

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry)'s reconsideration decision dated November 25, 2014 that found that the appellant was not eligible for disability assistance pursuant to section 10(4) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) as the appellant had not complied with the direction of the ministry under section 10(2) of the EAPWDA to supply the requested documentation necessary to determine her eligibility for disability assistance.

In particular, the ministry found that the appellant had failed to submit the following information as directed by the ministry:

- Mastercard statements for August 2014 to October 2014 ("Mastercard Statements");
- Visa statements for November 2011 to November 2012 ("Visa Statements"); and
- Department store credit card statements from August 2014 to October 2014 ("Department Store Credit Statements").

## 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

The evidence before the ministry at the time of the reconsideration consisted of:

- 1) Letter from the ministry to the appellant dated May 12, 2014 requesting documentation: current rent receipt and utility bills: current lease or rental agreement and utility bills, bank statements from January 1, 2014 to present, income tax notice of assessments for 2011, 2012 and all attachments for 2011 to 2013, written confirmation of who the appellant shared rent with and what their relationship was and vehicle registration and insurance.
- 2) Letter from the ministry to the appellant dated June 5, 2014 requesting documentation: rental agreement and or lease agreement, vehicle registration and income tax attachments for 2011 to 2013; January 17, 2013 requesting various documentation;
- 3) Letter from the ministry to the appellant dated June 26, 2014 requesting lease agreement information and new information of credit card statements from June 2012 for the appellant's mastercards, visa and department store credit card, loan information, budget sheet and written statement regarding the relationship with the appellant's room-mate;
- 4) Letter from the ministry to the appellant dated September 24, 2014 indicating that although some of the requested information and documentation had been provided, the appellant had not yet provided mastercard statements for October 2012, June 2013 and August 2013 to present, lease agreement contact information, and budget sheets. The ministry also requested new information regarding payments from the Insurance Corporation of British Columbia (ICBC) from June 2012 to present and an explanation why ICBC was paying for taxi cabs for the appellant;
- 5) The appellant's Request for Reconsideration dated October 24, 2014 (RFR) in which the appellant states that she has supplied all requested information. The appellant attached a letter from a credit card provider dated October 7, 2014 with a handwritten explanation indicating that the credit card company does not provide letters confirming when accounts are opened.
- 6) Letter from the appellant's advocate with a fax date of October 31, 2014 requesting an extension of time to complete her reconsideration package until November 28, 2014;
- 7) Letter from the appellant's landlord dated July 25, 2014 confirming the appellant's residency;
- 8) Letter from the appellant to the ministry dated October 8, 2014 providing documentation: mastercard statements October 2012, June 2013 and August 2013 to present; letters from financial providers confirming the date her mastercard accounts were opened, and letter from her landlord. The appellant also advised that she was waiting for a letter from another credit card provider and provided further information on the date her department store credit card was opened. The appellant also provided information regarding the source of her taxicab payments and providing her lawyer's contact information with respect to her accident claim. The appellant also provided information regarding the relationship with her roommate.

In her Notice of Appeal the appellant states that all documentation has previously been provided and that the ministry is now requesting additional documentation that was not previously requested.

Prior to the hearing the appellant, through her advocate, provided a written submission dated

December 15, 2014. The written submission states that the requested Mastercard Statements for August 2014 and September 2014 were provided by letter dated October 8, 2014 and that the October 2014 statement was not available as of the date of the ministry's letter to the appellant dated September 24, 2014 denying her disability assistance. The appellant states that she was unable to provide the Visa Statements for November 2011 to November 2012 because the first statement for that visa was dated November 28, 2012 to December 27, 2012 so there were no other statements to produce. The appellant further states that the request for the department store credit card statements was not made until June 26, 2014 and the appellant provided those documents by fax dated July 17, 2014. The appellant states that the ministry did not make any further requests for the Department Store Credit Card Statements until they were itemized in the reconsideration decision. The appellant states that it was patently unreasonable for the ministry to deny disability assistance for failing to provide documents that the appellant had not been previously directed to provide.

Prior to the hearing the ministry provided a written submission dated December 17, 2014 stating that at the time of reconsideration, the appellant had the following documents that had not been submitted, namely:

- Mastercard Statements (August 2014 to October 2014);
- Visa Statements (November 2011 to November 2012); and
- Department Store Credit Card Statements (from August 2014 to October 2014).

The ministry states that upon further review of the appellant's credit information, the ministry's investigative office is satisfied that the visa credit card was opened in November 2012 so the Visa Statements from November 2011 to November 2012 are not required. The ministry also states that the remainder of the information requested has now been submitted.

#### *Admissibility of New Information*

With the appellant's written submission, the appellant included a letter from the ministry to the appellant dated July 17, 2014, which the ministry did not refer to in its reconsideration decision. The panel has admitted this letter into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act* (EAA). In particular the letter from the ministry refers to the ministry's requests for information and documentation from the appellant. The remainder of the appellant's submission contained information and documentation previously provided and/or written argument.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the EAA.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for disability assistance pursuant to section 10(4) of the EAPWDA as the appellant had not complied with the direction of the ministry under section 10(2) of the EAPWDA to supply the requested documentation necessary to determine her eligibility was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

In particular, was the ministry's decision that the appellant had failed to submit the following information as directed by the ministry reasonable:

- Mastercard Statements (for August 2014 to October 2014);
- Visa Statements (for November 2011 to November 2012); and
- Department Store Credit Card Statements (from August 2014 to October 2014)?

The relevant sections of the legislation are as follows:

Information and verification – EAPWDA sections 10(2) and (4)

**10** (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.

(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.

Consequences of failing to provide information or verification when directed – EAPWDR section 28

**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.

### *Position of the Parties*

The position of the ministry, as set out in the reconsideration decision, is that the ministry sent the appellant letters dated May 12, June 5 and June 26, 2014 requesting information and documentation. The ministry's position is that on October 26, 2014 when the request for reconsideration was completed by the ministry the appellant had failed to provide various documentation. By the time of the reconsideration decision the appellant had provided further documentation but the ministry's position is that the appellant was not eligible for disability assistance until she complied with providing all the information requested by the ministry. At the time of reconsideration the ministry's position was that the appellant had still failed to provide the following items:

- Mastercard Statements for August 2014 to October 2014;



- Visa Statements for November 2011 to November 2012; and
- Department Store Credit Card Statements from August 2014 to October 2014.

The ministry's written submission states that upon further review of the appellant's credit information, the ministry's investigative office is satisfied that the visa credit card was opened in November 2012 so the Visa Statements from November 2011 to November 2012 are not required. The ministry also states that the remainder of the information requested has now been submitted.

The appellant's position is that the ministry's decision to discontinue her disability benefits on the basis of a failure to provide information amounts to an unreasonable application of the legislation. The appellant's position is that she has complied with, or substantially complied with, every directive to produce information pursuant to section 10 of the EAPWDA.

The appellant's written submissions state that the requested Mastercard Statements for August 2014 and September 2014 were provided by letter dated October 8, 2014 and that the October 2014 statement was not available as of the date of the ministry's letter to the appellant dated September 24, 2014 denying her disability assistance.

The appellant states that she was unable to provide the requested Visa Statements for November 2011 to November 2012 because the first statement for that visa was dated November 28, 2012 to December 27, 2012 so there were no other statements to produce.

The appellant states that the request for department store credit card statements was not made until June 26, 2014 and the appellant provided those documents by fax dated July 17, 2014. The appellant states that the ministry did not make any further requests for the additional Department Store Credit Card Statements until they were itemized in the reconsideration decision. The appellant's position is that it was patently unreasonable for the ministry to deny disability assistance for failing to provide documents that the appellant had not been previously directed to provide.

#### *Panel Decision*

The panel finds that under section 10(2) of the EAPWDA the ministry has the authority to direct the appellant to supply documentation to verify information received by the ministry if that information relates to the eligibility for disability assistance. In the present appeal the ministry initially requested documentation on May 12, 2014 regarding the appellant's rent receipt, bank statements, income tax information, vehicle registration and insurance and information on the appellant's room mate. The ministry followed up with the appellant on June 5, 2014. The appellant provided some of the requested documentation and the ministry sent another follow up letter on June 26, 2014, with a request for other new specific information including further credit card statements, loan information, budget sheet and written statement regarding the appellant's relationship with her roommate.

The appellant provided further information and documentation responding to the ministry's requests. On September 24, 2014, the ministry sent the appellant another letter indicating that the appellant had still not provided some credit card statements, lease agreement information or budget sheets. The ministry also included requests for new information regarding ICBC payments and the source of the appellant's taxicab payments.

By letter dated October 8, 2014 the appellant submitted further information to the ministry responding

to their requests. On October 27, 2014 the appellant submitted her RFR stating that all of the requested information has been provided.

The background of this appeal is important in that it provides the context for the ministry's requests for information and documentation and the appellant's responses made in an effort to comply with the ministry's requests. However for the purposes of the appeal the issue is whether the appellant had failed to provide the following items as identified in the reconsideration decision:

- Mastercard Statements for August 2014 to October 2014;
- Visa Statements for November 2011 to November 2012; and
- Department Store Credit Card Statements from August 2014 to October 2014.

#### Mastercard Statements

The documentation indicates that the ministry first directed the appellant to provide mastercard statements by letter dated June 26, 2014 and that the appellant complied with this request on July 16, 2014. The ministry sent a follow up letter dated July 17, 2014, presumably as they had not reviewed the letter from the appellant the day before enclosing the mastercard statements. The letter from the ministry to the appellant dated September 24, 2014 then advises the appellant that she was found ineligible for disability assistance, as she had failed to provide the requested documentation, including the Mastercard Statements.

The panel finds that as the ministry's letters to the appellant requesting mastercard statements were dated June 26, 2014 and July 17, 2014 they could not have included a request for the Mastercard Statements from August to October 2014. However, subsequent to the ministry's letter dated September 24, 2014 the appellant provided the Mastercard Statements up to September 25, 2014 by letter dated October 8, 2014. The panel finds that the appellant made reasonable efforts to comply with the ministry's request for information and documentation and that the ministry's determination that the appellant failed to comply with the request for the Mastercard Statements was not reasonable.

#### Visa Statements

The ministry's written submission states that upon further review of the appellant's credit information, the ministry's investigative office is satisfied that the visa credit card was opened in November 2012 so the Visa Statements from November 2011 to November 2012 are not required. Accordingly, the panel finds that the ministry's decision that the appellant was ineligible for disability assistance for failure to provide the Visa Statements was not reasonable.

#### Department Store Credit Card Statements

The documentation indicates that the ministry requested department store credit cards by letter dated June 26, 2014 and that the appellant provided those documents by fax dated July 17, 2014. At the time the appellant responded to the ministry's request, the Department Store Credit Card Statements of August 2014 to October 2014 had not been requested, nor were they available at that time. The documentation further indicates that between the fax of July 17, 2014 and the reconsideration decision the ministry did not direct the appellant to provide the Department Store Credit Card

Statements. In particular, the ministry's letter to the appellant dated September 24, 2014 and the RFR do not indicate that the appellant had failed to provide the Department Store Credit Card Statements. It is not until the reconsideration decision does the ministry indicate that the appellant had failed to submit the Department Store Credit Card Statements from August 2014 to October 2014.

The panel finds that it was not reasonable for the ministry to deny the appellant disability assistance for failing to provide the Department Store Credit Card Statements from August 2014 to October 2014 when they had not been specifically requested prior to the reconsideration decision and because the appellant had supplied the department store credit card statements up to the date of the first request on June 26, 2014.

*Conclusion*

The panel finds that the ministry's reconsideration decision finding that the appellant was not eligible for income assistance pursuant to section 10(4) of the EAPWDA was not reasonably supported by the evidence and was not a reasonable application of the legislation in the appellant's circumstances. The panel therefore rescinds the ministry decision.