

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated January 29, 2015, which held that the appellant received disability assistance (DA) between November 2011 and September 2014 for which she was not eligible pursuant to section 11 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) and sections 1, 29, and schedule B of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and she is liable to repay the DA pursuant to section 18 of the EAPWDA.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA) – Sections 11 and 18.  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) – Section 1 and 29, and Schedule B.

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

1. Request for Reconsideration signed and dated January 24, 2015 which states that that the appellant reported her household income at the time of her application and was not told that she was required to come in for a review until August 2014.
2. 31 pages of illegible computer screen shots from the appellant's bank.

Documents submitted after the reconsideration decision included:

1. Release of Information signed and dated February 19, 2015;
2. Notice of Appeal signed and dated February 10, 2015 in which the appellant states in part that she will produce a letter from local advocacy group for the disabled;
3. A letter signed and dated January 4, 2011 from a doctor which states that the appellant is unable to work due to severe degenerative disc back pain and sacroileitis, her daily living activities are impaired and attempts to improve her condition will be made but for the foreseeable future and likely permanently she is disabled.

At the hearing the appellant stated that:

- she did not seek out financial help from the ministry. Rather, she was advised by local advocacy group that due to her disability she was entitled to this benefit;
- she did not know that the benefit depended on her husband's income;
- the ministry did not provide an interpreter and she was not advised that she had to report any changes or provide additional information;
- she has become increasingly ill due to the stress of dealing with this situation;
- from the time of the original application and when she started receiving DA, her husband's income increased;
- the ministry erred by relying on the information she provided in her original application for assistance in June 2011 to form its decision on DA eligibility in November 2011, and she should not be penalized for this error. It was the ministry's responsibility to seek updated information.

At the hearing the ministry relied on its reconsideration decision.

### ***Admissibility of New Information***

The ministry provided a copy of the appellant's bank statement dated January 7, 2011. The appellant did not object to the admission of this new information. The panel found that the new information presented by the ministry was in support of the information before the ministry at the time of reconsideration. Specifically, the bank statement was used to determine the decision of PWD eligibility. Accordingly, the panel admitted this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. The appellant provided a letter from her doctor dated January 4, 2011. The ministry did not object to the admission of this letter. The panel found that the information in the letter does not support or corroborate the information that was before the ministry at the time of reconsideration. Specifically, the appellant's disability is not in question. Accordingly, the panel did not admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which held that the appellant received DA between November 2011 and September 2014 for which she was not eligible and pursuant to section 11 of the EAPWDA and section 1, 29 and schedule B of the EAPWDR, and she is liable to repay the DA pursuant to section 18 of the EAPWDA, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

### EAPWDA provides as follows:

#### Reporting obligations

- 11** (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.

#### Overpayments

- 18** (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16

### EAPWDR provides as follows:

#### Definitions

- 1** (1) In this regulation:

"**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: (f) any type or class of Canada Pension Plan benefits; and (u) Federal Old Age Security and Guaranteed Income Supplement payments;

#### Reporting requirement

- 29** For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,
- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:
    - (i) a change that is listed in paragraph (b) (i) to (v);
    - (ii) a family unit receives earned income as set out in paragraph (b) (vi);
    - (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in

paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 3.1 of Schedule B, the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 7.1 of Schedule B, the amount of unearned income that is compensation paid under sections 29 and 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

## Schedule B

### Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

### Exemptions — unearned income

7(1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for
  - (i) disability-related costs,
  - (ii) the acquisition of a family unit's place of residence,
  - (iii) a registered education savings plan, or

(iv) a registered disability savings plan;

### ***Panel Decision***

The appellant's position is that the ministry erred by relying on outdated information from June 2011 to form its decision regarding DA eligibility in November 2011 and she should not be penalized for this error. She also argues that she was not informed that she had to report any changes to her husband's income and that she was under the impression that her DA was unconnected to her husband's income. The ministry argues that though it did error by determining the appellant's eligibility for DA from outdated information (specifically her husband's income), it is the appellant's responsibility to report any changes to her income pursuant to section 11 of the EAPWDA and section 29 of the EAPWDR. Additionally, she is liable for any payments made to her while she was ineligible for DA pursuant to section 18 of the EAPWDA, and that her husband's income does not qualify for an exemption pursuant to Schedule B of the EAPWDR.

According to section 11 of the EAPWDA, in order to be eligible for DA one must submit reports that contain the information that is prescribed by the ministry, and report any changes in circumstance that may affect eligibility. The panel notes that the ministry did error by relying on outdated information to determine the appellant's eligibility for DA. The appellant did provide all reports prescribed by the ministry to initially be determined for eligibility for assistance. However, she states that she did not realize that she had reporting obligations after that. Section 29 (a) of the EAPWDR states that by the 5<sup>th</sup> of the month following the month (b) (ii) in which the family unit receives income, a report must be submitted to the ministry. The panel finds that although she did not know of her reporting obligations, monthly reporting cards were provided to the appellant and they state that she is to report any changes but that the ministry did not receive reports from November 2011 to September 2014 despite an increase in her husband's income. Accordingly, the panel finds that the evidence establishes that the ministry was reasonable in determining that the appellant was responsible to report any changes to her circumstances that would affect her eligibility for DA pursuant to section 11 of the EAPWDA and section 29 of the EAPWDR.

The appellant's household income increased when her husband's Canada Pension Plan (CPP), Old Age Pension (OAP) and Guaranteed Income Assistance (GIA) increased between November 2011 and September 2014, and the appellant does not dispute this. According to section 1 of the EAPWDR CPP, OAP, and GIA are unearned income and are not deductible or exempt pursuant to schedule B of the EAPWDR. The panel finds that the ministry reasonable determined that the husband's CPP, OAP and GIA are not exempt pursuant to Schedule B of the EAPWDR. Additionally, the panel finds that the evidence establishes that the ministry was reasonable in determining that the appellant received DA when she was not eligible and pursuant to section 18 of the EAPWDR she is liable to repay the amount.

### **Conclusion**

The panel finds that the evidence establishes that the ministry reasonably concluded that the appellant received disability assistance for which she was not eligible between November 2011 and September 2014 and pursuant to section 11 EAPWDA and sections 1, 29 and schedule B of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) she is liable to repay this amount pursuant to section 18 of the EAPWDA. The panel confirms the ministry's reconsideration decision.