

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of May 13, 2014 wherein the ministry denied an underpayment of disability assistance (“DA”) for the month of February 2014 because the appellant failed to report a change in her circumstances as set out in Section 11 of the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) within the time limit prescribed in Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 29.

PART D – Relevant Legislation

EAPWDA Section 11 (1)

EAPWDR Section 29 (a) (i) and (b) (ii).

PART E – Summary of Facts

The appellant is a single adult with one dependent child. She receives \$672.08 support and \$570 shelter, for a total monthly DA of \$1242.08, from which \$150 maintenance income is deducted, for a net DA of \$1092.08.

On March 29, 2014 the appellant advised the ministry that she had not been receiving maintenance income since November 2013, and requested that the ministry pay back the deducted maintenance income for the period February 2014 to April 2014. The ministry denied repayment of the February 2014 maintenance deduction because the appellant failed to notify the ministry of changes in her financial circumstances until March 29, 2014.

In her request for reconsideration dated May 1, 2014 the appellant apologized for failing to notify the ministry of the change in her financial circumstances. She explained that she does not receive a bank statement every month and failed to check her bank account.

In its May 13, 2014 reconsideration decision the ministry determined that the appellant was not eligible to receive payment of the deducted maintenance amount for the month of February 2014 for the following reasons:

- under EAPWDA Section 11(1) the recipient must notify the ministry of any change or information that may affect the eligibility of the family unit ; and
- A report setting out a change in income received by the family unit must be submitted by the 5th day of the calendar month following the month in which the change occurred as required by EAPWDR Section 29.

At the hearing the appellant stated that she was in financial difficulty at the time she requested back payment of the maintenance income that had been deducted by the ministry. She reiterated that the monthly maintenance income had always been deposited directly into her bank account, and when she realized that her child's father was no longer paying maintenance she went directly to the ministry and completed a change in circumstances card ("stub"). The appellant added that she thought the family maintenance department would notify the ministry that she was no longer receiving child maintenance payments. She was not sure if she had filled out a stub in February 2014.

In response to a question from the panel the ministry representative confirmed that the only way to notify the ministry of a change in financial circumstances is by use of the stub. The ministry representative added that there is no notation in the file that the appellant reported a change in circumstances prior to March 29, 2014.

Although the issue of an administrative error underpayment by the ministry was not addressed in the reconsideration decision, it was included in Section 2 of the request for reconsideration. At the hearing the ministry representative explained that in the case of a clerical error by the ministry the ministry may reimburse for backdated deductions.

The panel makes the following findings of fact:

1. The appellant is a single recipient of DA with one dependent child.
2. The appellant stopped receiving child maintenance income in November 2013.
3. On March 29, 2014 the appellant notified the ministry of a change in income received by the family unit.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny an underpayment of disability assistance (DA) for the month of February 2014 because the appellant failed to report a change in circumstances contrary to Section 11 of the EAPWDA within the time limit prescribed in EAPWDR Section 29.

The relevant legislation is set out in the EAPWDA and EAPWDR:

EAPWDA:

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.

Effective date of eligibility

- 23** (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance
- (a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities.
- (2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.
- (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.

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)

(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:

(ii) change in income received by the family unit and the source of that income.

Included in Section 2 of the request for reconsideration but not addressed in the reconsideration decision was the issue of reimbursement for an administrative underpayment. The ministry acknowledged that in the case of an administrative error by the ministry the ministry may reimburse for backdated amounts deducted, but argued that in this instance no administrative error had occurred because the appellant had failed to notify the ministry of her change in circumstances.

The ministry argues that the appellant is required by EAPWDA Section 11(1) (b) to notify the ministry of any change or information that may affect the eligibility of her family unit and under EAPWDR Section 29 must submit a stub by the 5th day of the month following the month in which the change occurred. The ministry argues further that because the appellant failed to notify the ministry of a change in income received by her family unit until March 29, 2014 the ministry was unable to determine the appellant's eligibility to discontinue deducting her maintenance income. The ministry therefore was unable to adjust the appellant's DA for the month of February.

The ministry also relied upon EAPWDR Section 23(5) which states: "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 assistance is requested." The appellant has not requested assistance for a service provided or a cost incurred. Therefore Section 23(5) is not applicable to the issue under appeal.

The appellant argues that she does not receive a monthly bank statement and failed to check her account, but notified the ministry of her change in financial circumstances on March 29, 2014 as soon as she became aware that she was no longer receiving child maintenance income as a direct deposit into her bank account. She adds that she thought that the family maintenance department would notify the ministry that she was no longer receiving child maintenance payments. She was not sure if she had filled out a stub in February 2014.

The evidence establishes that the appellant failed to report a change in her income (family maintenance payments) as required by Section 11(1)(b)(ii) of the EAPWDA until March 29, 2014, which is beyond the 5 day time limit set out in EAPWDR Section 29(a) that applies to her February benefits.

The panel finds based on the evidence that the appellant failed to report the change in her income (family maintenance payments) to the ministry as required by Section 11(1)(b)(ii) of the EAPWDA until March 29, 2014, which is beyond the time limits for a preceding month set out in EAPWDR Section 29(a). The panel finds the statutory regulations are clear and the ministry has no discretion or authority to vary these statutory requirements.

The panel therefore finds that the ministry's decision to deny the appellant an underpayment of DA for the month of February 2014 because she failed to report a change in circumstances within the time limit prescribed by EAPWDR Section 29(a) was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.