APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of May 22, 2014, wherein the ministry determined that the appellant was no longer eligible for disability assistance in accordance with section 28 of the Employment and Assistance for Persons with Disabilities Regulation. The basis for the determination was that the appellant failed to comply with the ministry's direction to provide information as required under section 10 of the *Employment and Assistance for Persons with Disabilities Act*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA"), section 10
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), section 28(1)

PART E – Summary of Facts

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

- The appellant is a sole recipient of disability assistance. Her file opened in September, 1997.
- Letters from the ministry to the appellant dated November 13 and November 28, 2013 asking the appellant to provide information including:
  - Copies of notices of income tax assessment ("NOA") for 2011 and 2012 with corresponding T4 and T5 slips.
  - Statements for all bank accounts, sole or joint, for the period of January 1, 2011 to November 13, 2013.
  - Statements for all investments, RRSPs, pension funds and other assets.
- A report from the Canada Revenue Agency (the "CRA"), dated November 27, 2013, indicating that the appellant had earned business income in 2012.
- A report from the CRA dated November 27, 2013, indicating that the appellant had earned professional income in 2011.
- A copy of the appellant's 2012 income tax return.
- A letter from the ministry to the appellant dated January 6, 2014 requesting various pieces of information including the "T slips".
- An e-mail from the appellant dated January 10, 2014 stating in part that her apartment had been broken into, her income tax reports and receipts were stolen, and that she did not have a printer so could not immediately provide stubs from her home based business. She stated that a police file had been started regarding the break-in.
- A questionnaire completed by the appellant on July 5, 2011 as part of the application process to join the ministry's Self-Employment Program ("SEP").
- The appellant's bank statements for the period January 1, 2011 to November 14, 2013.
- Approximately 75 pages of photocopied expense receipts.
- Approximately 30 pages of the appellant's product orders from company A for 2013.
- Approximately 33 pages of the appellant's product orders from company B for 2013.
- A note to the ministry's file, dated February 5 2014, reporting that the ministry's investigating officer ("I/O") had spoken to an RCMP constable who said that the complaint from the appellant dealt with cyberbullying, not with the theft of financial statements. A subsequent file note dated March 12, 2014 referenced a further conversation with the constable who attended at the appellant's apartment "when she thought her apartment had been broken into"

confirming that a case containing 3 CDs was allegedly missing from the appellant's apartment (though the case was subsequently found), and that "income receipts and tax information being stolen…did not come up."

- A letter from the ministry to the appellant dated February 5, 2014 requesting that the appellant go through her financial information with a calendar and write up a financial statement showing her earnings each month during 2011, 2012, 2013, and 2014.

- The appellant's letter to the ministry (dated February 12, 2014) in response to the ministry's letter of February 5, 2014, in which the appellant stated in part:
  - That she had submitted on January 31 and February 3, 2014 all of the financial information in her possession for 2011, 2012 and 2013.
  - If one were to take all of her financial information and "simply do a division by 12" to estimate a monthly income, the appellant's "financial situation is still [v]astly below the po[v]erty level."
  - The appellant "did extra effort" to request that CRA provide a T5007 and printouts after the "truthful theft of those years of income tax records along with the finite receipts", and then did "another extra effort" in obtaining the full tax record for 2012 and other detailed information related to her businesses.
  - She had been told by the ministry that under the SEP she only had to submit her earnings/deductions yearly at income tax time.
  - The appellant had never been informed by the ministry that she was not eligible for the SEP.
  - She cannot provide a further monthly breakdown of her finances, the ministry has all it needs to determine what it wants to know, and the appellant is exhausted from her efforts to please the ministry.

- A letter from the ministry to the appellant dated March 4, 2014, advising the appellant that the requested monthly income information had not been received by the ministry, so the appellant's eligibility could not be determined and accordingly her file would be closed on April 1, 2014.

- A written statement from the appellant's daughter, dated April 17, 2014, stating (among other things) that there is proof her mother's financial statements were stolen as there is a police file, and that her mother was never informed that she had to provide detailed income information on a monthly basis.

In her oral testimony on appeal, the appellant substantially reiterated information that had been before the ministry at the time of reconsideration. She also stated that:

- The deposits to her bank account from her work with Avon represent a gross amount and do not reflect her expenses, and often include the portion that subsequently gets paid to Avon. The appellant said that her share is only 10-25%.
- She has tried to get more detailed financial records from Avon, Regal and the travel agency for which she did some work, but said that for various reasons none of them could provide her with any more information.
- She registered with the ministry's SEP in 2011. She stated that she was told by the ministry

worker that she only had to report her earned income once a year, that the CRA would provide the information about her income to the ministry, and that she was only the 3rd person in B.C. to have been accepted into the SEP.
- Now that the ministry has told her she has to report her income monthly, she has been doing so since January 2014.

In response to a question from the panel, the appellant stated that she has an accountant prepare her income tax returns at the end of each year.

Additional Information

At the hearing the ministry submitted a written outline of its position which the panel accepted as argument.

The ministry also submitted a two-page printout from its computer files which it says shows that during the period July 2006 to September 2013, the appellant reported only $58 in earned income, on July 13, 2011. The appellant did not object to admission of the document. The panel assessed the document as supporting the ministry's contention that the appellant had unreported earned income during the relevant time period, and admitted it as written testimony in accordance with section 22(4) of the *Employment and Assistance Act*.

The appellant submitted a copy of an e-mail which she had sent to the ministry's investigating officer on February 26, 2014 acknowledging that she'd provided the ministry with the wrong RCMP case file number regarding the alleged break-in at her apartment. When questioned by the panel as to the relevance of this document to the current appeal, the appellant said that the documents would have supported her contention that X and the appellant maintained their finances separately. The panel notes that the alleged break-in was referenced in the appellant's written submissions that had been before the ministry. The panel accepted this document, and the appellant's oral testimony, as being in support of the records and information that had been before the ministry at reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

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PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to declare the appellant no longer eligible for disability assistance due to her failure to provide information in accordance with section 10 of the EAPWDA, with said ineligibility to last until the requested information is provided in accordance with section 28(1) of the EAPWDR.

The relevant legislative provisions are as follows:

EAPWDA

Information and verification

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.

EAPWDR

Consequences of failing to provide information or verification when directed

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 ineligible for assistance lasts until the applicant or recipient complies with the direction.

* * *

The appellant's position is that to the best of her ability she has provided all the information the ministry requested. She argued that she doesn't know what else she can provide and that it is unreasonable for the ministry to expect her to do more. The appellant argued that it is "over the top" for the ministry to expect her to provide a monthly breakdown of her income during the relevant period. She said that the ministry can make its own estimate based on the information she has provided. The appellant stated that she'd been advised by a ministry worker that she'd been accepted into the SEP, and that she only had to report earned income once a year, at year end. She also stated that at no time did her earned income exceed the $500 earned income exemption that was in place during most of the relevant time period. Finally, the appellant cited the decision in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)* [2009] B.C.J. 2124 in arguing that the panel must give significant weight to her testimony. She said there is no reason to doubt her testimony and that the panel must take it at face value.

The ministry's position is that a review of the appellant's file shows that she did not fulfill her statutory obligation (under section 11 of the EAPWDA and section 29 of the EAPWDR) to report income in 2011-2013. The ministry stated that the appellant failed to provide information and records directed by the ministry for the purpose of determining or auditing eligibility for disability assistance under section 10 of the EAPWDA. Accordingly, the ministry argued, the ministry reasonably determined that the appellant was ineligible for disability assistance until she provided that required information.

Panel Decision

Section 10 of the EAPWDA gives the ministry broad powers to require a recipient to provide information and verification as part of determining or verifying eligibility. In the appellant's case, documentation received by the ministry from the CRA indicated that the appellant had reported income for income tax purposes which she had not reported to the ministry as required.

The appellant has argued that she did provide everything that she could provide. The panel notes that the ministry specifically directed the appellant to provide a monthly breakdown of her income during the period 2011 to 2014 which the appellant has failed to do. She stated that this request by the ministry was "over the top" and that she no longer had the financial records she required to prepare such a breakdown. She suggested instead that the ministry review her voluminous records with respect to product orders, as well as her unsorted expense receipts and bank statements to come up with its own estimate of her monthly income.

In the panel's view, it was not unreasonable for the ministry to request the appellant to provide the monthly breakdown. She had a statutory obligation to inform the ministry of her income each month by the 5th of the following month. The appellant has provided no evidence to support her contention that the ministry had told her that she only had to report her income annually, or that the CRA would

make this report on her behalf. It is clear from the tax information received from the CRA that the appellant was reporting income to the CRA that she did not report to the ministry. In her oral testimony the appellant acknowledged that she has an accountant prepare her income tax returns. Given that the appellant acknowledges that she does earn income which was not reported monthly to the ministry, and since the appellant does have the assistance of an accountant to prepare her income tax returns, it is clear that the appellant is in a better position than the ministry to provide an estimate of her monthly income for the relevant time period. The appellant acknowledges that she has not provided the monthly breakdown as directed by the ministry.

It is irrelevant whether the amount of the appellant's earned income ultimately was under the allowable earnings exemption. The issue in this appeal is that the appellant had an obligation to provide information to the ministry as directed and she did not do so.

With respect to the appellant's contention that the panel must accept her evidence at face value, the panel has declined to do so on the basis of concerns it has with some of her evidence. There are numerous instances where the appellant has made statements favourable to herself that are unsupported by other evidence, such as her being told that she had been accepted into the SEP, that she only had to report her income once a year, and that the CRA would report her earned income to the ministry on her behalf. The panel also notes that the appellant twice referred the ministry to the RCMP regarding an alleged theft of her financial information, and twice the RCMP stated that the theft of financial records was not raised by the appellant.

Considering the evidence as a whole, the panel concludes that the ministry reasonably determined that the appellant had failed to provide information as directed under section 10 of the EAPWDA. Section 10(4) of the EAPWDA provides that if a recipient fails to comply with a direction, the ministry may declare the family unit ineligible for a prescribed period. The period prescribed in section 28 of the EAPWDR is "...until the applicant or recipient complies with the direction."

For these reasons, the panel finds that the ministry's decision that the appellant is ineligible for disability assistance until she complies with the ministry's direction under section 10 is a reasonable application of the legislation in the appellant's circumstances. Accordingly, the panel confirms the ministry's decision.