

## 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 July 25, 2016, which held that as a result of inaccurate information provided by the appellant, he received assistance for which he was not eligible in March, April, and May 2016, and is therefore subject to a reduction of his income assistance pursuant to section 15.1 of the Employment and Assistance Act (EAA). As this was the second determination under section 15.1, the reduction of income assistance determined under section 32.1 of the Employment and Assistance Regulation (EAR) is \$25 for the next 6 calendar months.

## PART D – Relevant Legislation

EAA, sections 11 and 15.1

EAR, sections 32.1 and 33

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in his absence in accordance with section 86(b) of the EAR.

### Information before the ministry at reconsideration

During the period in question, the appellant was an employable recipient with two dependent children.

On November 27, 2015, the ministry applied a sanction on the appellant's file for non-reporting of employment income.

On May 3, 2016, the ministry requested confirmation of the appellant's earnings because the year-to-date amount on his payslips did not match the amounts reported by the appellant as employment income.

On May 31, 2016, the ministry reviewed the submitted payslips and an overpayment was assessed on the appellant's file due to unreported employment income. Copies of the appellant's Record of Employment, payslips for January through April 2016, and the ministry's Overpayment Chart are included in the appeal record.

By letter dated May 31, 2016, a copy of which is included in the appeal record, the ministry advised the appellant of the overpayment and his responsibility to repay. The letter also advised the appellant that because he received assistance for which he was ineligible due to inaccurate or incomplete reporting and he did not take the necessary steps to ensure accuracy and completeness when reporting on his Monthly Report form, a sanction under section 15.1 of the EAA would be placed on his file. Because this was the second occurrence, the monthly reduction of \$25 would be for six months, beginning with the July 2016 assistance payment.

An additional letter dated May 31, 2016, also included in the appeal record, advised the appellant that a \$100 sanction would be placed on his file for two months for quitting his employment.

On June 25, 2016, the appellant requested reconsideration, indicating that he would be seeking the assistance of an advocate and that the ministry was wrong.

### Information provided on appeal

In his Notice of Appeal, the appellant wrote that he does not agree with the \$100 sanction for quitting his employment, considering the issues at hand.

A letter dated August 8, 2016, was provided by the ministry on appeal. In the letter, the ministry notes that on May 31, 2016 a letter was mailed to the appellant advising of three decisions impacting his assistance: 1) sanction for failure to accurately report his employment income; 2) sanction for voluntarily leaving his employment without just cause; and 3) an overpayment of assistance. The ministry writes that although the May 31, 2016 letter advised the appellant that he has the right to

request reconsideration, it is not clear whether the appellant understood that 3 decisions were outlined in the letter. “As a result, a request for reconsideration was not initiated for the overpayment of assistance. The ministry will be contacting [the appellant] to ensure he is aware of his right to reconsideration for all three decisions. The right to reconsideration regarding the overpayment decision will be offered to [the appellant].”

At the hearing, the ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

### Issue under appeal

The issue under appeal is whether the ministry decision which held that, as a result of inaccurate information provided by the appellant, he received assistance for which he was not eligible and is therefore subject to a reduction of his income assistance of \$25 for 6 calendar months pursuant to section 15.1 of the EAA and section 32.1 of the EAR, was reasonably supported by the evidence or a reasonable application of the legislation.

### Relevant 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) disability 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 either

(i) 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*], or

(ii) because the recipient failed to report as required under section 11 (1), 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.

## **EAPWDR**

### **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 .....

(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.....

### **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;

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- (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.

#### *Appellant's position*

Based on the appellant's written submissions, his position appears to be that the ministry's decision is wrong given his circumstances.

#### *Ministry's position*

The ministry argues that the appellant did not accurately report employment earnings he received in January, February and March 2016 as he is required to do by section 11 of the EAA and section 33 of the EAR. As a result of failing to provide accurate information, he received income assistance for which he was not eligible in March, April and May 2016 and is subject to a reduction of income assistance in accordance with section 15.1 of the EAA. As this was the second determination for inaccurate reporting, in accordance with section 32.1 of the EAR, the reduction of income assistance is \$25 for six calendar months (July through December 2016).

#### *Panel Decision*

Under certain conditions, section 15.1 of the EAA authorizes the ministry to reduce income assistance for the prescribed period and by the prescribed amount set out under section 32.1 of the EAR.

The first condition is set out in section 15.1(1)(a) - income assistance, hardship assistance or a supplement was provided to or for a family unit that was not eligible for it. The second condition is the subject of this appeal and is set out in section 15.1(b) – the income assistance, hardship assistance or supplement was provided on the basis of inaccurate or incomplete information provided by the recipient.

While the reconsideration decision under appeal states that the appellant's family unit received an overpayment of income assistance, in the subsequent letter dated August 8, 2016, the ministry advises that the appellant will be offered the right to reconsideration regarding the overpayment decision. Consequently, the overpayment is potentially subject to review by the ministry if reconsideration is sought and could also be subject to an appeal to this tribunal. The panel finds that it is not reasonable to apply the consequences set out in section 15.1 for providing inaccurate or incomplete information when a decision upon which the application of these consequences is based, the issue of overpayment, remains open to further review by the ministry.

The panel finds that the ministry's reconsideration decision is not a reasonable application of the legislation in the circumstances of the appellant. The reconsideration decision is rescinded and the appellant is successful on appeal.