

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated October 1, 2018 which found that the Appellant is not eligible for disability assistance pursuant to section 10 of the *Employment and Assistance For Persons with Disabilities Act* (EAPWDA) because she failed to provide information and verification of information necessary to determine eligibility as set out in section 28 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – RELEVANT LEGISLATION

EAPWDA Section 10

EAPWDR Section 28

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance.

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

- Request for Reconsideration (RFR) signed by the Appellant and dated September 9, 2018, in which she states that she was denied eligibility after a compliance review found her to be non-compliant in providing requested documents, which she intends to provide with the assistance of her representative (the Representative). Included with the RFR is a letter written by the Representative, which identifies the documents which the Appellant had allegedly not provided, and, with regard to the two pieces of information that the Ministry says it still requires, states:
 - After asking her bank to provide the required bank account statements, the Appellant “*discovered a sum of money totalling \$1,830.97 in an unused, though active account*” which had been transferred to the account by an unknown individual “*which is not connected to any insurance, or other settlement nor is it income from an employment source*”. In addition, the Representative states that the Appellant has no way to verify the source of the money, but suspects that it might be repayment of a personal loan she made to an acquaintance several years ago, and that she has no contact information for that acquaintance; and
 - Regarding the requested status of litigation proceedings, the Appellant has provided the current status (the litigation is ongoing and has not been settled), and “*does not have the income to afford unnecessary lawyer’s fees that are charged for signed documents*”;
- Letter to the Appellant from the Ministry, dated March 2, 2018 (Letter #1) announcing a review of the Appellant’s file and requesting that information identified in an attached review checklist be provided by March 19, 2018;
- Letter to the Appellant from the Ministry, dated April 10, 2018 (Letter #2) referencing Letter #1, indicating that all of the information requested in Letter #1 had not been provided, asking that the documents requested be submitted by May 2, 2018 and advising the Appellant that the next assistance payment will be held by the Ministry until the information has been provided;
- Letter to the Appellant from the Ministry, dated June 21, 2018 (Letter #3) referencing a letter from the Ministry to the Appellant dated May 9, 2018, indicating that all of the information requested in the May 9, 2018 letter had not been provided, asking that the documents requested be submitted by July 6, 2018 and advising the Appellant that the next assistance payment will be held by the Ministry until the information has been provided;
- Letter to the Appellant from the Ministry, dated July 19, 2018 (Letter #4) indicating that, as the information requested in Letter #1 and Letter #3 had not been provided, the Appellant is no longer eligible for assistance and that her file would be closed on August 24, 2018;
- Financial Institution (“Bank”) Statement date-stamped June 16, 2018 showing a chequing account in the name of the Appellant with a ledger balance and an available balance of \$6.43 and a savings account in the name of the Appellant with a ledger balance of \$1,831.28 and an available balance of \$0.49;
- Bank Account Activity Statement date-stamped June 7, 2018 in the name of the Appellant for the above-noted savings account showing what is described on the statement as a “*transfer in from (specified 7 digit number) ...*” in the amount of \$1,830.79 on May 5, 2018, a cheque deposit “*with cash back*” in the amount of \$0.42 on May 7, 2018, and an interest credit in the amount of \$0.07 on May 31, 2018;

- Email from a lawyer to the Appellant dated January 20, 2016 which states “*We are suing the driver and owner of the other vehicle as well as a company and a mechanic, that are at this time unidentified.*”;
- Ministry Monthly Report signed by the Appellant and dated June 13, 2018 showing employment income of \$592.34 since the last declaration and “Other Income” of \$1830.97 (sic) with the comment “*Paid from someone who owed me \$. I had no idea the \$ was in my account as it’s a savings account I never use.*”;
- Province of BC Gift of a Vehicle Form dated June 10, 2018, identifying the Appellant as the donor of a particular vehicle and her son as the recipient; and
- Province of BC 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Form dated August 10, 2018 identifying the Appellant as tenant and stating that the tenant had failed to pay rent in the amount of \$950, which was due on August 1, 2018.

Additional Information Submitted after Reconsideration

In her Notice of Appeal (NOA), dated October 10, 2018, the Appellant indicated that the reason for her appeal was that the Ministry had not applied EAPWDA Part 2 Section 10 in a reasonable manner when assessing her review criteria and the evidence she had supplied, and that despite the Appellant having supplied the requested information, the Ministry had continued to deny eligibility, had delayed delivery of the reconsideration package, and had not understood the evidence she had provided.

The Appellant was joined at the hearing by the Representative who also spoke on her behalf.

At the hearing, the Appellant stated that she did not know who initiated the \$1,830.79 deposit to her savings account and that the Bank had been unable to provide details of the deposit. The Representative said that it was not clear how the Appellant could provide proof of the nature of the deposit and what the funds represent when she has no knowledge of who made the deposit. He said that it was clearly not a recurring payment and that it did not represent payment for work. He stated that apparently the Bank had received a transfer from an anonymous third party, but the Appellant had no way of knowing who had made the deposit.

With respect to the status of litigation proceedings, the Appellant said that the litigation had been initiated by her approximately 5 years ago in relation to the automobile accident in which she had received the traumatic brain injury, which had occurred in another Province. She said that she had already paid a lawyer to initiate proceedings, but had not received a settlement and had no idea of the status of the law suit. The Representative said that he had sent a letter to the law firm handling the suit, asking for a signed statement confirming that the legal action had been initiated and inquiring as to the status of the action. He said that he had not received a response to his written request and suggested that legal counsel would typically charge a fee for providing the information he had asked for on the Appellant’s behalf.

At the hearing, the Ministry relied on its Reconsideration Decision and explained that the Ministry had initiated its review of the Appellant’s file in March 2018 because it had received an “allegation” from a third party that the Appellant had been residing in a common-law relationship in which the Appellant still, at that time, maintained a joint bank account with her previous common-law spouse. The Ministry stated that it is required to investigate an allegation of an undisclosed common-law relationship involving a client because it might affect the client’s eligibility for assistance to the extent that eligibility can be impacted by a familial relationship with another person, particularly if the client also maintains a financial link with that person. At the hearing, the Appellant denied that she had been living in a common-law

relationship and stated that she had been living with a roommate at the time, with whom she used to maintain a joint bank account but no longer did.

The Ministry explained that it requires the documentation relating to the \$1,830.79 deposit and the status of the law suit because it requires documentary evidence to complete this type of audit and could not simply rely on the testimony of the client. In response to a question from the Panel, the Ministry explained that it could ask a service provider such as the Bank for information on a client's behalf because when an applicant for income or disability assistance completes the application forms he or she provides blanket authorization for the Ministry to make requests for information or documentation from third parties on a client's behalf in relation to both the application for assistance and for any matter relating to the applicant if and when he or she becomes a client of the Ministry. The Ministry also explained that it sometimes makes such a request on behalf of a client if there is a fee applied by the service provider for the information requested as the Ministry will pay that fee on the income or disability assistance client's behalf.

Admissibility of Additional Information

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit as evidence the information and records that were before the Ministry when the decision being appealed was made and "*oral and written testimony in support of the information and records*" before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant.

The Panel considered the information in the NOA to be argument.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the Ministry's Reconsideration Decision of October 1, 2018 wherein the Ministry denied disability assistance to the Appellant because she failed to provide the information necessary for the Ministry to determine whether she was eligible for disability assistance under Section 10 of the EAPWDA and that she will be ineligible for disability assistance until she complies with the Ministry's direction as set out in section 28 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the Appellant.

The relevant legislation is as follows:

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 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 ...

(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 ... for the prescribed period ...

EAPWDR

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 ...

The Appellant's position is that she has provided the Ministry with all of the information she can in relation to the audit and that she cannot provide any more information about the nature of the \$1,830.79 deposit because the Bank is unable to provide any details, and she cannot provide any documentation on the status of the law suit because the law firm handling the legal action has not responded to the Representative's request for information. The Ministry's position is that it requires documentation on the nature of the \$1,830.79 deposit and the status of the legal action from the Appellant's legal representative in the law suit to complete its file review.

The Panel Decision

The Panel notes that, for the purpose of determining or auditing eligibility for disability assistance, Section 10 of the EAPWDA authorizes the Ministry to direct a recipient to supply verification of information and to declare a recipient's family unit ineligible for disability assistance if he or she fails to supply verification information, and that Section 28 of the EAPWDR states that the Ministry may declare the family unit ineligible for assistance until the recipient complies with that direction.

With respect to the Ministry's information, provided by an unidentified informer, indicating that the Appellant "*had previously been residing in a common-law relationship and still had joint banking ... with (her) previous spouse*", the Panel finds that there is not sufficient evidence to show that the Appellant was in a common-law relationship with her previous roommate or, at the time that the audit was initiated in March 2018, that she still maintained joint banking with her previous roommate. However, the Panel notes that, while the joint bank account number provided by the Ministry in its Reconsideration Decision is the same seven digit account number that appears on the Bank Account Activity Statement date-stamped June 7, 2018 in the name of the Appellant as the source of the \$1,830.79 deposit to the Appellant's account with the Bank, the source of the information concerning the specific joint account number in the Reconsideration Decision is not ascribed. Therefore, the Panel finds that there is insufficient evidence to conclude that the source of the \$1,830.79 transfer on May 5, 2018 in the Appellant's savings account at the Bank was unquestionably the joint account previously maintained by the Appellant and her then roommate as there is the possibility that, in the absence of any evidence to the contrary, the Ministry might have obtained the joint account number appearing in the October 1, 2018 Reconsideration Decision either directly from the informant without corroboration, or from the Appellant's June 7, 2018 account activity statement.

The Panel further notes that the Bank has the ability to provide documentation which will confirm the source of the \$1,830.79 deposit to the Appellant or the Ministry (as the Ministry has authorization to request the documentation on the Appellant's behalf).

With respect to the status of the law suit, the Panel notes that the evidence shows that both the Appellant and the Ministry have the name, address and phone number of the law firm representing the Appellant in the law suit and that the law firm is located in the Appellant's community.

The Panel notes that Section 10 of the EAPWDR does not restrict the Ministry's authority to direct a recipient to supply verification of information. Therefore the Panel finds that the Ministry's direction to provide documentation confirming the nature of the \$1,830.79 deposit and the status of the Appellant's law suit was a reasonable application of the applicable enactment in the circumstances of the Appellant. In any event, the Panel notes that either the Appellant or the Ministry has the authority and the capability to confirm the nature of the \$1,830.79 deposit by asking the Bank for the documentation and the status of the Appellant's law suit by asking the law firm handling the Appellant's legal action directly for the status of the law suit.

Conclusion

The Panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for disability assistance because she failed to provide information and verification of information necessary to determine eligibility, was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant, and therefore confirms the Ministry's decision. The Appellant is not successful in her 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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)