

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) reconsideration decision, dated October 18, 2021, in which the Ministry upheld a sanction applied against the appellant’s disability assistance due to inaccurate reporting resulting in an overpayment. The Ministry exercised discretion provided in 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”) to reduce the appellant’s disability assistance by \$25 per month for three months.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – sections 11 and 14.1
Employment and Assistance for Persons with Disabilities Regulation - section 28.1 and 29

Part E – Summary of Facts

The appellant is in receipt of disability assistance as a single parent with three dependents.

In January 2021 the appellant's file was selected for a file review due to possible undeclared ICBC income. In July 2021 the Ministry sent the appellant an Overpayment Notification letter and draft overpayment chart and reviewed the Overpayment Chart with the appellant.

On August 23, 2021, the Ministry conducted a review of the appellant's file and determined that, between February 2020 and May 2021, they received \$8735.98 in disability assistance for which they were not eligible due to inaccurately reported ICBC income. The Ministry applied a sanction of \$25 per month for the October, November, and December 2021.

The appellant requested a reconsideration of the Ministry's decision to apply a sanction. In their Request for Reconsideration, dated September 1, 2021, the appellant stated that they did not disagree with the requirement to repay the overpayment but felt that the sanction was not justified in their case. The appellant argued that the overpayment had been caused by a misunderstanding and they had not done anything on purpose. The appellant stated that they had reported their income according to emails received from their ICBC adjustor. The appellant also explained that they are a single parent with three children who is not working at the moment due to disability, accident and COVID-19 and needs disability assistance for their children.

Other evidence before the Ministry at reconsideration included:

- Monthly reports from the appellant for each month from December 2019 to May 2020, July to February 2021.
- An Overpayment Chart for the period from February 2020 to May 2021.
- A screenshot of an email from an ICBC Customer Recovery Specialist, dated September 11, 2020, stating that the appellant is receiving Total Temporary Disability (TDD) benefits of \$411.96 biweekly from August 1, 2020-October 31, 2020.

On October 18, 2021 the Ministry, citing Section 28.1 of the EAPWDR, determined that the appellant had failed to ensure the accuracy of their monthly report on August 23, 2021 and applied a sanction of \$25 for October, November, and December 2021.

Appeal Submissions

In their Notice of Appeal, dated October 25, 2021, the appellant indicated that they had done nothing deliberate in not informing the Ministry and had reported TDD monies received when they saw emails from the [ICBC] adjustor indicating it had come in.

At the hearing, the Appellant reiterated their reconsideration arguments, with some elaboration. They explained that they never knew when their TDD monies were coming and relied on emails from the ICBC adjustor, which they then used to report to the Ministry. The appellant stated that ICBC did not pay every two weeks and they could not report if they didn't know when monies would arrive. The appellant expressed their agreement and willingness to repay the overpayment. The appellant stated that their reporting could have been more accurate if they had checked their bank account rather than relying on the adjustor's emails and expressed disagreement and disappointment with the Ministry's decision to "punish" for something they feel is not their fault. The appellant explained that they felt they were being punished for an ICBC worker who didn't work on time.

The Ministry relied on the reconsideration officer's decision of October 18, 2021 and summarized this opinion in their submission for this appeal and explained that the purpose of applying sanctions is to deter overpayments arising from inaccurate reporting by Ministry clients.

Admissibility

Subsequent to the reconsideration decision neither party submitted any new evidence requiring an admissibility determination in accordance with section 22(4) of the EAA. The appellant filed a Notice of Appeal with a hand-written statement as described above. Both parties presented argument at the hearing. The panel finds that the information provided by the parties on appeal is in the nature of elaboration or clarification rather than evidence that is new or different from that before the Ministry at reconsideration.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision applying a sanction, under Section 14.1 of the EAPWDA and Section 28.1 EAPWDR, against the appellant for inaccurate reporting resulting in an overpayment is reasonably supported by the evidence or a reasonable application of these enactments in the circumstances of the appellant.

In this appeal, there is no dispute between the appellant and the Ministry that the appellant has received disability assistance for which they were not eligible. The Ministry's determination regarding the application of the sanction is at issue.

For the reasons that follow, the panel finds that the Ministry's reconsideration decision is both reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant.

The Ministry is authorized by Section 14.1 of the EAPWDA to impose a sanction for inaccurate reporting, incomplete reporting or failing to report, by reducing assistance provided to the family unit in accordance with the requirements set out in Section 28.1 of the EAPWDR.

Section 14.1 of the EAPWDA grants discretion to the Ministry to impose a sanction where a family unit receives assistance for which they were not eligible due to the Ministry client's provision of inaccurate or incomplete information. In this appeal, the exercise of this discretion is the central point of disagreement and on this point the panel finds the Ministry's exercise of discretion reasonable.

The appellant disagrees with the imposition of a sanction because they feel they have done nothing deliberate and nothing wrong – it is a misunderstanding. The appellant argues that they have relied on their ICBC adjustor to provide information to them via email, and they have then reported that information to the Ministry. The appellant does, however, concede that their reporting could have been more accurate if they had checked their bank account.

The Ministry's position is that the appellant was receiving payments regularly, despite the fact that the appellant may not have been notified of each payment by the adjustor, and it is the responsibility of the Ministry client to notice what is happening and report accurately. The Ministry calculated an overpayment over a 14-month period and stated that it had explained reporting requirements to the appellant on multiple occasions, including November 7, 13 and 21 of 2019 and April 7, June 25, and August 24 of 2020, but that the appellant had not reported in accordance with those requirements. In response to a question from the panel, the Ministry representative stated that it is an "automatic step" to impose a sanction if an overpayment is due to client error. The Ministry representative explained that there is consideration of mitigating circumstances for persons with disabilities prior to a determination imposing a sanction.

The panel finds that the appellant was aware of their obligation to provide complete and accurate information to the Ministry. The panel notes that the monthly report forms that form a part of the appeal record have been signed by the appellant and clearly set out what information must be reported. In addition to this, the panel notes that the appellant did not dispute or disagree with the Ministry's submission that the Ministry had informed them of their reporting requirements on multiple occasions. Each form also includes the appellant's confirmation that "all of the information provided on the form to the Ministry of Social Development and Poverty Reduction is true and complete." In their own submission, the appellant stated that her reporting could have been more accurate if they had checked their bank account. The panel finds that relying on ICBC adjustor emails, failing to check one's own bank account and entering no income when the appellant had received TDD monies does not meet the requirement for "true and complete" information. The panel finds that the appellant failed to take the necessary step of checking their bank account to ensure the information provided was "true and complete". The panel finds that the appellant failed to access information that was within their control to access and, as a result, did not take the necessary steps to ensure the accuracy or completeness of the information they provided to the Ministry, as described in Section 14.1(c). The appellant has indicated that they did not act deliberately, which the panel accepts, but provided no argument with respect to any applicable mitigating circumstances that might render the Ministry determination unreasonable. In light of the foregoing considerations, the panel finds the Ministry's decision to impose a sanction due to inaccurate reporting is both reasonably supported by the evidence and a reasonable

application of Section 14.1

Section 28.1 specifies the amount, application, and duration of reduction applicable for first, second and third/subsequent determinations that a Ministry client has provided incomplete or inaccurate information. Section 28.1(a) provision states that a reduction of \$25 per month, for the next three calendar months for which assistance is provided to the family unit, is applicable following a first determination by the Ministry. There is no dispute that this is a first determination against the appellant. As such, Section 28.1(a) is the relevant provision. The panel finds that the imposition of a sanction in the amount of \$25 for a period of three months is a reasonable application of the legislation.

On the question of the timing of the sanction, the panel finds that the sanction of \$25 for three months (October, November, and December 2021) following the month (August 2021) of the Ministry's determination has been imposed in a manner that amounts to a reasonable application of Section 28.1 of the EAPWR. With respect to timing, the Ministry was unable to apply the sanction in September 2021 because assistance had already been issued for that month. Therefore, October to December 2021 reflects the next three months assistance is provided to the family unit following the Ministry's determination.

Conclusion

The panel concludes that the Ministry's imposition of a sanction for inaccurate reporting against the appellant in the amount of \$25 per month for three months is reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

Relevant Legislation

The following sections of the EAPWDA apply in this appeal:

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 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.

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 in this appeal:

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.

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 191 [*temporary total disability*] or 192 [*temporary partial disability*] 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 specified by the minister:

(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 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the Workers Compensation Act received by the family unit in the calendar month.

APPEAL NUMBER 2021-0202

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)

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

Part H – Signatures

Print Name
Jennifer Smith

Signature of Chair

Date (Year/Month/Day)
2021/11/05

Print Name
Jan Broocke

Signature of Member

Date (Year/Month/Day)
2021/11/08

Print Name
Jeremy Scott

Signature of Member

Date (Year/Month/Day)
2021/11/09