

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated September 10, 2014 which held that the Appellant is not eligible for Medical Services Only (MSO) pursuant to section 61.1 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because he did not cease to be eligible for disability assistance (DA) as a result of employment income earned; or receipt of a pension or other payment under the Canada Pension Plan (CPP).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation – sections 12.1 and 61.1

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

- The Appellant's Request for Reconsideration dated August 13, 2014 with attached submission from his advocate dated August 19, 2014. The Advocate stated that on July 20, 2013 the Appellant was granted PWD status and placed on MSO as a result of early CPP benefits of \$680 per month. The Appellant owns a share in a business (the Company) in which he was working until 2007 when he took sick leave due to his disabilities. He is hesitant to sell his share as doing so would terminate his employment with the Company where he intends to resume work. In addition, the share is not easily disposed of. The Ministry has determined that shares are a non-exempt asset and as a result, the Appellant no longer qualifies for MSO benefits. The Appellant requests that the Ministry grant an exemption for his share and allow him to access a shelter top up, medical services, and a bus pass program.

The following documents were also attached to the Request for Reconsideration:

- Two letters to the Ministry from the Advocate dated January 10th and April 11th 2014 in which the Advocate outlines the difficulty involved in disposing of the Appellant's share.

Information from the Company regarding the Appellant's share and company policies:

- A letter from the Company dated February 26, 2014 stating that the Appellant is one of 278 shareholders and has been on sick leave since February 2007.
- A fax from the Company to the Advocate dated August 22, 2013 stating that ownership of a company share confers a right to employment by the company subject to the company's rules and regulations. The sale of a share terminates employment and the right to future employment by the company.
- A letter from the Company to the Advocate dated May 12, 2014 stating that if the Appellant wishes to return to work, he will not be able to resume the position he held when he began his absence, and he will be required to pass a medical exam. His employment with the Company will be terminated if he sells his share.
- A copy of web pages for the Company's management history and philosophy, dated April 9, 2012.

Submissions from the Advocate regarding the emphasis on employment for persons with disabilities:

- A copy of Legislative Assembly Hansard, April 17, 2002;
- Copies of two BC court decisions (Dockets 117064 and CA031388); and
- A copy of the Ministry's policy: *Ministry Case Management Principles*, Dec. 1, 2003.

Other documents included the following background information:

- Two letters to the Appellant from the Ministry dated August 23rd and 30th, 2012 regarding a review of his file.
- An exchange of emails between the Ministry and the Company dated September 6, 2012 in which the Company stated that one common share is registered in the Appellant's name (since 1984). The selling price for the Company's shares was between \$273,500 and \$277,500 in the past year.

- Three letters to the Appellant from the Ministry from September 7th and 25th 2012 stating that he is no longer eligible for assistance due to “assets in excess”. The Appellant had received assistance for which he was not eligible and has an overpayment of \$12,929.61 as well as a sanction for inaccurate or incomplete reporting.
- A copy of the Appellant’s DA application dated April 18, 2013; and a letter to the Appellant from the Ministry dated July 20, 2013 advising that the Ministry has approved his designation as PWD. The Ministry advised him to contact it if he wishes to receive DA and stated that DA is also dependent on financial and other eligibility criteria being met.
- A copy of the Ministry’s “Employment and Assistance Review” form dated August 7, 2013 indicating that the Appellant has a share in the company and monthly CPP income of \$697.36. The form also noted that the Appellant had no fixed address and no immediate need for a shelter allowance.
- A letter addressed “To whom it may concern” from an advocate dated November 29, 2013 with attached PWD medical assessments. The Advocate stated that she explained the Ministry’s policy to the Appellant “of temporarily exempting assets to give the applicant time to set up a trust.” The Advocate reported that the Appellant did not make arrangements to sell his share due to his medical conditions and the absence of any reliable assistance. In any event, he would not be able to sell his share quickly.
- A Ministry “Shelter Information” form dated November 21, 2013 indicating the Appellant was intending to rent a suite for \$375 per month.

#### Oral testimony

The Advocate explained that at the time the PWD application was approved, the Appellant did not have a residence; he therefore had no rent to claim. The Ministry approved MSO (and no other allowances) because the Appellant was receiving CPP. The Appellant was not eligible for the support portion of DA due to CPP income in excess of the disability rate of \$531.42. The Appellant was receiving MSO from August 7, 2013 until the Ministry determined he wasn’t eligible for it on July 17, 2014. The Appellant requested the shelter allowance in November 2013 because he had found a place to rent. The Ministry did not process the request because it was waiting for the Appellant to deal with his share. The Advocate noted that part of the Ministry’s original decision denying an exemption for assets was not addressed in the reconsideration.

In accordance with section 22(4)(b) of the *Employment and Assistance Act*, the panel admits the oral testimony as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made. The panel finds that the oral submissions relate to the Ministry’s information regarding the categories of allowances the Appellant was assessed for (support, shelter, and MSO).

The Ministry relied on its reconsideration decision and background information and did not introduce any new evidence. The Ministry reported the following:

- In September 2012, the Appellant applied for income assistance and was denied due to assets in excess of \$5,000, representing a share in the Company. The share had a value of between \$273,500 and \$277,500 and entitled the Appellant to work for the Company.
- In March 2013, the Appellant was denied income assistance due to assets in excess of \$5,000, and CPP income of \$685.00 per month which exceeded the income assistance rates.

- Subsequently, the Appellant applied for PWD designation which was approved on July 20, 2013.
- At a file review on August 7, 2013, the Ministry informed the Appellant that since he did not have a rent expense, he would only be eligible for the support portion of DA, \$531.42. However, he would not be eligible to receive financial assistance at that time because his CPP was \$678.36, exceeding the support allowance.
- At the file review, the Appellant was found to still have assets in excess as the result of his share. Pursuant to section 12.1 of the EAPWDR, the Ministry granted the Appellant a three month exemption to enable him to place his asset in a trust or RDSP. The Ministry granted him MSO status during the exemption period and explained to him that the maximum trust exemption is \$200,000 and that documentation regarding the sale of the share would be required within the next three months so that ongoing eligibility for MSO could be assessed.
- In November 2013, the Appellant stated that he had been unable to sell his share or place it in a trust or RDSP because (a) it was difficult for him to find a buyer for the share; and (b) he wanted to retain the share so that he could work for the company after he got well. The Ministry extended the deadline for selling the shares or placing them in a trust or RDSP because it found that the Appellant was making reasonable efforts towards doing so.
- Also in November 2013, the Appellant submitted an "Intent to Rent" form, requesting rent of \$375 per month. The Ministry did not process the request because the Appellant's eligibility for financial assistance was still pending the requested documentation regarding the sale of the share.
- On July 17, 2014, the Ministry determined that the Appellant was ineligible for MSO due to assets in excess of the allowable limit under the EAPWDR. The Ministry noted that it had given the Appellant more than eleven months to provide the requested documentation to show that he had made a reasonable effort to liquidate the share and place it in a trust or RDSP; however, the Appellant had not submitted the required documents which included the Company's board minutes.
- On August 13, 2014 the Appellant requested a reconsideration of the Ministry's denial of MSO.
- On reconsideration, the Ministry determined that the Appellant was not eligible for MSO pursuant to EAPWDR section 61.1 because he did not cease to be eligible for DA due to certain types of income (e.g., employment or CPP).
- The Appellant was approved for PWD designation but never received DA from the Ministry at any time.

At the hearing, the Ministry stated that the Appellant was receiving MSO because it was the only way the Ministry could keep the file open while the Appellant was dealing with the asset (his company share). The Ministry stated that during the time the asset was being reviewed, there was nothing in the file to show that shelter funds had been requested again (subsequent to the original request in November 2013 when the Appellant began paying rent). In response to a question from the Advocate, the Ministry stated that it is not clear in the legislation (EAPWDR section 12.1) why the Ministry left the file open. It was an exception that the Ministry made because it wanted to give the Appellant more time to liquidate the asset. In response to a question from the panel, the Ministry stated that the Appellant would have received DA if it found him eligible for the shelter allowance.

The panel makes the following findings of fact:

- The Appellant was designated PWD but did not receive DA.
- The Appellant received MSO from August 2013 until July 2014.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of August 13, 2014 which held that the Appellant is not eligible for MSO pursuant to section 61.1 of the EAPWDR because he did not cease to be eligible for DA as a result of employment income or receipt of CPP was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the Appellant.

The following sections of the legislation apply to the reconsideration decision under appeal:

### **Temporary exemption of assets for person with disabilities or person receiving special care**

**12.1** (2) During the exemption period described in subsection (3), an asset received by a person with disabilities or by a person receiving special care is exempt for the purposes of section 10 (2) [asset limits] if the minister is satisfied that the person intends to

(a) establish a registered disability savings plan or trust, and

(b) contribute some or all of the asset to the registered disability savings plan or trust.

(3) The exemption under subsection (2) starts on the date the person receives the asset and ends 3 months after that date unless

(a) the exemption period is extended to a later date under subsection (4), or

(b) the exemption ceases to apply under subsection (5).

(4) The minister may extend the exemption period to a specified date if the minister is satisfied that the person is making reasonable efforts to establish a registered disability savings plan or trust.

### **Eligibility for medical services only**

**61.1** For the purposes of this Division, a person may be eligible for medical services only if

(a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

(i) employment income earned by the person or the person's spouse,

(ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan, or

(iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement,

(b) the person's family unit ceased to be eligible for disability assistance on the day the person became 65 years of age,

(c) the person is a person with disabilities and the person's family unit ceased to be eligible for disability assistance because of

(i) financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act, or

(ii) an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or the person's spouse,

(d) the person is a dependant of a person referred to in paragraph (a) or (c), or

(e) the person is a dependant of a person referred to in paragraph (b), if the dependant was a

dependant of the person referred to in paragraph (b) on the day that person became 65 years of age and remains a dependant of that person.

### Appellant's Position

In his Notice of Appeal dated October 3, 2014, the Appellant argued that it is his asset level as adjudicated by the Ministry, and not his CPP disbursements that make him ineligible for DA. Similarly, in the Request for Reconsideration, the Advocate argued that the Ministry inappropriately assessed the Appellant's share as an "asset". The Advocate argued that the Ministry should treat the share as an exempt asset similar to "essential equipment and supplies for farming and commercial fishing" or "fishing craft and fishing gear owned and used by a commercial fisherman" in section 10 of the EAPWDR. He argued that the share should be exempted as a "Business Tool" and as "other forms of self-sustained employment". He further argued that forcing the Appellant to sell a share that entitles him to work for the Company after he gets well, runs counter to the principles and policies of self-reliance and employment which underpin the EAPWD legislation.

At the hearing, the Advocate noted that the Ministry had not pursued the issue of the share in its reconsideration decision, even though the Ministry determined that the share was a non-exempt asset, and the Appellant in his Request for Reconsideration asked for the share to be exempted. The Advocate acknowledged that the panel's jurisdiction is to determine the reasonableness of the Ministry's reconsideration decision in which the Ministry found the Appellant to be ineligible for MSO pursuant to section 61.1 of the EAPWDR. He submitted that the Ministry was using section 61.1 to sidestep the issue of the share. The Appellant (through his advocate) stated that he would set aside his arguments regarding the share being a non-exempt asset, and appeal the reconsideration decision on the issue of eligibility for MSO under EAPWDR section 61.1. He presented the following arguments:

- The Ministry erred in making a determination for MSO under section 61.1, and should have determined the Appellant's eligibility for MSO under section 12.1 of the EAPWDR.
- The Appellant was technically never found eligible for MSO under EAPWDR section 61.1. He was receiving MSO (since August 2013) for the purpose of keeping his file open.
- The Ministry's temporary exemption of the asset pursuant to section 12.1 of the EAPWDR (to give the Appellant more time to actively work on liquidating the share) essentially permitted the Appellant to be eligible for DA, not MSO. He had been approved for DA under EAPWDR section 12.1 which is how his PWD eligibility was determined, but he has not received the allowance because the Ministry says he has assets in excess of the limit.

### Ministry's Position

In its reconsideration decision, the Ministry stated that in order to be eligible for MSO, section 61.1 of the EAPWDR "clearly indicates that a family unit must cease to be eligible for DA due to certain types of income (e.g. employment or CPP)". The Ministry argued that the Appellant did not cease to be eligible for DA for two reasons: (1.) he never received DA; and (2.) although he was approved for PWD designation in July 2013, he was never determined to be eligible for DA.

At the hearing, the Ministry argued that it left the Appellant's file open and changed it over to MSO to give him more time to deal with his share, and not because it found him eligible for DA. The Ministry extended the time frame from three months to eleven months because the Appellant was making reasonable efforts to deal with the share up until July 2014 when he did not provide the documentation the Ministry requested (company board minutes).

The Ministry also argued that it did not find the Appellant eligible for DA on the basis of the shelter allowance. The Appellant was found to be ineligible for the shelter allowance at the time of his designation as PWD because he did not have any rent at that time. The Ministry acknowledged that it received the Appellant's "Intent to Rent" form in November 2013 but it held off on processing his request for a shelter allowance because it was still waiting for documentation regarding the sale of the share in order to determine whether he was eligible for DA.

### Panel's Decision

Section 61.1 of the EAPWDR deals with eligibility for MSO as set out in the title of the section heading. For PWD's under the age of 65, subsection 61.1(a) connects eligibility for MSO to ceasing to be eligible for DA. A person designated as PWD may be eligible for MSO only if the person ceased to be eligible for DA as a result of having one of the types of income that are listed in clauses (i) to (iv) of subsection 61.1(a). Whether the person has "excess assets" is not a consideration under the section.

Both the Ministry and the Appellant agree that the Appellant is designated as PWD; that he was receiving MSO since August 2013; and that he never received any DA payments even though he was designated as PWD. The Appellant argued that EAPWDR section 61.1 does not apply to his circumstances because he was never found eligible for MSO under the section. He therefore cannot be found ineligible. He further argued that he was eligible for DA pursuant to EAPWDR section 12.1.

The issue the Ministry was determining in its reconsideration decision is the Appellant's current eligibility for MSO status, and not whether he was eligible for it previously. There is no evidence that the Appellant was found eligible for MSO pursuant to EAPWDR section 61.1 and the Ministry acknowledged that it did not grant the Appellant MSO status under any statutory authority. The question then is whether the Appellant ceased to be eligible for DA as a result of one of the income types listed in subsection 61.1(a). With regard to the income types listed, the Appellant receives CPP in the amount of \$697.36 per month.

The Ministry argued that the Appellant did not "cease to be eligible" for DA because he was never found eligible for DA in the first place. He was designated as PWD but he was not found eligible for either the support or the shelter portion of DA. Even after he presented documentation regarding a rent expense, the Ministry held off on finding him eligible for the shelter allowance to give him time to liquidate the share. The panel finds that the evidence that the Appellant was not paid DA at any time reasonably supports the Ministry's position that he was not eligible for DA.

The Appellant argued that he was eligible for DA even though he never received any DA payments. He argued that the Ministry found him eligible for DA pursuant to EAPWDR section 12.1, but because he had a share, the Ministry held off on paying him DA and instead gave him an exemption period to

sell the asset or place it in a trust. The panel notes that EAPWDR section 12.1 pertains to *temporary exemption of assets for person with disabilities or person receiving special care*. The section provides that an asset received by a person with disabilities is exempt for the purpose of asset limits if the minister is satisfied that the recipient intends to contribute the asset to an RDSP or trust. Subsection 12.1(3) prescribes an exemption period of three months unless the minister extends it to a specified date.

The panel finds that there is nothing in EAPWDR section 12.1 that confers eligibility for DA. The Ministry's evidence was that it relied on this section to grant the Appellant an exemption period, initially three months pursuant to subsection 12.1(3), to give him time to establish an RDSP or trust pursuant to subsection 12.1(2)(a). The Advocate argued that the Ministry "deemed" the Appellant eligible for DA in order to grant him a temporary exemption for assets. However, there is no deeming provision in EAPWDR section 12.1 and the Ministry's evidence was that it applied the exemption period for assets while the Appellant's eligibility for DA was being determined.

Given that EAPWDR section 12.1 does not grant eligibility for DA, the panel finds that the Ministry reasonably determined that the Appellant did not cease to be eligible for DA pursuant to EAPWDR subsection 61.1(a). There is no evidence to indicate the Ministry ever found the Appellant eligible for DA. The panel therefore finds that the Ministry reasonably determined that the Appellant is not eligible for continued MSO status.

### Conclusion

The panel finds that the Ministry's determination that the Appellant is not eligible for MSO pursuant to section 61.1 of the EAPWDR was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the Ministry's reconsideration decision.