

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated June 15, 2022, in which the ministry denied disability assistance to the appellant for failing to provide information requested by the ministry under section 10 of the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”).

Part D – Relevant Legislation

EAPWDA, section 10
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), sections 1 and 28(1)
Freedom of Information and Protection of Privacy Act (“FIPPA”), sections 26 and 27

Full text of the legislation is available in the Schedule of Legislation after the decision.

Part E – Summary of Facts

The appellant was a minor when the appeal began and was represented by his parent. By the time of the hearing, the appellant had attained the age of majority. He attended the hearing with an advocate, and his parents attended as support.

Evidence Before the Ministry at Reconsideration:

The appellant was a minor, in receipt of disability assistance under the EAPWDA. The appellant's parent acted on his behalf in communications with the ministry.

The appellant is a beneficiary named in a trust. The ministry asked the appellant to provide a copy of the trust document, to determine the appellant's ongoing eligibility to receive disability assistance. An accountant sent the ministry a copy of the trust document, which contained clause 1.4, titled "Beneficiaries." Clauses 1.4(a) through (c) were redacted, except for the appellant's name which appeared in clause 1.4(a). Words on either side of the appellant's name in clause 1.4(a) were redacted. Clause 1.4(d) contained the name of the appellant's parent as a beneficiary and their relationship to one of the trustees. In the fax memo to the ministry that accompanied the trust document, the accountant stated, "We have "crossed out in black" other beneficiaries."

The trust document provides that the beneficiaries' shares in the trust, if any, depend on the exercise of the trustee's discretion and no beneficiary has the power to terminate the trust.

The ministry asked the appellant to provide an unredacted copy of the trust document, as well as 2 schedules to the trust document. The appellant's parent, who is also a trustee of the trust, provided the 2 schedules, but took the position, based on legal advice, that they should not have to provide names of the beneficiaries in the redacted clause. The appellant's parent asked that, if the ministry maintained that it needed the names of all beneficiaries, the ministry explain why it required that information to determine the appellant's eligibility for disability assistance.

In response to the ministry's request for an explanation, the Ministry of the Attorney General stated:

To confirm that there is a valid trust in place, we must be able to determine who receives the benefit of the property held in trust. Paragraph 1.4 of the [Trust] defines the "Beneficiaries" of the trust, however most of 1.4(a) to (c) is redacted, and we are unable to determine whether [the appellant's] entitlement as a beneficiary is contingent on anything else written in those paragraphs. For example, some individuals named as beneficiaries of a trust only receive a benefit when they reach a certain age. Without this information, the ministry is unable to determine whether the trust will impact [the appellant's] eligibility for assistance. Please note that personal information collected by the ministry is collected solely for the purpose of evaluating eligibility and that the redacted information, being relevant to that evaluation, can be collected but will remain confidential and subject to the Freedom of Information and Protection of Privacy Act.

The ministry advised the appellant of these reasons for requiring the unredacted trust document, in a letter dated March 24, 2022.

On April 22, 2022, the appellant's parent and an advocate called the ministry and asked for additional time, until May 15, 2022, to provide the requested document. The ministry agreed to allow additional time, but the document was not provided. On June 1, 2022, the ministry determined that the appellant had failed to provide requested information to verify eligibility for assistance under the EAPWDA, and that, without the unredacted document, the ministry could not review the appellant's eligibility for assistance. As a result, the ministry found the appellant was no longer eligible to receive disability assistance.

Additional Evidence:

At the hearing, the appellant's parent stated:

- when they began the process to apply for disability assistance for the appellant, in January 2021, they were told that they would have to show that the trust was discretionary, and so they needed to provide the trust document to the ministry
- they agreed to provide trust documents but redacted the amount of the trust and the names of the beneficiaries because they believed that the ministry did not need that information, and they did not consider it was their information to share
- they had been willing to show the document to someone at the ministry, for the ministry to confirm that the only information redacted was the names of the beneficiary and their relationship to the settlor of the trust; however, they did not want to give the ministry a copy of the document to be retained in the appellant's file
- the appellant's disability assistance was cut off in April 2022
- they were very frustrated with the ministry process, which didn't allow them to speak to anyone directly to find a way to address the ministry's concerns without disclosing the personal information of the other beneficiaries – not only their names, but the fact that they are beneficiaries of a financial trust, which is sensitive information.

In answer to questions from the panel, the appellant's parent stated:

- clause 1.4(a), which contains the appellant's name, is redacted before and after his name because it includes the names of other beneficiaries and their relationship to the settlor;
- nothing in the redacted clause stops the trust from being discretionary;
- the appellant does not have control of the document; his parents, as trustees, have the document;
- the accountant for the trust redacted the information.

The appellant's advocate stated that they were willing to show the unredacted document to the panel and the ministry representative at the hearing, to confirm that the redacted information was as they described. However, they did not want to have the unredacted information recorded, either by the tribunal or the ministry at the hearing. The advocate showed the unredacted document to the panel and the ministry representative, who read the clause in

question and confirmed that clause 1.4 only contained the names of other beneficiaries and their familial relationship to the settlor.

Admissibility:

The ministry did not object to the additional evidence presented by the appellant at the hearing.

The oral evidence of the appellant's parent provides additional information about their communication with the ministry about the trust document, and the appellant's reasons for not providing the unredacted document. The unredacted trust document contains the information that the ministry asked the appellant to provide. The panel finds that both the additional oral evidence and the information in the unredacted trust document are reasonably required for the full and fair disclosure of all matters relating to the decision under appeal, and therefore are admissible under section 22(4) of the Employment and Assistance Act

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in its decision that the appellant was not eligible to receive disability assistance under the EAPWDA because the appellant had failed to provide information the ministry requested to determine his eligibility.

Appellant's Position:

The appellant maintains that the ministry does not need the unredacted trust document to determine the appellant's eligibility to receive disability assistance. The appellant says that the redacted portions of clause 1.4 only contain the names of other beneficiaries, and that information is not necessary to determine the appellant's eligibility for assistance under the EAPWDA. Further, the appellant says that the personal information of those beneficiaries is not in the appellant's possession or control.

The appellant also argues that the ministry's request for the personal information of other beneficiaries is not authorized by the Freedom of Information and Protection of Privacy Act ("FIPPA"), and therefore collection of that information by the ministry is contrary to section 26(a) of FIPPA. In the alternative, the appellant argues that, if the ministry is authorized to collect that information, under section 27(1) of FIPPA the ministry is required to collect that information directly from the other beneficiaries.

The appellant says that the request for the redacted information is contrary to policy and guidelines set out in the British Columbia Employment and Assistance Policy and Procedures Manual. The appellant maintains that, under ministry policy, the ministry should not request information that is not within the appellant's control, or that requires third parties' consent to disclosure. Further, the appellant says that, according to the policy set out in the manual, the ministry would not consider a discretionary trust to be an asset under the EAPWDA. The appellant says that even the redacted trust document shows that the trust is discretionary. Therefore, the appellant argues that the ministry has failed to provide adequate reasons for its assertion that it also needs the redacted information to determine if the trust is an asset as defined in the EAPWDA.

During the hearing, the advocate indicated that they would be willing to show the panel and the ministry representative the unredacted trust document, if the information was not recorded by the panel or the ministry.

Ministry's Position:

At the hearing, the ministry relied on its reconsideration decision. The ministry maintains that it is not seeking personal information of third parties, but rather is asking for a complete copy of a trust document which, as a whole, pertains to the appellant's interest, whether or not other people are mentioned. The ministry says that the issue in this appeal is whether the ministry is entitled to verify information by requesting an unredacted document.

The ministry representative agrees, having seen the unredacted paragraph 1.4, that it only contains the names of other beneficiaries and their relationship to the settlor.

Panel Decision:

Under section 10 of the EAPWDA, for the purpose of determining eligibility for disability assistance, the ministry may direct a person to provide information, and may seek verification of that information. If a recipient does not provide the information requested, the ministry may declare the recipient ineligible for disability assistance.

To determine eligibility for assistance, the ministry needs information about a person's income and assets, to establish that they fall within the limits set out in the EAPWDR. Section 1 of the EAPWDR defines "asset" to include "a beneficial interest in real or personal property held in trust." Under ministry policy set out in the British Columbia Employment and Assistance Policy and Procedures Manual, the ministry generally does not consider a discretionary trust to be an asset under the EAPWDR, if the trust is not collapsible. The appellant is a beneficiary of a trust, and the ministry reasonably requested a copy of the trust document, to determine if the appellant's interest in the trust was an "asset" as defined in the EAPWDR.

The appellant, or his representatives, provided the ministry with the trust document the ministry requested, but redacted portions of paragraph 1.4 which is titled "Beneficiaries". The redacted trust document discloses the name of the appellant, and one of his parents who is also a beneficiary. The rest of the trust document contains clauses that confirm, apparently to the satisfaction of the ministry, that the trust is discretionary and is not collapsible.

The ministry took the position that it needed an unredacted copy of the trust document, to determine if the appellant's entitlement as a beneficiary was "contingent on anything else written in [paragraph 1.4]." The ministry gave the example that sometimes, a beneficiary of a trust only receives a benefit when they reach a certain age, and asserted that "without this information, the ministry is unable to determine whether the trust will impact [the appellant's] eligibility for assistance."

The panel notes that the ministry could have verified the information in paragraph 1.4 at any time if the appellant could have shown the ministry the unredacted document. The panel heard the frustration expressed by the appellant's parent, at being unable to speak directly to someone at the ministry with the authority to consider other ways to address the trustees' concerns about preserving confidentiality for the other beneficiaries.

In any event, arguments of both parties became irrelevant when the appellant's representative produced the unredacted trust document at the hearing. The advocate showed the panel and the ministry the information that the ministry had requested, which is sufficient for the ministry to verify the accountant's statement about the redacted wording. The legislation allows the ministry to verify information, but the ministry is not required to obtain, record, or retain documents. Based on the new evidence, which is the information that the ministry requested, the panel finds that the ministry's reconsideration decision, that the appellant was not eligible for disability assistance because he had failed to provide information requested by the ministry, is not reasonably supported by the evidence.

The appellant has raised arguments about the ministry's authority to obtain personal information of third parties under the EAPWDA and FIPPA. However, based on the panel's decision that the ministry's reconsideration is not reasonable based on the new evidence, the panel finds that it is not necessary to decide the applicability of FIPPA, or whether the request for the redacted information is contrary to policy and guidelines set out in the British Columbia Employment and Assistance Policy and Procedures Manual.

In addition to the reasons given above, the panel is concerned with the lack of reasons in the reconsideration decision, which simply says that the ministry requested information that the appellant failed to provide, and therefore the appellant is ineligible to receive assistance. It is not unreasonable for the ministry to ask to see an unredacted copy of a document to verify that information, necessary to determine eligibility, is as represented. However, the ministry did not provide any detail in the reconsideration decision to explain how redacted information in the "Beneficiaries" clause could make the appellant ineligible to receive disability assistance, or why the ministry might need that information to determine eligibility. Procedural fairness requires that an administrative decision includes adequate reasons for the decision. The example given to the ministry by the Ministry of the Attorney General, of beneficiaries only receiving an interest on reaching a certain age, would not appear to affect the determination of whether appellant's interest in the trust is an asset under the EAPWDA – if that information may affect eligibility, the explanation is inadequate. In any event, not even that explanation or example is included in the reconsideration decision.

Conclusion:

The panel finds that, given the new evidence in the unredacted trust agreement shown to the panel and the ministry representative at the hearing, the ministry's reconsideration decision is not reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision, and the appellant is successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Information and verification

Section 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

(a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

(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.

Employment and Assistance for Persons with Disabilities Regulation

Definitions

Section 1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

Consequences of failing to provide information or verification when directed

Section 28 (0.1) For the purposes of section 10 (4) (a) *[information and verification]* of the Act,

- (a) the amount by which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit is \$25 for each calendar month, and
- (b) the period for which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit lasts until the recipient complies with the direction.

(1) For the purposes of section 10 (4) (b) *[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.

(1.1) Section 10 (4) (b) of the Act does not apply if the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

(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 \$25 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.

Freedom of Information and Protection of Privacy Act

Purpose for which personal information may be collected

Section 26 A public body may collect personal information only if

- (a) the collection of the information is expressly authorized under an Act,
- (b) the information is collected for the purposes of law enforcement,
- (c) the information relates directly to and is necessary for a program or activity of the public body,

- (d) with respect to personal information collected for a prescribed purpose,
 - (i) the individual the information is about has consented in the prescribed manner to that collection, and
 - (ii) a reasonable person would consider that collection appropriate in the circumstances,
- (e) the information is necessary for the purposes of planning or evaluating a program or activity of a public body,
- (f) the information is necessary for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur,
- (g) the information is collected by observation at a presentation, ceremony, performance, sports meet or similar event
 - (i) at which the individual voluntarily appears, and
 - (ii) that is open to the public, or
- (h) the information is personal identity information that is collected by
 - (i) a provincial identity information services provider and the collection of the information is necessary to enable the provincial identity information services provider to provide services under section 69.2, or
 - (ii) a public body from a provincial identity information services provider and the collection of the information is necessary to enable
 - (A) the public body to identify an individual for the purpose of providing a service to the individual, or
 - (B) the provincial identity information services provider to provide services under section 69.2.

How personal information is to be collected

Section 27 (1) A public body must collect personal information directly from the individual the information is about unless

- (a) another method of collection is authorized by
 - (i) that individual,
 - (ii) the commissioner under section 42 (1) (i), or

(iii) another enactment,

(a.1) the collection of the information is necessary for the medical treatment of an individual and it is not possible

(i) to collect the information directly from that individual, or

(ii) to obtain authority under paragraph (a) (i) for another method of collection,

(b) the information may be disclosed to the public body under section 33,

(c) the information is collected for the purpose of

(i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,

(ii) a proceeding before a court or a judicial or quasi-judicial tribunal,

(iii) collecting a debt or fine or making a payment,

(iv) law enforcement, or

(v) reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur,

(c.1) the information is collected from a body disclosing it in accordance with a provision of a treaty, arrangement or written agreement that

(i) authorizes or requires the disclosure, and

(ii) is made under an enactment of British Columbia, other than this Act, or an enactment of Canada,

(c.2) the information is collected from a body disclosing it under an enactment of another province or of Canada,

(d) the information is transferred to the public body from another public body in accordance with section 27.1,

(e) the collection of the information is necessary for delivering or evaluating a common or integrated program or activity,

(f) the information is about an employee, other than a service provider, and the collection of the information is necessary for the purposes of managing or terminating an employment relationship between a public body and the employee, or

(g) the information is personal identity information that is collected by a provincial identity information services provider and the collection of the information is necessary to enable the provincial identity information services provider to provide services under section 69.2.

(2) A public body must ensure that an individual from whom it collects personal information is told

(a) the purpose for collecting it,

(b) the legal authority for collecting it, and

(c) the contact information of an officer or employee of the public body who can answer the individual's questions about the collection.

(3) Subsection (2) does not apply if

(a) the information is about law enforcement or anything referred to in section 15 (1) or (2),

(b) the minister responsible for this Act excuses a public body from complying with it because doing so would

(i) result in the collection of inaccurate information, or

(ii) defeat the purpose or prejudice the use for which the information is collected,

(c) the information

(i) is not required, under subsection (1), to be collected directly from the individual the information is about, and

(ii) is not collected directly from the individual the information is about, or

(d) the information is collected by observation at a presentation, ceremony, performance, sports meet or similar event

(i) at which the individual voluntarily appears, and

(ii) that is open to the public.

(4) A public body must notify an employee, other than a service provider, that it will be collecting personal information under subsection (1) (f) unless it is reasonable to expect that the notification would compromise

(a) the availability or the accuracy of the information, or

(b) an investigation or a proceeding related to the employment of the employee.

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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/09/18

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2022/09/18

Print Name

Signature of Member

Date (Year/Month/Day)

2022/09/18