

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision dated March 6, 2020 in which the ministry required the appellant to pay a sanction due to inaccurate reporting. Under section 14.1 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) and section 28.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”) the ministry decided to reduce the appellant’s disability assistance (“DA”) by \$25 per month for three months as a result of the sanction.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act - EAA - section 11

Employment and Assistance Regulation - EAR - section 33

Employment and Assistance for Persons with Disabilities Act - section 14.1

Employment and Assistance for Persons with Disabilities Regulation - section 28.1

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's reconsideration decision indicating that on February 7, 2020, the appellant was advised that her assistance would be reduced by \$25 for 3 months as a result of a sanction imposed on her file for inaccurate reporting. On February 21, 2020, the appellant submitted a Request for Reconsideration ("RFR"). On March 6, 2020, the ministry completed the review of the RFR.

The ministry record includes the following background information:

- The ministry confirmed in a separate reconsideration decision that the appellant had an overpayment of \$3,429.39 for income assistance ("IA"). The ministry states that this reconsideration decision is about whether the appellant's assistance should be reduced by \$25 for three months because the appellant failed to accurately report her income.
- Notes on the appellant's file indicate that the ministry explained the reporting requirements during the appellant's most recent application for assistance.
- During the period in which the overpayment occurred, the appellant submitted monthly reports with \$0.00 for employment income entered on each stub. In addition, when the appellant started working in October 2018, she answered "no" to the question on the report about whether she had any employment changes.
- The ministry noted that the appellant had no previous sanctions imposed on her file and this is the first determination against her for inaccurate reporting.
- The sanction of \$25 is for the months of March, April, and May 2020 based on a review completed by the ministry on February 7, 2020.
- In section 2 - *Decision to be Reconsidered*, the ministry notes the following:
 - On January 15, 2020, the appellant submitted *Records of Employment* and copies of pay stubs to confirm her earned income.
 - During the period October 17, 2018 to April 17, 2019, the appellant was eligible for IA and her "monthly net earning exception" was \$400 per month. The ministry reports that no income was declared during this period.
 - On February 7, 2020, the ministry sent the appellant a "sanction letter" as well as a decision letter (with *Overpayment Chart* and supporting evidence) confirming the overpayment. The ministry and the appellant later signed an *Overpayment Notification* on February 21, 2020.
 - On February 7, 2020, the ministry phoned the appellant to inform her that the overpayment decision and sanction letter had been mailed. The appellant verbally requested a reconsideration of the decision to apply a sanction of \$25 per month to her benefits for March to May 2020.

2. Copies of the appellant's monthly reports dated January 24, 2019, February 21, 2019, March 21, 2019, April 25, 2019, October 24, 2018, November 21, 2018, and December 20, 2018. The appellant checked "no" on all of the reports for any employment changes, and she entered \$0.00 for employment income on all reports. The declaration on the form states: *I understand that the ministry may disclose this information to verify continuing eligibility for assistance under the above Acts and Regulations. I declare that all of the information provided on the form to the Ministry of Social Development and Poverty Reduction is true and complete.*

3. The RFR, signed by the appellant on February 21, 2020, with the following attachments:

- A letter to the ministry dated January 14, 2020 in which the appellant explains that her net pay was less than her "annual earnings exemption"; that the ministry denied her PPMB application twice in 2019; and that she was finally approved for PWD on June 14, 2019.

- A letter to the ministry dated January 28, 2020 in which the appellant says she made sure that her employment income did not exceed the allowable exemption limits of \$4,800 per year for IA and \$12,000 per year for PWD. The appellant states that she “did not indicate the earned amount in monthly reports because the yearly earnings report can show clearly how much I make from the workplace with all actual figures.” The appellant states that she thought the ministry’s system would correctly accumulate her work hours from one month to the next (for an annual total). The appellant also “googled online” the exemption amounts for IA / PWD (\$4,800 and \$12,000 respectively).

4. A letter from the ministry to the appellant dated February 7, 2020, advising of an overpayment of \$3,958.98 for assistance the appellant was not eligible for. The letter states that the appellant failed to accurately declare her employment income from October 17, 2018 to April 17, 2019. During this period the appellant received \$9,868.48 net earnings and declared \$0.00. The letter explains that the undeclared income resulted in an overpayment of \$3,958.98.

The letter states that the appellant must repay funds that she was not eligible to receive and the ministry may apply a sanction to reduce the monthly assistance amount if the overpayment is due to “incomplete or inaccurate reporting” of income (including employment income), changes in circumstances, and any other information on the monthly report form. If a sanction is imposed, the ministry will advise the appellant via a separate letter.

5. A letter from the ministry to the appellant dated February 7, 2020, stating that the ministry has concluded that an overpayment has occurred because of inaccurate or incomplete reporting. The letter states that BC Employment and Assistance is an income and asset based program, and all income and/or changes in circumstances must be declared “on a monthly basis” to ensure that the appellant does not receive assistance for which she is not eligible. The letter explains that in addition to the obligation to repay the overpayment, the ministry may impose a sanction under the legislation for inaccurate or incomplete reporting which would result in the appellant’s monthly assistance payments being reduced.

The letter states that a reduction of \$25 per month will be imposed for the next three months in accordance with the Regulation (starting with the March 2020 assistance payment). The letter explains that this sanction is being imposed because the ministry determined the appellant “did not take the necessary steps to ensure accuracy and completeness when reporting her income on the monthly report form.” The ministry indicates this is the first occurrence of inaccurate reporting on the appellant’s file.

6. An *Overpayment Notification* dated February 21, 2020 with the appellant’s acknowledgment of receipt, setting out an overpayment of \$3,958.98 due to the appellant receiving assistance she was not eligible for. The notice explains that the overpayment is a debt due to the government which the appellant is liable to repay, and the ministry will deduct \$10 per calendar month from the appellant’s assistance to repay the debt.

7. The appellant’s *Earnings Statements* from October 26, 2018 to April 26, 2019 showing the appellant’s employment income for two paydays per month.

8. Documents for the appellant’s PPMB application including a *Medical Report*, ministry letters and *Decision Summary* dated January 29, 2019, and February 27, 2019 (rejecting the application).

9. A letter from the ministry to the appellant dated June 14, 2019, approving PWD designation effective July 1, 2019.

10. A ministry *Overpayment Chart* for assistance months December 2018 to June 2019. The ministry notes in the *Comments* that the appellant worked from October 17, 2018 to April 17, 2019; her case status was employable; no income was declared resulting in an overpayment of \$3,958.98 for seven months. The appellant’s status was changed to PWD on July 1, 2019.

Additional information

Subsequent to the reconsideration decision neither party submitted any new evidence requiring an admissibility determination in accordance with section 22(4) of the EAA. On March 12, 2020, the appellant filed a *Notice of Appeal* with a hand-written statement and typed submission which the panel accepts as argument. Both parties presented argument at the hearing.

Procedural matters

The ministry attended the hearing with an observer. The appellant consented to the observer listening in at the teleconference.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in applying a sanction against the appellant for inaccurate reporting. Did the ministry reasonably apply section 14.1 of the EAPWDA and section 28.1 of the EAPWDR in reducing the appellant's DA by \$25 per month for three months as a result of the sanction?

The ministry based the reconsideration decision on the following 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 specified 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.

EAR**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:

(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;

EAPWDA**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,

Analysis

Arguments

Appellant

In her submissions for the appeal and reconsideration, the appellant argues that a deduction of \$25 per month for three months should not be applied to her assistance payments due to inaccurate or incomplete reporting because she does not owe an overpayment for IA. The appellant maintains that her net employment earnings in 2018 and 2019 do not exceed her “eligible annual exempt amount.”

The appellant explains that she was “not trying to hide anything” by not reporting her earnings on the monthly reports. She thought the ministry’s web system would correctly accumulate her work hours from each month to come up with her annual earnings and confirm that her earnings were below the “annual exemption limits.” The appellant maintains that she should not be sanctioned because she “clearly explained all the facts, reasons and points without hiding anything.” The appellant describes the hardship she faces due to the \$25 deductions; her PWD allowance goes toward rent, living expenses, medical expenses, etc.

At the hearing, the appellant argued that she “does not owe one penny” for an overpayment because she did file the monthly reports. The appellant said that the ministry “is not treating people with compassion”, and a \$25 (per month) fine is a lot for a low income person.

When asked what the ministry explained to her in regards to the monthly reports, the appellant said she does not remember a conversation with the ministry. The appellant explained that when she went to the office in October 2017 to apply for IA, the ministry asked her to provide all her information; there was no phone call to remind her of the requirements; and she started filing her reports on-line.

When asked if she recalls entering \$0.00 in the boxes on the monthly reports, the appellant said yes, she was required to fill out the reports for IA but not for PPMB/ PWD. The appellant explained that the monthly reports were required for IA in order to get paid on time. The appellant said that she entered \$0.00 in the box for employment income because she “would report it during tax filing period; the government would automatically know the amount”, and her total earnings did not exceed her “annual exemption.”

The appellant expressed her frustration with the ministry process which she describes as very inefficient, with no clear communication from the ministry. The appellant said that the ministry “did not give her clear wording/ papers” about the \$25 penalty and the ministry “needs to list penalties up front on a single page of paper” to tell the appellant what she needs to pay attention to. The appellant argues that she “got punished” due to “not being informed of accurate, precise information.”

The appellant states that \$35 per month (not \$25) is being deducted from her DA and this is the first time she has heard about the additional \$10 penalty. The appellant suggests that the ministry reform all of its programs and “send just one letter with all three figures on one page” (\$10, \$25, and the overpayment amount). The appellant argues she should “not be responsible for these fines” because she was “not properly educated about it.”

Ministry

The ministry argues that the sanction is justified because the appellant did not take “the necessary steps to ensure the accuracy and completeness of the information before providing it to the minister.” The ministry notes that the appellant entered \$0.00 under employment income for each stub during the period in which the overpayment occurred. The ministry notes that the appellant answered “no” to the question about any employment changes when she began working in October 2018.

In the reconsideration decision, the ministry states that it is important to speak to the ministry for clarification if the appellant is unsure about reporting her income or how it may affect her assistance. The ministry argues that although the appellant believed she had “an annual earnings exemption because of something you read on the internet”, there is still a requirement for both IA and DA recipients to report employment income every month. The ministry argues that reporting requirements were explained to the appellant during her most recent application for assistance.

At the hearing, the ministry argued the appellant was adequately informed of the sanction (as well as the overpayment) because letters for each were sent to the appellant on the same day. The ministry explained that the \$10 deduction from the appellant’s DA is to repay the overpayment and the \$25 deduction is for the sanction. The ministry explained that the \$25 sanction only applies for three months and in June 2020, the total deduction from IA will be \$10 per month (not \$35) because the sanction will have ended. The ministry argued that it “followed the rules and regulations, applied the legislation correctly; and had no choice to not apply a sanction unless there are extenuating circumstances.”

Panel's decision

The panel finds that the ministry was reasonable to impose a sanction of \$25 per month for three months due to inaccurate reporting on the monthly report forms. The appellant had a monthly reporting obligation under section 11(1) of the EAA and section 33(1) of the EAR that included the requirement to report "all income received by the family unit and the source of that income" as well as her employment circumstances by the 5th day of each calendar month. The ministry's evidence is that reporting requirements were explained to the appellant when she applied for assistance.

The appellant said that she does not recall a conversation about the reporting requirements, but the ministry maintains that its notes confirm that a ministry worker explained the reporting requirements. In any event, the appellant confirmed in the monthly reports that "all of the information provided on the form to the Ministry of Social Development and Poverty Reduction is true and complete." Entering \$0.00 for employment income when the appellant had monthly earnings, and checking "no" for any employment changes when she first started working does not meet the standard for "true and complete" information. In addition, the legislative requirement to report "all income received by the family unit" as well as any other circumstances, by the 5th day of each month, was not met.

The appellant argues that she entered \$0.00 on the forms because she thought the ministry would know how much money she made based on information sharing during tax filing. The appellant noted that her total earnings were below the "annual earning exemption" that she thought applied to her income. Nevertheless, the questions and boxes on the monthly report form are very clear, asking the reporter if they have "any employment changes?" and providing spaces to enter "employment income."

The appellant argues that the ministry did not clearly communicate the sanction and other penalties but the record shows that the ministry sent a letter on February 7, 2020, confirming the overpayment and warning about the possibility of a sanction. The letter states that if the ministry decides on a sanction the appellant will be informed by separate letter. The ministry sent the appellant a "sanction letter" (also dated February 7, 2020) and that letter clearly explains that \$25 will be deducted from the appellant's DA for a three month period due to inaccurate reporting. In addition, the ministry notified the appellant of the \$10 per month deductions (to repay the overpayment) in the *Overpayment Notification* which has the appellant's signature, acknowledging receipt on February 21, 2020.

The terms and conditions of ministry sanctions are set out in section 14.1 of the EAPWDA and section 28.1 of the EAPWDR. Section 14.1 of the Act sets out consequences for providing inaccurate or incomplete information and authorizes the minister to reduce the recipient's DA if the recipient provided inaccurate information in their monthly report. Section 28.1 of the EAPWDR sets out specific sanctions for inaccurate or incomplete information.

In particular, section 28.1 and subsection 28.1(a) of the Regulation authorize the minister to reduce the family unit's assistance by \$25 per month for three months for a first time determination of inaccurate reporting. The decision to impose this sanction is discretionary under section 28.1 which states that the minister "may take action" against the recipient. The ministry argued that it "has to impose the sanction" unless there are extenuating circumstances. The panel finds that the ministry applied its discretion fairly because the monthly report forms clearly set out what information must be reported.

Subsection 28.1(a) of the Regulation explains the start date for the \$25 per month deduction. The sanction begins "the first calendar month following the calendar month in which the minister made the determination" of inaccurate or incomplete reporting. In the reconsideration decision, the ministry states that it determined the appellant failed to "ensure the accuracy of [her] monthly report on February 7, 2020" and the \$25 deduction will therefore reduce her March, April, and May 2020 DA. In response to questions at the hearing, the ministry clarified that after the completion of the file review, the overpayment was added to the file and the ministry applied the sanction at the same time as evidenced by the two letters to the appellant dated February 7, 2020.

The panel finds as fact that the ministry made the determination of inaccurate reporting on February 7, 2020 and the appellant was notified of the sanction on that date. The panel finds that the ministry reasonably applied the legislation in reducing the appellant's DA by \$25 per month for March, April, and May 2020.

Conclusion

The panel concludes that the ministry was reasonable in applying a sanction against the appellant for inaccurate reporting because the appellant did not disclose her employment status and monthly earnings on her monthly reports to the ministry. The panel finds that the decision to apply a sanction to reduce the appellant's DA by \$25 per month for three months was a reasonable application of the legislation, specifically section 14.1 of the EAPWDA and section 28.1 of the EAPWDR. The panel confirms the reconsideration decision. The appellant is not successful on 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-04-08

PRINT NAME

Connie Simonsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-04-08

PRINT NAME

Adam Shee

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-04-08