



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated December 8, 2015 which reduced the Appellant's assistance under s.15.1 of the Employment and Assistance Act for inaccurate or incomplete reporting and in the minister's opinion failing to take the necessary steps to ensure the accuracy and completeness of the information before providing it to the Ministry. The Ministry determined the reduction would be \$25 per month for 3 months as this was the first instance as per s.32.1 of the Employment and Assistance Regulation.

## PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 11, 15.1

Employment and Assistance Regulation (EAR) sections 32.1, 33

## PART E – Summary of Facts

The Ministry was not in attendance at the hearing. After confirming that the Ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Act.

Information before the minister at reconsideration included:

- The Ministry's letter to the Appellant advising him of their decision dated October 8, 2015.
- A copy of a Customer History Report in the Appellant's name from a cheque cashing service showing an amount of \$233.00 on April 30, 2015.
- A copy of the Ministry's Overpayment Chart for the month of June, 2015.
- A copy of an Overpayment Notification to the Appellant dated October 8, 2015.
- The Appellant's Request for Reconsideration, dated December 1, 2015.

At the hearing the Appellant agreed that he received income of \$233.00 and stated that he has no problem repaying the \$33.00 overpayment of his income assistance, but he believes that the sanction of \$25.00 per month for 3 months is very harsh. In response to questions from the Panel the Appellant stated that he has never failed to report income previously and did not intend to do it, although he said that he entered zero in the space for income on the reporting form. He stated that he was previously a recipient of income assistance and was cut off for January and February, 2015, then was reinstated. He stated that he was cut off by the Ministry because they were unable to contact him.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which reduced the Appellant's assistance under s.15.1 of the Employment and Assistance Act for inaccurate or incomplete reporting and in the minister's opinion failing to take the necessary steps to ensure the accuracy and completeness of the information before providing it to the Ministry. The Ministry determined the reduction would be \$25 per month for 3 months as this was the first instance as per s.32.1 of the Employment and Assistance Regulation.

Legislation

### **EAA**

#### **Reporting obligations**

**11** (1) For a family unit to be eligible for income 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.

#### **Consequences for providing inaccurate or incomplete information**

**15.1** (1) The minister may take action under subsection (2) if the minister determines that

(a) income assistance, hardship assistance or a supplement was provided to or for a family unit that was not eligible for it,

(b) the income assistance, hardship assistance or supplement was provided to or for the family unit on the basis of inaccurate or incomplete information provided by the applicant or recipient

- (i) under section 10 (1) (e) [*information and verification*], or
- (ii) in a report under section 11 (1) [*reporting obligations*], and

(c) in the minister's opinion the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister.

(2) In the circumstances described in subsection (1), the minister may reduce the income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

(3) The periods prescribed for the purposes of subsection (2) may vary with the number of determinations made under subsection (1) in relation to a family unit.

(4) If a family unit that is subject to a reduction under section 14.1 of the *Employment and Assistance for Persons with Disabilities Act* qualifies for income assistance or hardship assistance under this Act before the period prescribed for the purposes of section 14.1 (2) of that Act expires, the reduction is deemed to have been imposed under subsection (2) of this section.

## **EAR**

### **Consequences for providing inaccurate or incomplete information**

**32.1** If the minister determines under section 15.1 (1) of the Act that the minister may take action under section 15.1 (2) of the Act in relation to a family unit, the income assistance or hardship assistance provided to or for the family unit may be reduced by \$25 for

- (a) a first determination, for the next 3 calendar months for which income assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month
  - (i) following the calendar month in which the minister made the determination, and
  - (ii) for which income assistance or hardship assistance is provided to or for the family unit,
- (b) a second determination, for the next 6 calendar months for which income assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month
  - (i) following the calendar month in which the minister made the determination, and
  - (ii) for which income assistance or hardship assistance is provided to or for the family unit, and
- (c) a third or subsequent determination, for the next 12 calendar months for which income assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month
  - (i) following the calendar month in which the minister made the determination, and
  - (ii) for which income assistance or hardship assistance is provided to or for the family unit.

### **Monthly reporting requirement**

**33** (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of each calendar month, 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) whether the family unit requires further assistance;
  - (ii) changes in the family unit's assets;
  - (iii) all income received by the family unit and the source of that income;
  - (iv) the employment and educational circumstances of recipients in the family unit;
  - (v) changes in family unit membership or the marital status of a recipient;
  - (vi) any warrants as described in section 15.2 (1) of the Act.

The Appellant's position is that he did fail to report income, but the sanction of \$25.00 per month for 3 months is unreasonable. He argued that he has never done this before and his failure to report the income was unintentional. He argued that a penalty that exceeds the amount of the overpayment of income assistance is not reasonable.

The Ministry's position is that the Appellant was aware of his reporting responsibilities and did not report the income until it was discovered by them, the Appellant did not provide any mitigating circumstances and the penalty is appropriate. The Ministry argued in the reconsideration decision that the exercise of discretion in applying the sanction included such considerations as whether there were legitimate mitigating circumstances that resulted in the Appellant not having accurate or complete information on the reporting date, whether the Appellant's mental health prevented accurate reporting and whether there were circumstances such that imposing the sanction does not serve the intended purpose of encouraging accurate reporting in future. The Ministry argued that the Appellant was aware of his duty to report receiving the income but entered zero in the space provided on the reporting form.

The Panel notes that the Appellant admitted that he did not report the income as required under s.11 EAA, but wishes to dispute the sanction applied by the Ministry. In considering whether the Ministry reasonably exercised its discretion in applying the sanction, the Panel takes into account the analysis provided – the Ministry considered whether there were mitigating circumstances that may have prevented the Appellant from accurately or completely reporting the income and found none, and whether the circumstances serve the intended purpose of encouraging accurate reporting in the future. The Panel notes that the Appellant did not leave the section of the form for reporting income blank; he entered zero, and the omission was not discovered until the Ministry found it in the Appellant's financial records.

The Panel finds the Ministry decision to reduce the Appellant's assistance under s.15.1, EAA to be reasonably supported by the facts. The Panel also finds the Ministry decision under s.32.1, EAR, the reduction of \$25 for three calendar months as this was the first instance, to be a reasonable application of the legislation in the circumstances of the Appellant. The Panel confirms the Ministry decision.