

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 24 January 2018, which denied the appellant backdated disability for May, June and July 2017 because he had not provided information requested by the ministry pursuant to section 10 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act section 10, 11 and 14.
Employment and Assistance for Persons with Disabilities Regulation section 28, 28.1 and 29.

PART E – SUMMARY OF FACTS

Relevant information before the ministry at reconsideration consisted of the following:

- The appellant has persons with disabilities (PWD) designation;
- On April 24, 2017 the appellant submitted a late stub (monthly report) for May 2017 assistance declaring an income of \$432.74 along with a March 15, 2017 paystub;
- On May 15, 2017 the appellant attended an office, as he had not received his May assistance. The ministry advised him that he had not accurately reported his income.
- On May 19, 2017 the appellant submitted late stubs for May and June 2017 assistance, declaring income of \$673 and \$1142 respectively. As well, the appellant submitted income verification of \$475.87 dated March 31, 2017, a paystub for \$185.17 dated April 15, 2017 and bank statements covering the period from February 3, 2017 to May 8, 2017;
- On May 19, 2017 the ministry sent the appellant a letter advising that his cheque was being held for correction of his April and May stubs;
- On June 9, 2017 the ministry sent the appellant a letter advising that his June assistance had been cancelled as the ministry had not received the information it has requested;
- On June 12, 2017 the appellant attended a Service BC Office requesting help with his stubs. He was informed that his cheque was being held for pay stubs and bank statements in order to amend his monthly reports;
- On July 6, 2017 the ministry cancelled the appellant's May, June and July cheques;
- On July 10, 2017, the appellant submitted a second stub for continued assistance for June declaring income of \$744.18 along with May 15 and 31 paystubs;
- On July 11, 2017 the ministry sent the appellant a letter advising that his cheque was being held and requesting bank statements from January to July 2017 and all employment paystubs from January 1, 2017 onward;
- On August 22, 2017 the appellant submitted employment paystubs for January 15 and 31, February 15 and 28, March 15 and 31, May 15 and 31, June 15 and 30, and July 15 and 31. As well, the appellant submitted bank statements for January 3 to March 7, 2017 and May 8 to July 24, 2017;
- On August 29, 2017 the ministry reviewed the appellant's information and determined that the paystubs did not match the bank statement deposit information. The ministry required the appellant to reapply for assistance and also required that he provide additional information, including updated monthly reports for January, February and March 2017;
- On September 11, 2017 the appellant was issued August and September assistance. A service request was generated to determine if the appellant was eligible for May, June and July 2017 assistance;
- On November 21, 2017 the ministry denied the appellant's request for backdated assistance for May, June and July 2017.
- A **Request for Reconsideration** (RFR) dated 18 December 2017. Accompanying the appellant's RFR was a 2-page submission (Reconsideration Submission) prepared by the appellant's advocate, in which the advocate argues that the appellant has always tried to report his income accurately and is limited in his ability to do so by his disabilities. As well, the appellant has also had some difficulty obtaining paystubs from his employer. The advocate argues that there has never been any suggestion that the appellant was in May, June and July 2017 approaching his annual earnings exemption (AEE) for 2017 and this was confirmed by the Year to Date (YTD) information in the paystubs submitted by the appellant through the summer. The advocate argues that the minister exceeded its authority under section 10 by withholding the appellant's assistance while waiting for information that was not necessary to assess his eligibility. The advocate argues that the information that was provided (reports, paystubs that were provided and historical earnings patterns) was sufficient to establish eligibility and demonstrate that he was not in danger of

exceeding his AEE. The advocate further argues that the minister exceeded its authority in finding the appellant ineligible for failing to provide information quickly enough. The advocate argues that when the ministry had received all of the information requested, this information confirmed that the appellant had not approached his AEE in 2017 but it was not necessary to reasonably determine that the appellant had not exceeded his AEE in May, June and July 2017.

Notice of Appeal

In the Notice of Appeal dated 5 February 2018, the appellant has written: *detailed reasons to follow.*

Hearing Submissions

At the hearing the appellant stated that he was not required to submit paystubs and bank statements with his monthly for approximately the first 6 months of receiving PWD Benefits. Since being required to submit this additional information he has attended the ministry office and ServiceBC office on multiple occasions to obtain help with completing his monthly reports. He estimates that he has attended approximately twice per month but, other than on one occasion, he has not been provided with the assistance he requested. He states that he has been mistreated and disrespected by ministry staff on multiple occasions, including having been told by a ministry supervisor to “go and seek psychiatric help.” The appellant argued that ministry staff are not acting in accordance with their own code of ethics in the treatment of clients with disabilities. The appellant argued that he has had difficulty getting the monthly reporting done correctly and on time with the correct two paystubs attached as he is sometimes unsure which paystubs he should include and sometimes has lost a paystub. But, he argued, has never declined assistance from the ministry to help him do it correctly. He stated that, on at least on occasion, he has received a mid-month paycheque from his employer that was dated the end of the previous month (i.e. a cheque received February 15 with a January 31 date) and this may be a part of the problem with correctly completing his monthly reports by the 5th day of the month as required. The appellant stated that his only sources of earned income are his employment 1 day per week, plus CPP and GST. He argued that he has never been made aware that the ministry had any concerns about his paystubs and bank deposits not matching. He argued that he could have spoken to any information requested, if he had been asked. The appellant argued that he has had more than one 10-day notice from BC Hydro because his cheques have been held by the ministry.

The appellant’s advocate argued that while the appellant has had some difficulty getting his information submitted to the ministry he has made every effort to do so and the ministry has always had sufficient information to determine the appellant’s eligibility. The advocate argued that the ministry is acting beyond its section 10 powers in holding and cancelling the appellant’s support. In relation to May 2017 assistance, which is based on March 2017 income, the advocate argued that on May 19 the appellant had submitted bank statements for the period from February 3 to May 8 and this information was sufficient to determine the that the appellant had not exceeded his AEE. In relation to June 2017 assistance, which is based on April 2017 income, the advocate argued that the ministry was in possession of the same bank statements showing the appellant was below his AEE. As well, one of the two relevant April paystubs had also been submitted on May 19 and the other was submitted in July once the appellant had been able to obtain a second copy from his employer. In relation to July 2017 assistance, which is based on May 2017 income, the advocate argued that both May 15 and 31 paystubs were submitted on July 10 rather than on June 5th. The advocate argued that the appellant’s disabilities and difficulties in obtaining paystub copies from his employer contribute to late submission of his paystubs, but that this was reasonable under the circumstances. The advocate argued that the ministry should be exercising discretion to provide extra time for clients with disabilities and should not be using section 10 when there is a basis to determine eligibility. The advocate argued that section 10 could be applied in relation to AEE or unearned income and neither of these are relevant to the appellant’s circumstances. The advocate argued that in the appellant’s circumstances, there has never been any suggestion that he is nearing his AEE and there has been enough information to determine eligibility. He argued that the ministry knows and has known that the appellant is eligible because it had sufficient information to make this determination. The advocate argued that the appropriate recourse in the appellant’s situation would be the sanctions set out in section 28.1 of the EAPWDR.

The ministry relied on the reconsideration decision. However, the ministry also provided an explanation of the three-month system on which it operates in providing assistance. The ministry explained that income earned in month 1 is to be reported by the 5th day of month 2 for assistance issued in month 3. The ministry explained that this means that the relevant paystubs are those for the month immediately preceding the report. For instance, a

client's February 5th report should include January 15 and 31 paystubs for March assistance, which is paid in the last week of February. The ministry explained that its system permits late reports to be entered until the Friday before assistance cheques are issued and that a manual entry is also possible for the first couple of days of the week in which cheques are issued. After this time has passed, there is a possibility of paying a client for missed assistance as an "administrative underpayment", which is not detailed in the applicable legislation or regulation but is governed by ministry policy. According to this policy, administrative underpayment is possible only where the underpayment was due to ministry error and not client error.

Admissibility

The panel finds that the information provided by the appellant and his advocate at the hearing and in the Notice of Appeal consists of argument. As such, the panel finds that there is no information before it requiring an admissibly determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

The panel finds that the information provided by the ministry at the hearing consisted of explanation of ministry practices and procedures and, as such, is in support of information that was before the ministry at reconsideration. This information is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's reconsideration decision, denying the appellant backdated disability for May, June and July 2017 because he had not provided information requested by the ministry pursuant to section 10 of the EAPWDA, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the EAPWDA apply to this appeal:

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) 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, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

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

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

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 confirmed by a signed statement of each recipient.

Consequences for providing inaccurate or incomplete information

14.1 (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 disability 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

(A) under section 10 (1) (e) [*information and verification*], or

(B) 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 disability 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 15.1 of the [Employment and Assistance Act](#) qualifies for disability assistance or hardship assistance under this Act before the period prescribed for the purposes of section 15.1 (2) of that Act expires, the reduction is deemed to have been imposed under subsection (2) of this section.

The following sections of the EAPWDR apply to this appeal:

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.

(2) For the purposes of section 10 (5) [*information and verification*] of the Act,

(a) the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit is \$100 for each calendar month, and

(b) the period for which the minister may reduce the disability assistance or hardship assistance of the

dependent youth's family unit lasts until the dependent youth complies with the direction.

Consequences for providing inaccurate or incomplete information

28.1 If the minister determines under section 14.1 (1) of the Act that the minister may take action under section 14.1 (2) of the Act in relation to a family unit, the disability 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 disability 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 disability assistance or hardship assistance is provided to or for the family unit,

(b) a second determination, for the next 6 calendar months for which disability 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 disability 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 disability 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 disability assistance or hardship assistance is provided to or for the family unit.

[en. B.C. Reg. 193/2006, s. 4.]

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.

[en. B.C. Reg. 335/2007; am. B.C. Regs. 85/2012, Sch. 2, s. 4; 332/2012, s. 1; 226/2014, s. 1.

In the reconsideration decision the ministry concluded that it was reasonable in questioning and requesting an accurate account of the appellant's earnings. The ministry noted that the YTD on several of the appellant's paystubs had the same amount (\$3535.10). As a result, the ministry found that the YTD was not an appropriate measure of the appellant's earnings. As well, the ministry found that the deposits into the appellant's accounts were not only from the paystubs provided. The ministry concluded that the appellant may have been receiving additional income, such as cash payments from his clients. The ministry argued that the appellant is ineligible for assistance beginning in May 2017 because he had not provided income verification information requested on May 15, 2017 and he continued to be ineligible until the information was provided on August 22, 2017. The ministry concluded that the appellant was not eligible for backdated assistance in accordance with section 28 of the EAPWDR.

The essence of the appellant's argument is that the appellant has made every effort to provide any and all information requested by the ministry, and while this information was sometimes late, the ministry at all times had sufficient information to determine that the appellant was eligible for assistance. Because of this, a section 10(4) determination of ineligibility is not warranted, and section 28(1) EAPWDR consequences are not applicable in this situation. Rather, the appellant asserts the appropriate sanction in his circumstances falls under section 28.1 EAPWDR because he did not fail to comply with any request for information; he, at all times, attempted to comply with every request and repeatedly sought help from the ministry in order to do this.

The panel finds that the ministry's reconsideration decision is not reasonable. The panel notes that the appellant and the ministry agree that the only aspect of the appellant's eligibility that is in issue relates to his earned income. The appellant's argument is that the ministry knew he was eligible and had, at the relevant times, sufficient information to make this determination. The ministry's argument is that it did not know that the appellant was eligible and could not determine this, making section 10 applicable in the appellant's situation. The ministry stated that a YTD of \$3535.10 was present on April 15 and 30 and May 15 and paystubs. The ministry argued that the unchanging YTD made it impossible to determine the appellant's ongoing eligibility based on the information provided. However, the panel notes that the YTD information in the appeal record does not support this ministry assertion. Rather the evidence shows a YTD of \$2790.92 for April 30, \$3167.93 for May 15, and \$3535.10 for May 31. The panel notes that the April 15 paystub is not included in the documentation before it. The panel finds that the ministry's conclusion that reviewing the appellant's YTD information was not an appropriate measure of the appellant's earnings and is not reasonably supported by the evidence. As well, the panel finds that the ministry's assertion that the appellant may have been receiving cash payments from his clients is not supported by the evidence. As admitted by the ministry at the hearing, there was no information or evidence in the ministry's possession that would support this conclusion. The panel finds that the appellant did, as he acknowledged, have some problems meeting the reporting requirements set out in section 29 of the EAPWDR but these problems reflect issues with completeness and accuracy as contemplated by section 28.1 of the EAPWDR rather than eligibility. In reaching this conclusion the panel notes that, other than the information provided in the reconsideration decision, the ministry was not able to speak to the number of times the appellant had attended at ministry or ServiceBC locations seeking assistance with ensuring that he correctly completed the monthly reports and included the necessary verification information. In sum, the panel finds that the foregoing conclusions that support the ministry's argument that it could not determine eligibility for the relevant periods are not reasonably supported by the evidence. Therefore, the ministry's decision finding the appellant ineligible in accordance with section 28 is not a reasonable application of the legislation in the appellant's circumstances.

Conclusion

The panel finds that the ministry's reconsideration decision, denying the appellant backdated assistance for May, June and July 2017 was not a reasonable application of the legislation in the circumstances of the appellant and not reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.