

**PART E – Summary of Facts**

The information before the ministry at reconsideration included the following:

- The ministry's reconsideration decision of January 2, 2014 in which the ministry notes that the appellant is a sole recipient of disability assistance. The ministry states that the appellant failed to declare some of his employment income in 2013, resulting in an overpayment of \$780.58.
- The Reason for Request for Reconsideration of the Appellant's Request for Reconsideration, dated December 16, 2013, in which the appellant states that due to a brain injury from a car accident, he has short-term memory loss and gets easily flustered when under pressure or pressed for time. He states that he forgot to photo copy the checks he received from his jobs and did not have the information from the checks when he was calculating income. He also states he was so busy that he could not remember all the different days he worked. He states that two prior overpayments from previous years on his file "were the fault of the ministry." He claims that he was incarcerated in 2007 and "did not know the ministry would continue to deposit funds into my account. I informed them upon my release." He also claims that in 2007 or 2008 "the ministry turned my check back on even though they knew I received a student loan."

He states further that he tried to be accurate in reporting income for 2013 "but due to my head injury (no fault of my own), I made a mistake."

- The Decision To Be Reconsidered section of the Appellant's Request for Reconsideration, dated November 21, 2013, in which the ministry notes four previous sanctions applied to the appellant's file for non-reporting of income/assets: December 2006, September 2007, September 2008, and May 2012.
- The ministry's letter of November 15, 2013 to the appellant informing him that a sanction had been applied to his file because "it was determined you did not take the necessary steps to ensure accuracy and completeness when reporting your employment income on your Monthly Report form (HSD0081)."
- An Overpayment Chart for July to November 2013 showing Actual and Declared Income amounts for those months and concluding "Client missed declaring [work related] income . . . resulting in a client initiated overpayment of \$780.58."

Information received after the ministry's reconsideration decision includes:

1. The appellant's Reasons for Appeal in his Notice of Appeal of January 9, 2004. The appellant states that he cannot understand how someone familiar with his file and with head injuries could disagree with his argument. He writes: "How is it not possible for someone with my condition to be forgetful/distracted while dealing with mental fatigue and tasked with many things to do in a short period of time[?]"

The panel accepts the information in the Reasons for Appeal as argument from the appellant.

2. A submission from the appellant dated January 27, 2014 consisting of 14 pages and including the following, in this order:

- An unsigned letter dated February 19, 1998, to the ministry's vocational rehabilitation consultant from an unidentified career planner helping the appellant. The letter states that since the appellant's accident he takes longer to grasp things when learning a new job and has not been able to keep any employment. As well, since the accident, the appellant has become "somewhat withdrawn socially."
- An unsigned letter dated March 6, 1998 providing the results of a psychological assessment by a doctor as requested by the ministry's vocational rehabilitation consultant above. The letter states that the appellant was involved in a car accident in 1994. The assessment confirms that the appellant presents "difficulties with speed of cognitive processing which results in slowed thinking." The doctor adds: "Although his [the appellant's] intellectual potential appears to be well within the average to above-average range, his typical functional levels (as a result of slow-processing speed) may, therefore be more within the low-average range..." Within this range, the appellant "does appear to be able to process, store, and retrieve new material ...."
- A letter from a community college career planning facilitator to a worker at the Ministry of Human Resources dated May 5, 1998. The letter is in support of the appellant's application for at least level 2 disability benefits. The facilitator writes that the appellant is having a great deal of difficulty coping day to day as a result of the impact of the head injury he sustained in the car accident.
- The appellant's application for the Ministry of Human Resources disability benefits program consisting of three parts.

Part A, completed on March 23, 1998 by a career counselor on the appellant's behalf. The appellant describes his disability in terms of his problems grasping new concepts, as a result of head injuries from his car accident. He also suffers from depression and a sleep disorder, as well as emotional distress, all accident-related.

Part B, an assessment completed by the community college career planning facilitator above on March 24, 1998. She writes that the appellant's disability makes it difficult for him to manage time and daily living tasks. She states he has problems maintaining a place of residence because he has difficulty relating to others.

Part C completed on November 30, 1998, by a physician [not the doctor who completed the March 6 assessment above] refers to the appellant's primary diagnosis as "psychological and emotional coping difficulties" and other diagnosis(es) as "slowed intellectual processing." The appellant is described as having "difficulty in organization and inability to compete in the job market." The physician indicates that these problems appeared following the appellant's head injury in 1994. According to the physician the appellant's condition is episodic and is likely to continue for at least one year and is likely to recur.

- A letter of April 28, 1998 from the Ministry of Human Resources approving Level 1 disability benefits for the appellant. Level 2 benefits are denied. The letter is stamped "overturned by appeal."
- A reconsideration request signed by the appellant on May 13, 1998.
- A May 12, 1998 letter in support of the appellant's reconsideration request. The letter is from the

community college career planning facilitator who assessed the appellant's original application (above). The writer states that since his accident the appellant has not been able to hold employment or follow through on educational goals. The writer refers to the appellant's emotional coping difficulties mental fatigue, slowed processing of information, distractibility, trouble trusting others, intense frustration, difficulty coping emotionally, and his need for counseling help before he continues his education. She states that the appellant in her view has "a severe mental impairment that is likely to continue for at least two years."

- A May 28, 1998 memorandum from a Ministry of Human Resources worker to another Ministry worker citing a copy of the Ministry's reconsideration review of that date.
- A copy of that reconsideration review, granting the appellant's appeal (for Level 2 benefits).

Regarding item 2, the documents in the 14-page submission from the appellant dated January 27, 2014 and summarized above, the ministry at the hearing stated that the ministry had the documents in the submission on file and had no objection to the submission being accepted as evidence. The panel finds that the documents that comprise this item contain information in support of the information and records that were before the minister when the decision being appealed was made; and therefore the panel finds that the documents are admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

At the hearing, the ministry representative summarized the reconsideration decision, stating that this was the appellant's fifth sanction on file and that the reasons the appellant gave for not reporting his income were not sufficient to establish for the ministry that the appellant had been unable to do so. The appellant's response was to review the reports and letters (summarized above) included in his submission of January 27, 2014 comprising documents with his 1998 application for disability benefits. He stated at the hearing that though his condition has improved somewhat since 1998, he still experiences cognitive difficulties as a result of his car accident in 1994. He stated that he is easily distracted, flustered, confused and often forgetful.

**PART F – Reasons for Panel Decision**

The issue under appeal is whether the ministry's reconsideration decision to apply a sanction (\$25 reduction) to the appellant's file for twelve months was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. As there were more than three sanctions against the appellant on file, the ministry's made its determination under Section 28.1 (c), Employment and Assistance for Persons with Disabilities Regulation. The ministry determined under Sections 11(1) and 14.1, Employment and Assistance for Persons with Disabilities Act, that the appellant was provided disability assistance he was not eligible to receive due to inaccurate or incomplete reporting. Consequently the ministry determined that the appellant's disability assistance would be reduced as provided for under Section 14.1(2), Employment and Assistance for Persons with Disabilities Act.

**Employment and Assistance for Persons with Disabilities Act****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.

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

### **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.

[en. B.C. Reg. 193/2006, s. 4.]

### 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;

With respect to Section 14.1(1)(b) and (c), Employment and Assistance for Persons with Disabilities Act, the ministry's position is that the appellant failed to declare some of his employment income for July to November, 2013, resulting in an overpayment of \$780.58. The appellant acknowledges that he made a mistake in declaring his income for those months.

With respect to Section 14.1(2) Employment and Assistance for Persons with Disabilities Act, the ministry's position is that it was justified in deciding to reduce the appellant's disability assistance. The ministry notes that the wording of this provision allows for the ministry to exercise discretion in imposing sanctions and only to impose them if the minister is satisfied that such an application would best serve the purpose of the legislation. The appellant's position is that due to a head injury from a car accident in 1994, living out of town, and being busy he finds it difficult to remember his documents and to declare all of his income. As he states in his Reasons for Appeal he has short-term memory loss, gets easily flustered when under pressure or pressed for time. He states that he forgot to photo

copy the checks he received from his jobs and did not have the information from the checks when he was calculating income. The ministry's position in response is that being busy is not a satisfactory excuse for not declaring his income. Furthermore, regarding the appellant's condition due to his head injury from 1994, the ministry notes that the appellant has not provided any confirmation from a medical practitioner that he is medically unable to keep track of and declare his income. The ministry's position is that there is insufficient information to establish that the appellant was unable to declare his income and therefore that the ministry is justified in imposing a sanction.

The panel notes that after the reconsideration decision, in his 14-page submission of January 27, 2014, the appellant provided several documents from 1998 related to his application for PWD status that year and describing the physical and psychological effects of the car accident of 1994. Further the panel notes that two of these documents are provided by medical practitioners, the psychological assessment of March 6 and the medical report of November 30 in Part C of the appellant's application for disability. The other documents related to the appellant's condition are prepared by a career planning worker and a college planning facilitator. The reports by the physicians indicate that as a result of the accident the appellant's cognitive processes are reduced, with slower intellectual processing. The physician who completed the psychological report states that the appellant's intellectual potential is within the low average range but the appellant "does appear to be able to process, store, and retrieve new material . . . ." The physician who completed Part C of the appellant's application for disability refers to the appellant's primary diagnosis as "psychological and emotional coping difficulties" and other diagnosis(es) as "slowed intellectual processing." The appellant is described as having "difficulty in organization."

The panel finds that the slowed intellectual processing indicated by both physicians does not in itself directly address the question of the appellant's inability to keep track of his income, insofar as there is no evidence in the reports by the physicians to indicate that keeping track of income requires faster cognitive processing than the appellant is capable of within his "low-average" range. The panel also finds that the evidence in the 1998 documents from the medical practitioners is inconclusive with respect to determining if the appellant in 2014 was unable to declare his income because of cognitive deficits caused by the accident in 1994. The panel notes that the physicians in these documents did not indicate that the conditions observed were going to last 16 years. The physician who conducted the psychological assessment states that his assessment was to "evaluate [the appellant's] current range and levels of intellectual functioning" and there is no indication in the report of the likely time period the appellant's condition might last. The physician who completed Part C of the appellant's application for disability indicates only that the appellant's condition is likely to continue for at least one year and to recur but does not check the box on the form indicating that he knows it will continue five years or more. Based on the medical evidence provided in 1998, and the lack of current confirmation from a medical practitioner that the appellant is medically unable to keep track of and declare his income, the panel finds that the ministry reasonably determined that there is insufficient evidence to establish that the appellant was unable to keep track of and record his income in 2014. Therefore the panel finds the ministry's determination reasonable with respect to reducing the appellant's disability as provided for under Section 14.1(2) Employment and Assistance for Persons with Disabilities Act.

With respect to Section 28.1(c), Employment and Assistance for Persons with Disabilities Regulation, the ministry's position is that this is the appellant's fifth sanction on file and that therefore a \$25/month sanction for 12 months applies. The ministry cites four prior sanctions applied to the appellant's file:



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December 2006, September 2007, September 2008 and May 2012. The appellant's position is that two of these sanctions "were the fault of the ministry." The panel notes that its role is to determine the reasonableness or unreasonableness of the ministry's reconsideration decision of January 2, 2014, not determinations from previous years which the appellant had the right to appeal back then. Given that this is the fifth sanction on the appellant's file, the panel therefore finds to be reasonable the ministry's decision with respect to applying a sanction of \$25/month for 12 months as indicated under Section 28.1(c), Employment and Assistance for Persons with Disabilities Regulation. The panel therefore confirms the ministry's reconsideration decision.