

PART C – Decision under Appeal

This is an appeal of the September 24, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry), in which the Ministry upheld its imposition on the appellant's file of a sanction for inaccurate reporting, reducing her disability assistance by \$25 per month for 3 months starting September 2014, pursuant to s. 28.1(a) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 11.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 14.1 and 28.1.

PART E – Summary of Facts

The appellant is a designated person with disabilities who receives disability assistance. The evidence before the Ministry at the reconsideration consisted of the following documents:

- Copy of Ministry of Children and Family Development (“MCFD”) form, Children Cared for Outside the Parental Home Notification and Confirmation, indicating by check marked boxes that the MCFD’s notification date was July 29, 2014, the “date child left parental home” was April 24, 2014 (the “MCFD Form”);
- Copy of computer printout of Ministry overpayment notification comments dated July 30, 2014, with handwritten note, “Discussed overpayment and sanction by phone with the client July 31, 2014 [Ministry investigative officer’s name]”;
- Copy of a letter to the appellant from a Ministry investigative officer dated July 30, 2014 advising the appellant that the Ministry had determined that she received disability assistance for which she was not eligible and that an overpayment of \$1,141.98 had been recorded on her file;
- Copy of Ministry overpayment chart for the appellant’s assistance months May 2014 through July 2014, printed July 30, 2014, with a handwritten note, “Approved July 30, 2014” and a set of initials;
- Copy of a letter to the appellant from a Ministry investigative officer dated July 30, 2014 advising the appellant that, as a result of inaccurate or incomplete reporting, the Ministry was applying a sanction to her file, reducing her assistance by \$25 each month for 3 months beginning in September 2014; and
- The appellant’s written submissions on reconsideration (2 pages), to which was attached a copy of a letter to the appellant signed by a MCFD social worker and acting team leader dated August 26, 2014 (“MCFD Letter”) in which it states the following:
 - on April 24, 2014, an Extended Family Plan was signed by the appellant, her aunt and uncle, and the Director of Child Protection (“Director”), in which the parties agreed that the appellant and her child would live with the aunt and uncle, and that the child was in the appellant’s care at the time of this plan;
 - on June 25, 2014, the court ordered that the Director supervise the appellant’s care of her child and the child was in the appellant’s care at the time of this order; and
 - on July 21, 2014, the appellant’s child was removed from her care and placed in the care of the appellant’s aunt and uncle.

The appellant’s child was born in late March 2014 and shortly after, the Ministry was advised of the birth. The appellant could not remember who reported to the Ministry the birth of her child – she thought it was one of the social workers from the MCFD who met with her in the hospital. The Ministry issued disability assistance to the appellant as a sole recipient with one dependent child starting April 3, 2014. At the hearing, the appellant said that she and her child were in hospital from the child’s birth until April 24, 2014, the date on which the appellant signed the Extended Family Plan, and moved with her child to the home of her aunt and uncle. The appellant said that she maintained her apartment, but did not live in the apartment with her child after the child’s birth. The appellant said that she did not notify the Ministry about the Extended Family Plan on April 24, 2014.

On June 25, 2014, the court ordered that the Director supervise the appellant’s care of her child. On July 21, 2014, the appellant’s child was removed from her care and placed in the care of the

appellant's aunt and uncle. The appellant told the panel that she left her aunt and uncle's home on July 21, 2014, that her child continues to live with her aunt and uncle, but she is working to have her child back in her care. The appellant is living in the apartment she maintained since before the birth of her child. The appellant said that at the removal order hearing on July 21, 2014, a MCFD social worker told her that the MCFD communicates directly with the Ministry and would advise the Ministry that her child was no longer in her care. The MCFD Form was completed and provided to the Ministry on or about July 29, 2014. As noted above, the MCFD Form indicates that the child was removed from the parental home on April 24, 2014.

The Ministry's reconsideration decision indicates that the appellant's file was triggered for review in July 2014, as the appellant was not yet in receipt of federal benefits for her child. In its July 30, 2014 letter, the Ministry notified the appellant that it had determined that same day that an overpayment had occurred on the appellant's file and that the Ministry worker had reviewed this information with the appellant. The Ministry's letter advised the appellant that the overpayment occurred because of inaccurate or incomplete reporting; that the appellant did not "take the necessary steps to ensure accuracy and completeness when reporting [her] change of living arrangements" for the appellant's child on her monthly report form. At the hearing, the Ministry said that the appellant did not report to the Ministry the Extended Family Plan on the day it was signed or shortly thereafter. The Ministry's letter advised the appellant that as a result of the inaccurate or incomplete reporting, a sanction was being applied to her file and as it was the first occurrence on her file, the sanction was a monthly reduction of the appellant's disability assistance of \$25 per month for three months starting in September 2014.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's September 24, 2014 reconsideration decision, in which the Ministry determined that the appellant was required to serve the three-month sanction for inaccurate reporting, pursuant to section 28.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Legislation

Section 11 of the EAPWDA imposes reporting obligations on recipients of disability assistance and states:

- (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.

Section 14.1 of the EAPWDA addresses the consequences for providing inaccurate or incomplete information and states:

- (1) The minister may take action under subsection (2) if the minister determines that
 - (a) Disability assistance ... was provided to or for a family unit that was not eligible for it,
 - (b) the disability assistance ... 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 ... 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) ...

Section 28.1 of the EAPWDR sets out the consequences for providing inaccurate or incomplete information and states:

- If the minister determines under section 14.1(1) of the Act that the minister may take action under section 14.2(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,

....

Submissions

The appellant does not dispute that she did not notify the Ministry of the April 24, 2014 Extended Family Plan. The appellant's advocate pointed to the Ministry's policy regarding children cared for under the *Child, Family and Community Service Act* ("CFCSA") that states "A [MCFD] social worker must confirm that the child is being cared for under the CFCSA and that the parent is actively working on the return of the child." The appellant's advocate argued that when a child, such as the appellant's child, is subject to the supervision of the Director, the Ministry's policy shifts the onus in reporting a change involving the child from the recipient of disability assistance (as required by section 11 of the EAPWDA) to the MCFD social worker. The appellant and her advocate argue that the Ministry's policy is in place because when the MCFD is involved with a recipient's children (or child), it is an emotional time and by shifting the onus to the MCFD social worker to report changes in the child's circumstances, it provides a fairer process.

The appellant's advocate argued that the MCFD social worker provided erroneous information to the Ministry in the MCFD Form of July 29, 2014 which stated that the child had left the parental home on April 24, 2014. The appellant's advocate said that the appellant entered into the Extended Family Plan on April 24, 2014, but that her child was in her care from the child's birth until the child was subject to a removal order on July 21, 2014 (as clarified in the MCFD Letter of August 26, 2014).

The appellant and her advocate also argue that the appellant complied with the reporting obligations of section 11 of the EAPWDA and say that because the appellant had not reported to the Ministry that her child was going to live with her at her apartment, the agreement set out in the Extended Family Plan was not a change in information previously reported to the Ministry (as per subs. 11(1)(b)(ii)). The appellant and her advocate argue that the Ministry assumed that the child would live with the appellant at her apartment.

In its submissions, the Ministry explained that as a recipient of disability assistance, the appellant is responsible for reporting any change in information that may affect the eligibility of her family unit to the Ministry. The Ministry's position is that the Extended Family Plan signed by the appellant on April 24, 2014 constitutes information that may affect the eligibility of the appellant's family unit to disability assistance, which information she was required to report to the Ministry under subs. 11(1)(b)(i) of the EAPWDA. The Ministry also says that the information in the Extended Family Plan is a change from the information previously reported to the Ministry, as the appellant's aunt and uncle were participating in the care of the appellant's child from April 24, 2014 onward (as set out in subs. 11(1)(b)(ii) of the EAPWDA). The Ministry's position is that because the appellant did not report the information about the Extended Family Plan to the Ministry, the Ministry properly imposed a sanction on the appellant under section 14.1 of the EAPWDA. The Ministry's position is that the appropriate sanction is a reduction in the appellant's monthly disability assistance of \$25 per month for 3 months, as set out in section 28.1(a) of the EAPWDR.

Decision

The panel notes that the appellant signed the Extended Family Plan with the Director and her aunt and uncle on April 24, 2014 and that the Extended Family Plan required the appellant to live with her child at the home of her aunt and uncle, as opposed to the apartment she maintained prior to (and after) her child's birth (and where she currently lives). The appellant does not dispute that she did not report the information about the Extended Family Plan or its existence to the Ministry. The appellant argues that, through its policy, the Ministry has shifted the onus to the MCFD social workers to report to the Ministry information that may affect the eligibility of the family unit of recipients of disability assistance who have children subject to the provisions of the CFCSA. The panel does not accept the appellant's argument – the Ministry's policy cannot override the provisions of section 11 of the EAPWDA which require a recipient of disability assistance to report any information that may affect the eligibility of the family unit to receive disability assistance. Accordingly, the panel finds reasonable the Ministry's determination that the appellant did not report the information about the Extended Family Plan of April 24, 2014 to the Ministry as required by section 11 of the EAPWDA.

Section 14.1 of the EAPWDA provides that the Ministry may impose consequences on a recipient of disability assistance for providing incomplete or inaccurate information, or failing to take the necessary steps to ensure reporting of complete information to the Ministry, and section 28.1 of the EAPWDR sets out that for a first occurrence, the Ministry may impose a sanction of a reduction in the amount of disability assistance of \$25 per month for three months. The panel finds reasonable the Ministry's determination that the appellant, by not reporting the information in or existence of the Extended Family Plan of April 24, 2014 to the Ministry, was subject to the consequences provisions of section 14.1 of the EAPWDA. Further, the panel finds reasonable the Ministry's determination that the appropriate sanction for the appellant's first occurrence is a reduction of \$25 per month in her disability assistance, as set out under section 28.1(a) of the EAPWDR.

Accordingly, the panel finds that the Ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the Ministry's decision.