

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated January 20, 2015 that held that in accordance with section 11 of the Employment and Assistance Act (EAA) and section 32 of the Employment and Assistance Regulation, the appellant was ineligible for assistance from October and November 2014 because she failed to provide the requested information for the purpose of determining her eligibility. The ministry found that the appellant did not submit any of the required reporting from the time she was accepted into the Self Employment Program on July 16, 2014 until her file was closed on October 10, 2014.

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 1, 23, 29, and 70.2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A form titled Application for Disability Assistance, dated December 12, 2014, in the name of the appellant.
- A form titled Self-Employment Program Questionnaire and Acceptance of Terms, dated July 16, 2014, signed by the appellant. The form contains a declaration that the signer agrees to abide by the terms and conditions of the Self-Employment Program including to provide the ministry with information about her business as requested.
- Pages 1 & 3 of a 3-page form titled Self-Employment Program Client Monthly Report (SEP Report). The form is blank and has not been dated or signed.
- A letter addressed to the appellant from the ministry dated September 4, 2014. The letter informs the appellant that her next assistance cheque scheduled to be issued September 4, 2014 will be held at the office. The letter further instructs her to contact the office and “submit your reporting form for the month of September and October.” The letter states a decision on her eligibility will be determined once all documentation is reviewed.
- A form titled Request For Reconsideration dated January 14, 2015 with an attached 7-page statement from the appellant addressed to the ministry. The appellant writes the following:
 - The ministry Self-Employment Program (SEP) worker advised her that her monthly reports would affect her eligibility for benefits.
 - She wrote an 80-page business plan with the help of a business advisor.
 - She told the SEP worker she planned on using an accountant to assist her with her monthly reporting.
 - Her accountant fell ill and the appellant informed the SEP worker that she would not be able to submit her monthly report by the 5th of September and was told to contact the ministry when she had the report.
 - In September her accountant had a bad fall and was hospitalized resulting in another delay having her reports completed.
 - She contacted the SEP worker who told her that she could not do anything until the appellant submitted the necessary reports.
 - In October she called the SEP worker and left her a message saying that she still isn't close to being able to complete her forms.
 - When she visited the ministry office in October she was informed her file had been closed and her cheque was no longer being held for her and that she needed to reapply for disability assistance for her assistance cheques to begin again.
 - Once she completed her reapplication for disability assistance (December 11, 2014) the ministry SEP worker assisted her in completing the report for November but, until then, she was unaware the SEP worker could help her with the reports.
 - She understood that her September 24 cheque would be held at the office but she thought she needed to submit her reports in order to pick it up. She didn't know that after a period of time her cheque would be cancelled and her file closed.
 - When she signed up for the SEP she was not informed that her assistance cheque would not be released without the ministry receiving monthly reports or that her benefits could be cancelled if she did not submit the reports.
 - She did not receive any messages from the SEP worker.
 - Her preferred manner of communication is via email, however, the ministry mandates that they are to communicate via phone only.

- Contrary to the ministry records, she never told the ministry she was ill. The only illness she was dealing with was that of her accountant.
- She was intimidated by seeing examples of the sophisticated monthly reporting forms.
- When she signed up for the Self-Employment Program she told her SEP worker that due to her disabilities she would need help completing the monthly forms but she planned on getting an accountant. The SEP worker did not offer to assist her at that time.
- The 3 page monthly reporting form that the SEP worker gave her was missing a page.
- The EAPWDA section 10 requires her to submit required documentation to the minister “within the time and in the manner specified.” She was only told [in the September 4, 2014 letter] to submit her reporting forms for September and October as soon as possible but it did not define “as soon as possible.”
- It was unreasonable for the ministry not to grant her an extension on her report submission deadline once she had informed her SEP worker that her accountant was ill and she should have been informed that her file was to be closed.

At the hearing the appellant submitted new evidence consisting of several documents.

- An email from the appellant to the ministry SEP worker dated Aug. 29, 2014. The appellant wrote that she attempted to call the SEP worker several times, her accountant was sent to the hospital and unable to help her, the accountant was home now, and she won't miss the next deadline.
- A printout from her cellular phone provider showing she had a 10 minute, 16 second call with her SEP worker on September 9, 2014.
- 10 pages of ministry file notes for the appellant covering the period from June 2013 to March 2014. The appellant referred to several comments in the report made by the ministry including:
 - July 16, 2014 – ministry writes that appellant signed SEP agreement, appellant was given reporting form, and that she was given the SEP worker's direct line for any inquiries.
 - The report notes contact with the appellant on Aug. 19, 2014, attempted contact on Aug. 25 and Sept. 3, 2014
 - Sept. 30, 2014 – ministry writes “SEP worker has not heard from client with regards to paperwork for month of Sept & Oct cheque.”
 - Oct. 10, 2014 – ministry writes, no contact for Oct, closed client file.
 - November 12, 2014 – ministry writes client advised to reapply, stated she attempted to contact SEP worker, advised that her file was closed and she will have to reapply

The ministry had no objections to the new information being admitted as evidence. The email, the confirmation of a phone call, and the ministry notes up to the date of the Reconsideration Decision were admitted by the panel as evidence pursuant to the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the documents is in support of evidence that was before the ministry at the time of the reconsideration. The email supports the appellant's argument that, as of August 29, 2014 the appellant had attempted to contact the ministry and that she assured the ministry that she would have her upcoming report submitted on time. The phone record supports the appellant's argument that she contacted the ministry on Sept. 9, 2014. The ministry contact report provides additional detail about the interactions between the appellant and the ministry. The ministry notes provide additional detail regarding the dates of contact and ministry action.

At the hearing the appellant told the panel:

- Her disabilities include sleep apnea, incontinence, and difficulties communicating.
- She told the ministry she preferred to communicate via email but the ministry told her only oral communication is acceptable.
- The ministry notes from Aug. 25, 2014 state that the ministry “returned client’s call” supporting her argument that she was attempting to contact the ministry.
- The call she made on September 9, as shown on her cellular phone records, was not entered into the ministry notes so reconsideration decision would not have taken that call into account. On this call she was told she didn’t need to submit her reports until October.
- She refutes the ministry notes that no contact was made between Aug. 19 and Sept. 30, 2014.
- She thought her disability assistance cheque would have been held at the ministry office indefinitely until she provided the requested reports.
- She was not told her file was in jeopardy of being closed.
- She argues that it was unfair to close her file because the ministry was aware of the problems she was having with her accountant.
- Her accountant fell ill in mid August.
- Every time she spoke to the SEP worker she was given undefined extensions to bring in her reports.
- She pointed to the ministry notes dated December 12, 2014 where the ministry writes that the appellant was told to submit her monthly reporting in October and when it was not received, her file was closed. The appellant argues that this supports her argument that she had her deadline to submit the reports extended.
- In October she looked at the monthly reporting form and noticed one page was missing.
- She completed the monthly reporting forms for September and October 2014 and tried to submit them to the ministry on January 24 2015 but the ministry did not accept the reports.
- She attended a “Beginner’s Orientation” when she signed up for the Self-Employment Program. When her SEP worker informed her of the consequences of not reporting she was “scared.”
- She completed an 80-page business plan with the help of a small business advisor and she presented it to the bank. The bank was not able to approve her application because of permit issues involving the city.

At the hearing the ministry told the panel that the appellant was accepted into the Self-Employment Program on July 16, 2014. As part of the introduction to the program the SEP worker explained the appellant’s obligations and the appellant signed that she agreed to and understood the terms. The ministry told the panel that as per EAPWDR section 29 the appellant was obligated to submit any income or changes to her assets by the 5th of each month. Although the SEP monthly reporting form does not include a specific day it is required to be submitted, the EAPWDR section 70.2 states a person participating in the Self-Employment Program must submit monthly. The ministry told the panel that the appellant did not submit any report from the time she was accepted into the Self Employment Program on July 16, 2014 until her file was closed on October 10, 2014. The ministry recognizes that the appellant had some difficulties with her accountant; however, it submits that the onus is ultimately on the appellant to see that she meets her reporting obligations. The ministry told the panel that there is no provision in the legislation to extend a persons reporting deadline, however, the appellant may have misunderstood the ministry when she was told to submit her reports “as soon

as possible” when the reports were already late. The panel finds that this instruction does not amount to an extension of time but rather an encouragement to comply with her obligations as quickly as possible.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that, in accordance with Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 11 and Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 29 and 70.2, the appellant was ineligible for assistance for October and November 2014 because she failed to provide the requested information to the ministry for the purpose of determining her eligibility. The ministry found that the appellant did not submit any of the required reporting from the time she was accepted into the Self Employment Program on July 16, 2014 until her file was closed on October 10, 2014.

The legislation states:

Employment and Assistance for Persons with Disabilities Act (EAPWDA)

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.

(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.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

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) the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Monthly report

70.2 If a recipient who is participating in a self-employment program is operating a small business under the program, the recipient must, in addition to any report required under section 29, provide a monthly report to the minister in the form and at the time specified by the minister, setting out, for the period covered by the report, as required by the form, the business activities, earnings, expenses, assets and liabilities of the small business the recipient is operating.

It is the ministry's position that the appellant did not provide the information requested of her. The ministry maintains that the information requested was required to establish her eligibility for continued assistance and, as a result of not reporting the appellant's file was closed. The ministry maintains that the appellant is obligated to provide the information under EAPWDA section 11.

It is the position of the appellant that she has made all reasonable efforts to provide the ministry with everything requested and that she kept the ministry informed of the difficulties she was having completing the reports. She maintains that her file was closed unfairly and without warning.

In this appeal both parties agree that the appellant was obligated to submit monthly reports to the ministry. The appellant's evidence is that the ministry SEP worker explained to her the reporting obligations and she thought the forms would be too difficult for her to complete without the assistance of an accountant. Both parties agree that the appellant did not submit any reports prior to her file being closed on October 10, 2014.

The legislation, EAPWDR sections 29 and 70.2, provided that the appellant must submit her monthly reporting by the 5th of each month. As the appellant signed the Terms of the Self Employment Program on July 16, 2014 the first reports would have been due on Aug. 5, 2014 to report transactions/changes that happened in the month of July. In addition to the August 5th report, a report would have been due on September 5th and October 5th. The appellant argues that her accountant fell ill in mid-August and due to his continued medical complications she was unable to receive the help she needed to complete the report forms. The appellant argues that she was in regular contact with the ministry keeping them informed of the reasons her reports were delayed and she understood the ministry was giving her undefined extensions to submitting the reports although nothing was provided in writing. The ministry suggests the appellant possibly misunderstood the instruction to submit the reports "as soon as possible" as an extension however there is no provision in the legislation for the ministry to extend the reporting deadline.

Regarding the reasonableness of how the ministry considered the appellant's circumstances when it made the decision to close her file on October 10, 2014, the panel considered the evidence. The appellant's participation in the Self Employment Program lasted approximately 3 months. During that time she missed the reporting deadline of 3 months. The panel accepts the appellant's evidence that she was in periodic contact with the ministry and that she was having difficulties with her accountant. The panel accepts the appellant's argument that the ministry contact record did not include every contact she made with the ministry. Notwithstanding any unrecorded contacts between the appellant and the ministry, the appellant was obligated to submit the requested reports to the ministry so her ongoing eligibility for assistance could be determined. The appellant argues that since she and the SEP worker remained in contact over the 3-month period, the SEP worker should have made more of an effort to assist her with completing the forms. The panel considered that the appellant's evidence is that she made it clear to the SEP worker that she wanted to use an accountant to prepare the monthly reports therefore the panel finds it reasonable that the SEP worker may not have offered to assist the appellant with the reports. The panel finds that as the appellant attended the beginner's orientation session when she began the Self Employment Program, she had a reasonable opportunity to understand and consider the obligations of the program as well as the consequences of not meeting them. The panel finds that the ministry was reasonable when it found the appellant was not eligible for October and November 2014 disability assistance because she failed to provide the requested information for the purpose of determining her eligibility.

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision.