

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 20 August 2014 that found that the appellant was ineligible for July 2014 disability assistance under section 28 of the Employment and Assistance for Persons with Disabilities Regulation. The ministry requested in May, June and July 2014 that the appellant provide information regarding what she had done with an ICBC settlement. While the ministry is satisfied that the request for information has now been met and that she should no longer be denied assistance under section 10 of the regulation, under section 28 of the regulation she was ineligible for assistance (July 2014) until the information was provided.

## 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.

## PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration is summarized below:

1. From the ministry's files, as summarized in section 2 of the Request for Reconsideration:
  - 07 May 2014: the appellant phoned the ministry and stated that her lawyer is forwarding a sum of \$50,000 (all amounts approximate) and is looking at depositing these funds into a registered disability savings plan (RDSP). The appellant was advised that she must submit proof of this to the ministry.
  - 02 June 2014: the appellant visited the ministry office and confirmed the \$50,000 settlement. She stated that she was unsure when she received the money and was again advised to submit confirmation that she had put the money into an RDSP or Trust and submit the paperwork regarding the supplement. She was also advised that depending on the dates of both, she may not be eligible for June 2014 assistance.
  - 13 June 2014: the ministry canceled the appellant's June 2014 assistance cheques as they were not claimed and she had not submitted the requested documents. At that time, the appellant's eligibility for further assistance had not been established.
  - 30 June 2014: the ministry received a 1 page document showing the appellant's RDSP account profile with a bank was opened on 06 May 2014 in the amount of \$35,500. No information was provided as to how the \$14,500 balance from the settlement was spent.
  - 08 July 2014: to determine the appellant's eligibility for July 2014 assistance, the ministry called her to verify if she had submitted other documents regarding her settlement and expenses. The appellant stated that she does not have the paper regarding her ICBC settlement and she had to pay rent. When asked about proof on where the balance from the RDSP was spent, the appellant just confirmed that she wanted to seek reconsideration.
2. The appellant's Request for Reconsideration regarding the denial of assistance effective 01 June 2014. The appellant was given until 04 August 2014 to submit the form. On 31 July 2014 the appellant requested an extension to submit additional information. An extension was granted until 20 August 2014. On 19 August 2014 the appellant's advocate sent the ministry completed Request for Reconsideration, including a submission and 11 exhibits and a note requesting "appeal benefits during the appeal process".

In the reconsideration submission, the advocate notes that the appellant "has severe mental health restrictions. She is a person who has done her best to comply with the Minister's request." The submission goes to argument and reviews the attached exhibits, including bank statements, copies of cheques, and a letter from the appellant's lawyer handling the ICBC claim. One of the exhibits shows a motor vehicle purchase agreement with a car dealership dated 05 June 2014 for approximately \$14,700. Also included is the ICBC owner's certificate of insurance and vehicle license effective 24 June 2014. The panel notes that the information provided in the exhibits satisfied the ministry that the appellant had met the ministry's request for information.

The appellant's Notice of Appeal is dated 08 September 2014. Under Reasons for Appeal, her advocate writes:

“The client has severe mental health restrictions. The ministry has been aware of the client’s restriction. In fact the ministry referred the client to our office for help with the appeal process. It is unreasonable for the ministry to have expected the client together all this information independently. The ministry is a reasonable in denying the client appeal benefits.”

For the written hearing, the appellant's advocate made a written submission dated 22 October 2014. Attached to the submission is a letter dated 14 October 2014 from the appellant's family physician, who writes:

“[The appellant] is mentally handicapped with learning disabilities and the low IQ. As a result she is unable to execute or complete complex or multiple tasks this would include multitasking or tasks involving several steps. Even simple requests can overwhelm her and make her anxious and as a result [she] may unknowingly skip a step.

Therefore she is unable to complete complex/multiple tasks independently without assistance e.g. completing the request made by the ministry without the assistance of a legal advocate.

[The appellant] is designated as a person with disability under the Ministry of Social Development PWD program. The Ministry has a record of her disability application and in her file is the history documenting her medical conditions.

.... Due to her mental handicap it is not reasonable to hold her accountable for failing to gather legal documents from her lawyer and provide them to the Ministry within the stated time frame without third-party assistance.”

The balance of the advocate's submission went to argument (see Part F, Reasons for Panel Decision, below).

In an email dated 29 October 2014, the ministry stated that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision, that found that under section 28 of EAPWDR the appellant was ineligible for disability assistance until the information requested by the ministry was provided, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the *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.

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

(2) For the purposes of section 10 (5) [*information and verification*] of the Act,

- (a) the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit is \$100 for each calendar month, and

(b) the period for which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction

The appellant argues the appellant has significant mental health restrictions and has done her best to comply with the ministry's request; she did inform the ministry of her settlement as required by all recipients. The ministry argued the appellant was asked in May 2014 to provide confirmation on income and what was done with the ICBC settlement but she did not respond until August 19<sup>th</sup> 2014 and as such was no longer denied assistance under section 10 of the EAPWDA as the requested information was provided, but was ineligible for July assistance as it was requested in May but not provided until August 19<sup>th</sup>.

The appellant submitted a note from her family physician which supports her argument that the appellant has significant mental health restrictions. The physician states the appellant is, "mentally handicapped with learning disabilities and low IQ. As a result, she is unable to execute or complete complex to multiple tasks. This would include multitasking or tasks involving several steps. Even simple requests can overwhelm her and make her anxious and as a result she may unknowingly skip a step."

The panel finds neither parties dispute that the legislation requires persons receiving assistance to report any change in income. The appellant understood this requirement and informed the ministry on May 7, 2014 that she was receiving approximately \$50,000 from an ICBC settlement and her lawyer was depositing the funds into a registered disability savings plan (RDSP).

Neither party disputes that the legislation in section 10 EAPWDA gives the ministry the authority to ask the appellant to supply verification of information for the purpose of determining whether a person is eligible for assistance. The ministry asked for confirmation of receipt of the settlement and when the RDSP or trust was established. On June 2, 2014 the appellant confirmed the settlement was received and the ministry again asked for confirmation that the money was in an RDSP or a Trust. The appellant was informed that depending on date of receipt of the funds and date of deposit into a RDSP or Trust, the appellant may not be eligible for assistance for that month.

On June 30, 2014 the ministry received confirmation of the RDSP, but the amount was only \$35,000 and in order to determine eligibility for assistance, asked for information regarding the outstanding amount of \$14,500. In response to this request, the appellant, who until this time demonstrated her ability to respond to the ministry's requests, stated she did not have the paper regarding her ICBC settlement and had to pay rent. When asked about proof on where the \$14,500 was spent, the appellant just confirmed she wanted to seek reconsideration.

The information provided to the ministry on August 16<sup>th</sup> includes a motor vehicle purchase agreement with a car dealership dated June 5, 2014 and a vehicle license in the appellant's name effective June 2014. Although the appellant was aware she purchased a vehicle, she did not inform ministry of this on June 30<sup>th</sup> although she did provide the other information orally and provided confirmation of the RDSP.

This information satisfied the ministry's request for information and as such she was no longer denied assistance under section 10 of the EAPWDA, however, the ministry determined she was ineligible for

July assistance as information was requested in May but not provided until August 19th.

The appellant argues she has significant mental health restrictions and her family physician's note states she cannot "multitask" and even simple requests can overwhelm her and make her anxious and as a result she may make unknowingly "skip a step."

The panel finds the appellant understood what the ministry requested and was able to provide the information requested with the exception of information regarding the outstanding balance of \$14,500. Providing the information and documents about the vehicle purchase does not require multitasking. Further, the appellant had a lawyer working on her case for some time. A letter addressed to the appellant from her lawyer dated September 25, 2013 discussed the ICBC claim and outlines the steps to be taken to pay out the amount of the settlement in a way that will not interfere with receipt of disability assistance. Her lawyer recommends a copy of the letter be provided to the appellant's disability office and states that if anyone from the government has any questions or concerns about her settlement, they can contact her lawyer to discuss it. As well, he goes on to mention a meeting with the appellant to explain the details and ensure she understands it. The panel notes the appellant has an active bank account and is the signing authority for the RDSP.

Given the appellant demonstrated she understood the reporting requirements, that she did provide the information about the amount of the settlement and proof of the RDSP or Trust, and given she was independently able to purchase and obtain a vehicle and vehicle license, the panel finds that the appellant could have provided the information and documentation on the outstanding \$14,500. The appellant's lawyer was looking after the settlement and could also have provided this information on her behalf.

Section 10(4) of the EAPWDR states that if an applicant or recipient fails to comply with a direction [to supply verification of information related to the eligibility of the family unit for disability] the minister may declare the family unit ineligible for disability assistance for the prescribed period. Section 28(1) EAPWDR states that lasts until the applicant or recipient complies with the direction.

The appellant was asked on June 30, 2014 for information on the outstanding amount of the ICBC settlement, \$14,500 and that information was not provided until August 19, 2014. Given the panel finds the appellant was able to provide that information, the panel finds the ministry's decision that the appellant is not eligible for July assistance is a reasonable application of the legislation.

The panel confirms the ministry decision. The appellant was not successful in her appeal.