

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “ministry”) reconsideration decision dated September 5, 2018, which determined that pursuant to section 28.1s of the Employment and Assistance for Persons With Disabilities Regulation (“EAPWDR”), the appellant was subject to a \$25 reduction of his disability assistance (DA) for six calendar months (August 2018 to January 2019) because he had failed to report or provide accurate information which resulted in an overpayment.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 11 and 14.1
EAPWDR Sections 28.1 and 29

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The appellant is a sole recipient of disability assistance with no dependents.

The evidence before the ministry at reconsideration included:

- A Request for Reconsideration dated July 3, 2018 which the appellant signed on August 20, 2018 citing that the reason for his request was because he had filed his stubs and that the worker forgot to put them in the computer and that he had a problem a couple of years ago filling in his stubs but that he knows now how to do them;
- An Overpayment Chart for assistance months May 2017 to February 2018 which summarizes for each month the amount of income declared, the exemption amount, the assistance amount and the overpayment amount. An overpayment amount shows up for assistance months January 2018 and February 2018 totalling \$2,266.84;
- An Overpayment Notification dated July 3, 2018 informing the appellant of the total amount of \$2,266.84 and that this amount is a debt due to the government of BC and that he is liable to repay the amount by reducing his assistance by \$10 each month;
- An Annual Earnings Exemption (AEE) Calculator from 2017 which summarizes the appellant's 2017 income and exemption amounts that were applied for each month;
- Monthly Reports (HR81) dated May 5, 2017 (2 declaring different amounts) along with supporting paystubs, June 7, 2017 and supporting paystubs, July 7, 2017 and supporting paystubs, August 4, 2017 and supporting paystubs, September 5, 2017 and supporting paystubs, October 6, 2017 and supporting paystubs, October 29, 2017 and supporting paystub;
- A paystub showing cheque date of Nov 30, 2017 with net pay of \$2169.14;
- A paystub showing cheque date of Dec 29, 2017 with net pay of \$1186.85; and
- A letter from the ministry to the appellant dated July 3, 2018 explaining that the appellant had a responsibility to report any change in income or assets or change in circumstances that may affect his continued eligibility for assistance and that if he did not declare all changes, he may receive assistance for which he was not eligible. The letter went on to state that the appellant had been notified that an overpayment had occurred on his file and that they reviewed the overpayment with him. The ministry concluded that the overpayment occurred because of inaccurate or incomplete reporting by the appellant and that the appellant had received assistance for which he was not eligible (an overpayment) and because it was the second occurrence on his file, a monthly reduction of \$25 each month will be imposed for the next six months beginning with the August 2018 assistance payment.

The appellant wrote on the Notice of Appeal form on September 11, 2018: "Because the truth is I did hand in my paystubs, and the person who I hand in the paystubs must have mess around with my file so can't blame everything on me so its not fair. Everyone is human so they make mistakes too."

The ministry submission for the written hearing was the reconsideration summary provided in the record of ministry decision.

The appellant did not provide additional information for the written hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry decision dated September 5, 2018, which determined that pursuant to section 28.1 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), the appellant was subject to a \$25 reduction of his disability assistance (DA) for six calendar months (August 2018 to January 2019) because he had failed to report or provide accurate information which resulted in an overpayment, was reasonably supported by the evidence or a reasonable interpretation of the legislation.

The relevant legislation is as follows:

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 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.

EAPWDR

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

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. 87/2018:

- (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.

The appellant's position is that he did file his stubs but that the worker forgot to put them in the computer. The appellant wrote that a couple of years ago he had a problem filling in his stubs but that he now knows how and that he doesn't think it's fair for him to be charged this amount because the ministry can't always blame the client, that workers make mistakes too.

The ministry's position is that there is no record that the appellant had submitted his monthly reports for January and February 2018 assistance declaring his earnings for November and December 2017, because any information submitted would be recorded on the electronic file as well as kept on file in the office to which the appellant submitted the report. The ministry is satisfied that the appellant failed to take the necessary steps to accurately report his earnings, which then resulted in an overpayment of assistance and because this was his second determination for inaccurate reporting, that he is subject to a \$25 reduction of his DA for six calendar months (August, September, October, November, December 2018 and January 2019) as per section 28.1 of the EAPWDR.

Panel Decision

Section 11 EAPWDA states that for a family unit to be eligible for DA a recipient must submit a form and notify of any change in circumstances or information that may affect the eligibility of the family unit and must be signed by the recipient and section 29 EAPWDR states that the reports must be received by the 5th of each month. The panel notes that there are monthly reports signed by the appellant for the May 2017 to December 2017 period, along with their corresponding paystubs, however there are no monthly reports in the appeal record for the January or February 2018 reporting period. The panel also notes that there are paystubs in the appeal record that reflect that the appellant had employment income to declare and which would have affected his eligibility, so a monthly report was required.

Section 14.1 (1) of the EAPWDA states that the minister may take action under subsection (2) if the minister determines that DA was provided to a family unit who was not eligible for it because the recipient failed to report as required under section 11(1) and in the minister's opinion, failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister. Subsection (2) allows the minister to reduce the DA and subsection (3) allows that the period prescribed may vary with the number of determinations made. In the appellant's circumstance, the panel finds that because there is no evidence that the appellant submitted a monthly report, as required, to declare his employment income which would have made him not eligible for DA, that it was reasonable for the ministry to take action to reduce his DA.

Section 28.1 states that if the minister determines under section 14.1(1) of the Act that they may take action under section 14.1(2) of the Act, that the consequence is that the DA provided may be reduced by \$25 for a period of time. In the appellant's circumstance, the ministry applied section 28.1(b) because the ministry determined this had been a second determination, which is for a six calendar month period. The panel notes that in the appellant's reason for requesting the reconsideration that he wrote that he had had a problem in the past with his monthly reporting and the ministry wrote in their decision that this was his second determination for inaccurate reporting. The panels finds it reasonable that the ministry applied a \$25 reduction for the six month period of August, September, October, November and December 2018 and January 2019 pursuant to section 28.1(b) EAPWDR because this was the second determination.

Conclusion

The panel finds that the ministry reconsideration decision, which determined that the appellant was subject to a \$25 reduction of his disability assistance (DA) for six calendar months (August 2018 to January 2019) because he had failed to report or provide accurate information and which resulted in an overpayment, was a reasonable application of the legislation. The appellant is not successful in his appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 October 22

PRINT NAME

Marcus Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)