

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated August 3, 2016 which found that the appellant is not eligible for backdated disability assistance pursuant to section 23 of the Employment and Assistance for Persons with Disabilities Regulation because an applicant for disability assistance who has been designated as a person with disabilities (PWD) only becomes eligible for a support allowance on the date of the applicant's submission of the application for disability assistance form, and for a shelter allowance on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for the portion of that month's shelter costs that remain unpaid on the date of that submission.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Sections 10 and 16(1)  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 4, 4.1, 4.2, 23 and 28

## PART E – Summary of Facts

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

1. Request for Reconsideration (RFR) dated July 14, 2016 in which the appellant stated that the reason for the RFR is that it is her right to have legal representation and the ministry is claiming that they have no proof;
2. Two page letter dated July 19, 2016 prepared by the appellant summarizing her version of problems she encountered in trying to provide the requested documentation to the ministry between October 2015 and February 2016 and indicating that she is asking for back payment for the months of October 2015 through January 2016 and for parts of February and June 2016;
3. Nine page document attached to the RFR which includes:
  - One page hand-written letter from the appellant dated July 14, 2016 in which she provides details surrounding an outstanding warrant for the appellant's arrest issued in the another province in 2010;
  - Five page timeline prepared by the appellant in which she provides her version of the details of dealings between the ministry and the appellant occurring between the third week of October 2015 and January 5, 2016 with respect to the ministry's request that the appellant provide specified documents to verify her on-going eligibility for disability assistance;
  - Copy of a two page legal aid representation form asking for additional information and outlining the terms of service; and
  - One page email dated November 24, 2015 from an intake legal assistant at the Legal Services Society (LSS) confirming that LSS has received the appellant's application for legal aid and indicating that LSS expects to make a decision as to whether it will be able to provide legal aid to the appellant by November 27, 2015;
4. Application for income assistance (part 1) in the name of the appellant dated July 8, 2016 in which the appellant indicates that there are no outstanding warrants for her arrest;
5. Application for income assistance (part 2) in the name of the appellant dated July 8, 2016;
6. Ministry information/documentation checklist dated June 17, 2016 indicating that an employment assistance worker will be checking the appellant's "previous file" for identification documentation and that a 60 day statement is required showing recent transactions in the appellant's bank account;
7. Record of Employment (ROE) from Service Canada for the appellant showing the employer's name, a first day of work of December 12, 2014 and a last day of work of February 20, 2016, total insurable earnings of \$32,823.54 over the previous 27 bi-weekly pay periods, including \$2,762.74 in insurable earnings paid to the appellant in November 2015, \$2,691.00 in insurable earnings paid to the appellant in December 2015, \$3,533.15 in insurable earnings paid to the appellant in January 2016, and \$1,699.25 in insurable earnings paid to the appellant in February 2016;
8. Bank statement dated June 3, 2016 in the appellant's name showing a combined balance of \$335.18 in two accounts at a financial institution;
9. Updated banking information from the appellant's financial institution dated July 6, 2016 providing the bank account number and other details necessary for automated deposits to be made to the appellant's bank account;
10. Detailed account activity statement dated June 16, 2016 showing transactions in the appellant's bank account between March 1, 2016 and June 16, 2016;
11. Detailed account activity statement dated July 5, 2016 showing transactions in the appellant's bank account between May 1, 2016 and July 5, 2016;
12. Copy of a residential tenancy agreement dated June 3, 2016 for a month-to-month tenancy

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starting June 1, 2016 between the appellant and her landlord and rent receipts inclusive of utility charges varying between \$849.66 and \$1,016.88 for the months of February, March, April and June 2016;

13. Ministry of Children and Family Development extended family program plan file and care provider information for a child in the care of the appellant and a statement showing a monthly payment of \$625 for a contract expiring June 13, 2016; and
14. Request for Waiver form dated February 25, 2016 and prepared by the Ministry of Attorney General for the Province of British Columbia (BC) requesting that a charge for an offence allegedly committed by the appellant in another province be waived to a provincial court in a community in BC.

### *Evidence On Appeal*

In her Notice of Appeal submitted on August 9, 2016, the appellant stated that she was dropping off the required documents, that she did everything that was asked of her and more and that the issues has been escalated to the Office of the Ombudsman 5 times. This statement was accepted by the panel as argument.

The appellant is a single person with a PWD designation.

At the hearing, the appellant introduced the following additional evidence:

1. Two page letter to the appellant from an officer in the Office of the Ombudsperson for the Province of BC (the Ombudsperson), dated May 27, 2016 which states:
  - That the Ombudsperson officer (the officer) investigated whether the ministry followed a reasonable procedure in assessing the appellant's eligibility for disability assistance and that the officer's review indicates that the ministry had determined the appellant ineligible for disability assistance on two grounds: first, that the appellant had not provided sufficient information to establish her eligibility for assistance, and second, because the appellant had an outstanding arrest warrant in another province.
  - With respect to the outstanding arrest warrant, the officer's review concluded that appellant had been duly notified that the appellant was no longer eligible for disability assistance in October 2015 and had been sent an RFR form on October 28, 2015.
  - With respect to the appellant not having provided sufficient information to establish her eligibility for disability assistance, the officer found that sometime between December 2, 2015 and December 8, 2015, the ministry changed the appellant's address on file from the correct address to an incorrect house number on the same street, and that, as a result, three letters mailed by the ministry to the appellant in December 2015 and January 2016, including one on January 13, 2016 which included the RFR form regarding the decision to deny the appellant eligibility for disability assistance for failure to provide information sufficient to establish her eligibility, were mailed to the wrong address. Therefore the officer was not able to conclude "that the ministry had communicated reasonably with (the appellant) about its determination that (she) was ineligible for assistance because (she) had not provided sufficient information to establish her eligibility" and accordingly had asked the ministry to provide the appellant with notification of the decision and a RFR form forthwith and allow the appellant 20 business days to request a reconsideration of that decision. The officer also indicates in the letter that the ministry said that it would do so and on May 26, 2016 the ministry confirmed with the officer

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that the ministry had sent the appellant the RFR form.

2. One page letter to the appellant from an officer in the Office of the Ombudsperson, dated July 18, 2016 which acknowledges a second complaint by the appellant to the effect that she had still not received the RFR form regarding the decision to deny the appellant eligibility for disability assistance because she had not provided information sufficient to establish her eligibility that the ministry said it had mailed to her on May 26, 2016. The letter goes on to say that the appellant had since contacted the officer to say that she had received the RFR form on July 14, 2016.
3. One page letter to the appellant from an officer in the Office of the Ombudsperson, dated August 2, 2016 which acknowledges a third complaint by the appellant to the effect that she had been told by the ministry through a third party administrator (TPA) that her disability benefits had been reinstated but that when the appellant tried to pick up prescription medication she was told by the pharmacist that she did not have Medical Services Plan (MSP) coverage. The Ombudsperson officer then contacted the ministry and confirmed that the appellant's MSP coverage had been reinstated effective July 1, 2016.

The ministry had no objection to the introduction of the additional evidence.

At the hearing, the ministry submitted the following additional evidence to demonstrate that the ministry had the appellant's correct mailing address at that time:

1. Four page RFR form in the name of the appellant, bearing the appellant's correct mailing address and dated October 28, 2015, providing the opportunity for the appellant to request a reconsideration of the ministry's decision to find the appellant ineligible for disability assistance pursuant to section 14.2 of the EPWDA because there was an outstanding warrant for arrest in the appellant's name;
2. Two page letter to the appellant from the ministry, bearing the appellant's correct address and dated October 28, 2015, advising the appellant that the ministry has verified that there is an outstanding warrant for her arrest and that she is therefore ineligible for disability or income assistance. It further states that she can request a reconsideration of the ministry's decision within 20 business days; and
3. Thirteen pages of additional documents in support of the October 28, 2015 decision referred to above and forming part of the RFR package.

#### *Admissibility of Additional Evidence*

The panel determined that the additional written evidence submitted by both the appellant and the ministry was admissible under Section 22(4) of the *Employment and Assistance Act* as evidence in support of the records before the ministry at reconsideration.

#### *Appellant's Evidence At Hearing*

At the hearing the appellant said that she had been receiving disability assistance since 2010, and in October 2015 she was asked by the ministry to provide documents including bank statements, a copy

of her lease, and recent rent receipts to verify her ongoing eligibility for disability assistance. She received another call from the ministry a few days later asking for proof of income and indicating that the ministry had learned that there was an outstanding warrant for her arrest in another province dating back to 2009.

With respect to the outstanding warrant, the appellant said that she left the other province in 2009 following a domestic dispute and in fear for her safety and on the understanding that the charges would be dropped. In late November 2015 she applied for legal aid and told the ministry that she was taking the steps necessary to have the warrant waived, and provided the ministry with copies of documents showing that she was doing what she could to address the warrant waiver. The appellant stated that she was told by the ministry that the ministry would continue to provide disability assistance as long as the appellant was working on the warrant waiver. A legal aid lawyer was assigned to her in mid December 2015. The appellant has kept the ministry apprised of progress, including providing the ministry with a copy of the request for waiver on February 25, 2016. She is still waiting for a court date.

The appellant stated that she has experienced significant delays and frustration with errors made by the ministry, including challenges in making contact with the ministry by telephone because she often could not get through due to heavy call volumes, and because she had to deal with different staff at the ministry at different times and it was usually someone she had not spoken to before and was not familiar with her file or the warrant waiver process. In addition the appellant has had altercations with ministry staff and in late November she was barred by the ministry from dealing with ministry staff directly and as a result must now communicate with the ministry through a TPA, which causes further delays and further inhibits effective communication. The appellant stated that the TPA takes at least a week to return her calls.

In December 2015 the ministry changed the mailing address on her file without her knowledge, even though it was correct before the change, and as a result she did not receive important letters from the ministry, including the RFR of the ministry's decision to make her ineligible for disability benefits for not providing the information necessary to verify her ongoing eligibility.

In January 2016 the appellant's doctor referred the appellant to BC Mental Health & Substance Use Services (Mental Health). She had recently been cut off from disability assistance and stopped working, on her doctor's orders. As a result, she had to rely on employment insurance (EI) benefits. The appellant said she could not afford her medication so she had to sell some of her personal possessions, including her computer. As her job was in telemarketing, she can not return to work because she no longer has a computer.

The appellant also had to give up trying to resolve issues with the ministry because it was too stressful and affecting her mental health. The appellant admitted that she had been rude to ministry staff because of the stress she was under and the challenges she was facing in trying to resolve the issues with her disability assistance eligibility.

### *Ministry's Evidence at the Hearing*

The ministry relied on the reconsideration decision. The ministry stated that the file review in November 2015 was initiated as the result of an anonymous allegation received by the ministry in

July 2015 claiming that the appellant was committing fraud by receiving disability assistance while working from home.

The ministry said that under normal circumstances if a disability assistance recipient does not provide information requested under section 10 of the EAPWDA within 3 months, the recipient's file is closed automatically by the system and benefits are no longer provided. In this case the file was manually closed in January 2016 because the appellant did not provide the information necessary for ministry investigators to complete the ministry's Prevention and Loss Management Services review. The ministry stated that files are closed only under exceptional circumstances and that the ministry tries to work with the client to avoid file closure wherever possible.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant is not eligible for backdated disability assistance pursuant to section 23 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

### EAPWDA

#### Information and verification

**10** (1) For the purposes of ...

(b) determining or auditing eligibility for disability assistance ...

the minister may ... : ...

(g) direct ... a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct ... 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, ...

(4) If ... a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance ... for the prescribed period.

#### Reconsideration and appeal rights

**16** (1) ... a person may request the minister to reconsider any of the following decisions made under this Act: ...

(b) a decision that results in a discontinuance of disability assistance ... provided to or for someone in the person's family unit ...

### EAPWDR

#### Process for assessment of eligibility for disability assistance

**4** The eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.

#### Application for disability assistance – stage 1

**4.1** (1) The first stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (2).

(2) The applicants for disability assistance in a family unit

(a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described

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- in section 6 (2) [citizenship requirements], and
- (ii) the information, authorizations, verifications and declarations specified by the minister, as required in the application for disability assistance (part 1) form, and
- (b) subject to subsections (4), (5) and (6), must
- (i) complete searches for employment as directed by the minister for the 3 weeks immediately following the date of the application under paragraph (a), or
- (ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),
- and in either case provide information about and verification of the searches for employment, in the form specified by the minister.
- (3) Subsection (2) does not affect the minister's powers under section 10 of the Act.
- (4) Subsection (2) (b) does not apply to a person who
- (a) is prohibited by law from working in Canada,
- (b) has reached 65 years of age,
- (c) is a member of a family unit that includes a person with disabilities,
- (d) is not a person with disabilities, but has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or
- (e) is fleeing an abusive spouse or relative.
- (5) Subsection (2) (b) does not apply if any person in the family unit to which an application relates has an immediate need for food or shelter or needs urgent medical attention.
- (6) Subsection (2) (b) does not apply to a sole applicant who
- (a) has a dependent child, or
- (b) provides care to a supported child
- if the child has not reached 3 years of age.

#### **Application for disability assistance – stage 2**

- 4.2** (1) In this section, "**applicant orientation program**" means a program established by the minister to ensure that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of
- (a) rules about eligibility for disability assistance or supplements,
- (b) the process of applying for disability assistance,
- (c) required employment search activities, community based job search resources and ministry



and community programs,

(d) mutual obligations of the minister, applicants and recipients,

(e) employment plans,

(f) the minister's authority to collect and verify information, and

(g) the availability of alternate resources, such as, federal programs and other Provincial programs.

(2) The second stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (3).

(3) On completion of the first stage process provided for in section 4.1, the applicants for disability assistance in the family unit must complete and submit to the minister an application for disability assistance (part 2) form and must include as part of the application

(a) proof of the identity of the persons in the family unit and of their eligibility under the Act,

(b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and

(c) the information, authorizations, declarations and verifications specified by the minister as required in the application for disability assistance (part 2) form.

(4) Subsection (3) does not affect the minister's powers under section 10 of the Act.

(5) Subsection (3) (b) does not apply to a person who

(a) has reached 65 years of age,

(b) is not described in section 6 (2) [citizenship requirements] and is in a family unit that satisfies the requirement under section 6 (1), or

(c) has a physical or mental condition that, in the minister's opinion, precludes the person from completing an applicant orientation program.

### **Effective date of eligibility**

**23** (1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form, (and)

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission ...

(2) ... a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it ...

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible for disability assistance;

(b) 12 calendar months before the date of payment.

(5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

### **Consequences of failing to provide information or verification when directed**

**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 ...

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### *Appellant's Position*

The appellant's position is that she was not formally advised of the ministry's decision to deny her eligibility for disability assistance and provided with an opportunity to appeal that decision until July 14, 2016, and as a result she should have been able to appeal the January 13, 2016 decision and be eligible for disability assistance and MSP coverage since that time.

### *Ministry's Position*

The ministry's position is that the appellant was asked to provide information pursuant to section 10 of the EAPWDA in November 2015, and because she did not provide the required information, her file was closed in January 2016, at which time she was advised in writing of the decision and provided with an opportunity to request for a reconsideration of that decision. Because she did not request a reconsideration decision within 20 business days of notification, pursuant to section 71(2) of the EAPWDA, the appellant no longer has the ability to appeal that decision. Therefore the appellant must re-apply for disability assistance as required under sections 4, 4.1 and 4.2 of the EAPWDR, which she did in June and July 2016. Section 23(1.2) of the EAPWDR states that a family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for a support allowance on the date of the applicant's submission of the application for disability assistance (part 2) form, and for a shelter allowance for that portion of that month's shelter costs that remains unpaid on the date of that submission. As the appellant submitted her application for disability assistance (part 2) form effective July 5, 2016, disability benefits are payable from that date.

### *Panel Decision*

The decision that the appellant asked the ministry to reconsider was the ministry's decision which found that the appellant is not eligible for backdated disability assistance pursuant to section 23 of the EAPWDR because she only became eligible for a support allowance on the date she submitted her application for disability assistance form, and for a shelter allowance on the first day of the calendar month that includes the date of her application for disability assistance (part 2) form, but only for the portion of that month's shelter costs that remain unpaid on the date of that submission. The ministry's reconsideration decision of August 3, 2016 confirmed the original ministry decision, which was appealed by the appellant within 20 business days of the date that the appellant was notified of the decision, pursuant to Section 71 of the EAPWDR.

Other recent decisions of the ministry affecting the appellant include a ministry decision dated October 28, 2015, which found the appellant ineligible for disability assistance pursuant to section 14.2 of the EPWDA because there was an outstanding warrant for the appellant's arrest, and a ministry decision reportedly made in January 2016 which declared the appellant's family unit ineligible for disability assistance for failure to supply verification of information she supplied to the ministry pursuant to section 10 of the EAPWDA. This panel was convened to consider the decision pursuant to section 23 of the EAPWDR and has no authority to consider either of the other two recent decisions of the ministry affecting the appellant.

With respect to the decision under appeal, ministry policy is to close a recipient's file three months after a recipient has failed to provide verification of information under section 10 of the EAPWDA in most cases, but after less than three months or after more than three months under exceptional circumstances. In this instance the ministry chose to close the appellant's file two months after directing the applicant to supply verification of information. Under ministry policy, when the ministry closes a recipient's file, assistance is no longer provided and the ministry notifies the former recipient of the ministry's decision to discontinue providing assistance. If a former recipient is dissatisfied with the ministry's decision, the ministry provides the former recipient with an opportunity to ask the ministry to reconsider that decision, but must deliver a RFR in the form specified by the minister to the ministry within 20 business days of having been notified of the decision.

The issues in this appeal is the effective date of the reinstatement of disability assistance and what steps should be necessary for the appellant to re-establish eligibility for disability assistance. Regarding the steps necessary to re-establish eligibility, the panel must determine whether the ministry's decision to require the appellant to reapply for disability assistance was a reasonable application of the applicable enactment in the circumstances of the appellant.

The EAPWDA and the EAPWDR provide a framework for reporting requirements and time lines in circumstances where a recipient has to provide information to verify eligibility for income or disability assistance. Section 10 (1) of the EPWDA says that for the purposes of auditing eligibility for disability assistance the minister may direct a recipient to supply verification of any information he or she supplied to the minister, and that 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. If an applicant or a recipient fails to comply with a direction, Section 10 (4) states that the minister may declare the family unit ineligible for disability assistance for

a prescribed period. Section 28 of the EAPWDR prescribes the period for which the minister may declare the family unit ineligible for assistance to be whatever time it takes for the applicant or recipient to comply with the direction. Section 10 of the EAPWDA and section 28 of the EAPWDR are relevant in this appeal because the appellant was required to provide verification of information she supplied to the minister.

As the legislation provides a framework to address circumstances where a recipient has to provide information to verify eligibility for income or disability assistance, and because that process was not followed in this instance, the panel finds that the ministry's requirement that the appellant reapply for disability assistance was not a reasonable application of the applicable enactment in the circumstances of the appellant. The panel finds that once the appellant had complied with the direction of the ministry by supplying verification of any information she supplied to the minister, the prescribed period under section 10 of the EAPWDA had expired and therefore the family unit is once again eligible for disability assistance, provided all other legislative requirements have been met, and the appellant's file should have been re-opened. The panel finds that the legislation does not require that the appellant re-apply for assistance once verification of information has been supplied to the minister.

The panel recognizes that under circumstances where a significant period of time has elapsed between the date that the ministry notifies a recipient of disability assistance that verification of information is required under section 10 of the EAPWDA and the date that the information is subsequently provided, it might be necessary for the ministry to confirm other aspects of eligibility, and it might be necessary for a former recipient of disability assistance to complete a new application form. In this instance, however, only four or five months had passed since the request for verification of information was made, and some of the information that the ministry said it needed to re-establish eligibility was already in the appellant's file. For example, the ministry information/documentation checklist dated June 17, 2016 indicates that an employment assistance worker will be checking the appellant's "previous file" for identification documentation. Therefore, in the circumstances of the appellant, and pursuant to section 28 of the EAPWDR, the panel finds that disability assistance should have been provided from the date that the appellant supplied verification of the information she supplied to the minister, provided all other requirements of the legislation have been met.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant had to reapply for disability assistance and is not eligible for backdated disability assistance pursuant to section 23 of the EAPWDR, was not a reasonable application of the applicable enactment in the circumstances of the appellant.