

**Part C - Decision Under Appeal**

Under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated November 1, 2023 (the “Reconsideration Decision”) denying the Appellant’s application for disability assistance due to failure to provide information.

**Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (the “Act”):

Section 10 [Information and verification]

*Employment and Assistance for Persons with Disabilities Regulation* (the “Regulation”):

Section 28 [Consequences of failing to provide information or verification when directed]

*Employment and Assistance Act* SBC 2022 c.19

Section 24 (1) and (2)

(See attached Appendix for text of the above)

**Part E – Summary of Facts****Background – Summary**

The Appellant and spouse received disability assistance from a file opened in January 2022. In March 2023 the Appellant requested a disability assistance payment for a BC Hydro security deposit.

The Ministry reviewed the application, and a subsequent reapplication for disability assistance. Between March and August 2023, the Ministry asked for information, and for further information and verification. The Appellant had difficulty fulfilling the requests, provided some of the information and some with blacked out portions. Some responses included changed or conflicting information. The Ministry requested further and expanded information prompted by the Appellant's responses and from independent discovery of information disclosing that the Appellant:

- had a BC Hydro account for a restaurant (the "Restaurant),
- was listed (using the spouse's last name) as the owner,
- had transactions in the Appellant's bank account arising from a mobile point of sale system (the "POS" – a brand not named by the Panel),
- other deposits from the POS, payments from the claimed beneficial owner of the Restaurant for "helping", and
- had several large bank deposits.

Across time the Appellant provided some of the information requested with explanations. The Appellant disclaimed ownership of the Restaurant, later advising that the intent was to purchase it but that was now uncertain or impossible. Large payments were loans, and some of the POS payments were from a parent to repay insurance payments made on the parent's behalf.

In the course of the matter the Appellant also filed a reapplication (May 2023) for assistance and the Ministry's review included review of the entitlement of the Appellant to disability assistance, not just to a BC Hydro security deposit. The Ministry stated that it required the requested information to determine whether the money the Appellant received from other sources was income that affects eligibility for assistance.

The Appellant described experiencing degraded eyesight (and periodic loss), discontinued mobile phone service, and financial hardship that caused delay and prevented talking on

the telephone or travelling to see Ministry staff to ask questions and provide information. The Appellant continued online communication using the Ministry's "My Self Serve" portal.

Ultimately in August 2023 the Ministry discontinued disability assistance based upon ineligibility because of the failure to provide the information requested to conduct that assessment. The information sought had, by that time, narrowed to:

- 2022 tax information for the Restaurant.
- All monthly point of sale statements from January 2022 for the Appellant's personal POS used to receive money from the Appellant's parent.
- Statements from January 2022 for 2 certain bank accounts with verification of all ATM and E-transfer deposits.

### **Appellant Submissions**

The Appellant provided a written submission substantially reproduced in the following [as written, except where noted]:

...

- 1) Since March I have received many letters. Each one requesting numerous paperwork. Eventually the letters became very confusing because they would include new requests and the old ones. It started, after a few months, extremely confusing to me. I asked for clarification numerous times. Of course, I had my [spouse] help as much as possible. It was difficult. It was suggested that I call but our cell phones were cut off as we couldn't pay the bill. It was suggested that we come into the office to use the phone but we had no money and no gas. ... I tried to be forthright with my responses to the letters that I received from the Ministry. I even completed tasks that I was told to do even tho they weren't required; Such as seeing our NOA 2022. We had not filed yet as there was a few issues in closing down my business in [another province] during 2020 and 2021. I was working with CRA to fix this and then we would file. ... As far as the requested paperwork, I thought that handed in everything except some info from my [parent] and some further info [about] the restaurant. I had no access to tax info from the restaurant. It has been sold again. The info from my [parent] is inaccessible till [the parent] is out of the hospital and I can talk [to the parent].
- 2) [The Appellant described suddenly being blind and requiring multiple surgeries in January 2023 with an extended recovery where sight varies day to day at low levels

and sometimes none. Further surgery is scheduled.]

We plan on going home after winter so we have more help @ family.

- 3) From March till now, ½ of my rent is paid each month until Sept. Since March, I have lost 41 lbs. We accessed everything and anything we could regarding food. [Other health issues are described as well as a recent increase in the spouse's health problems] "[t]hat scares us."

### Conclusion

This was never done in malice. [My spouse] and I are just trying to survive. At the beginning we didn't realize that helping a friend was wrong. This all just seems to be taken way out of context. Everything that I asked to do, I tried to do. I know everything was slow coming in but I was also dealing with so many health concerns. Also from the beginning, I feel that we were put down constantly. We didn't feel supported, we felt totally judged, we felt like we were criminals. We helped a friend. That all. When the Ministry wanted all this documentation that cost us photocopying, paper, stamps and a lot of walking. They took our security. We had next to no money, food, support or help. How can I get an advocate? How do I get to town. We only know a few people. I suffer from neuropathy. Constant pain in my feet. I suffer fibromyalgia. Contact bruising and skin sensitivity. And I suffer from diabetes. My [spouse] suffer from epilepsy, seizures, migraines (@ 8/month) and massive anxiety.

We would never risk our health or security if we knew that we shouldn't have helped this friend. We have separated ourselves from this restaurant.

We did everything we could as fast as we could to supply what was requested. There could have been more support. With our high medical needs and my lack of sight there could have been more support, direction and guidance. Being so new to BC meant we didn't know enough about the disability ministry.

My letter to you is for information not to be seen as an excuse. I take full responsibility for my mistakes, I want you to know that is wasn't my intent to do wrong. We need the ministries help; Everything has been filed now that we know.

### Ministry Submissions

The Ministry relied upon the "reconsideration summary" of the Reconsideration Decision as its written submission. That provides a detailed background of the communications with the Appellant, with requests for information and identifying information of concern beginning upon review of the Appellant's application in March 2023. The concerns prompted the Ministry to seek complete information and progressively more accurate or

detailed information from the Appellant. Notice was given that a review of the Appellant's file was being conducted to validate the correct amount of assistance and that the information was accurate and up to date. The following is a synopsis of the communications:

- March 15, 2023 the Ministry asked for shelter information, bank information for all bank accounts including a 90 day bank statement for each account. The request followed discovery that the Appellant had 2 BC Hydro accounts, with one at the address of a restaurant (the "Restaurant").
- April 17, 2023 the above was repeated (after no reply).
- May 18, 2023, the Appellant disclaimed receipt of those letters but advised of a new residential address and provided the BC Hydro bill with a request for help with the utilities.
- May 24, 2023, the Appellant provided bank profiles with:
  - The spouse's profile showing two accounts.
  - The Appellant's profile showing one account listing the occupation as a business owner (later explained as due to the Appellant owning a business before moving to BC).
- May 29, 2023, the Appellant submitted bank statements for an account ending in "297" for February, March, and April 2023 showing the following: [Note: June 19, 2023 shows this sent again bearing a single digit mid-number difference for the account. The Panel considers this inconsequential as a typing error and not raised by either party as affecting the Reconsideration Decision or this decision.]
  - Deposits declared to be from the Appellant's mom through a mobile point of sale system commonly used by businesses ("POS") (later explained as deposits for annual insurance payments made on the parent's behalf).
  - Some blackened out transactions (later stated as done to protect the mom's information).
  - Three large deposits (later stated to be a loans from a friend because the Appellant was behind on motorcycle payments).
- May 30, 2023, the Appellant:
  - Aided by staff - "completed a reapplication of assistance"
  - Disclaimed ownership and declared that a friend owned the Restaurant.
  - Stated that the Restaurant's BC Hydro account was held to help a friend.

- May 30, 2023, the Ministry sent another letter requesting more information linked to missing information and verify prior statements.
- May 31, 2023 the Ministry found that as of February 13, 2023 the registered sole proprietor of the Restaurant was a person bearing the Appellant's first name and spouse's last name. (The Ministry later noted that some of the Appellant's 2022 bank statements showed Restaurant transactions using the POS system.)
- June 1, 2023, the Ministry sent another letter requesting information (which included the information requested on the May 30<sup>th</sup> letter) as follows:
  - all pay information and bank account information (profile and statement) for any and all business accounts regarding the Restaurant.
  - 2022 tax information for the Restaurant.
  - Monthly or Daily "your summary report" from the POS being used for the Restaurant since January 2022.
- June 19, 20, 26, and 30, and July 5, 2023, the Appellant provided many documents and explanations.
- July 6, 2023, the Ministry requested certain outstanding information advising that if not provided the Appellant's assistance may be reduced or discontinued under the authority of Section 10 of the *Act*.
- August 21, 2023 the Ministry requested that same outstanding information and advised, consistent with the warning above, that due to not receiving the information the Appellant was no longer eligible for assistance (until provided and eligibility found).
- September 17, 2023 the Appellant provided sufficient documentation to satisfy one of the requests.

The remaining information outstanding from July 6, 2023 was set out in the Reconsideration Decision. In that decision the Ministry described circumstances about the ownership and operation of the Restaurant, the use of the POS for claimed personal use, and unexplained electronic deposits and transfers in the Appellant's bank. For these the Ministry stated that it "requires ... information to determine [whether the Appellant] received any business income which may be considered income that affects ... eligibility for assistance." The outstanding information was as stated in the last paragraph of the "Background – Summary" above.

Because that information had not been received the conclusion in the Reconsideration Decision states:

Therefore, in accordance with Section 28(1) of the Employment and Assistance for Persons with Disabilities Regulation, you are not eligible for assistance until you have complied with providing all the information requested by the ministry.



## Part F – Reasons for Panel Decision

The panel's role in appeals, such as this, is not to redo the Reconsideration Decision. It is to assess whether the Reconsideration Decision meets a standard of reasonableness. The standard applied is whether the Reconsideration Decision reasonably applies applicable laws and is reasonably supported by the evidence available at the reconsideration. However, in addition the Panel may also consider any evidence newly submitted as part of the appeal. No new evidence was submitted in this matter, although the Appellant's written submission was received and considered.

The primary issue here is whether the Reconsideration Decision was reasonably supported by evidence that the Appellant failed to provide information within the time and in the manner specified by the Minister. Within that issue is the question of whether the evidence sent to the Ministry was adequate for making a reasonable decision on the merits of the application, yet the Ministry still pursued additional information. In such cases, the Panel will determine whether the decision to deem a person ineligible pending the receipt of more information was reasonable or unreasonable, considering the evidence provided, even if there is an outstanding request for additional information.

Assessment of the reasonableness is contextual, as is expressed at section 24(2)(a) of the *Employment and Assistance Act* SBC 2022 c.19 which states that the Panel must consider "the circumstances of the person appealing the decision". In the Panel's view this is not limited to the person's personal difficulties but includes circumstances evaluated as part of a disability assistance application. In this case those circumstances include the provision of information for that purpose and the appropriate level of scrutiny.

The Appellant's submission concludes asking for the "[Ministry's] help" while accepting "full responsibility for [making] mistakes", disclaiming "intent to do wrong" and stating that "[e]verything has been filed now that we know."

The Panel notes the Appellant's acceptance of mistakes without claimed intent. The context is, however, that the evidence shows Appellant statements and evidence require higher levels of scrutiny than normal as part of a review of eligibility.

This is because the evidence disclosed that the Appellant:

- filed official paperwork:
  - Disclaiming ownership of the Restaurant to the Ministry.
  - Registering as sole proprietor owner of the Restaurant - in the month after applying for disability assistance. (Now removed.)
  - Opening a BC Hydro account as a claim of responsibility for the electrical services account of the Restaurant. (Now closed.)
  - With the Ministry that was incomplete in material ways such that the true number of bank accounts, and information within accounts, was not disclosed without Ministry follow-up demands.

- operated a POS common for commercial use, and on which transactions linked to the Restaurant.
- ‘helped’ in the Restaurant but disclaimed being an employee.
- had other financial links to the Restaurant such as:
  - Receiving funds in the Appellant’s account for “helping” the Restaurant operator. (The Appellant claimed being unaware until reviewing as part of the disability application.)
  - Acknowledging an intent to purchase the Restaurant but instead the operator ‘opened the Restaurant’ with the “now” unlikely hope that the Appellant “would take it over later.” (Quotes from Ministry text in the Reconsideration Decision.)
- had bank transactions of sums that may affect eligibility calculations. (Some described as loans or repayments, others unexplained.)

While the Appellant disclaimed “intent to do wrong” the filing of the paperwork for official purposes that bore, apparently knowing, ‘mistakes’ is a circumstance that reasonably allows the Ministry to require more information and verification. In the Panel’s view a “mistake” is one that is unknowing or unintentional and evidence that may be tainted by knowing, intentional, or misleading acts may be given less weight and require greater scrutiny and verified support.

The Appellant’s stated belief that “[e]verything has been filed now that we know” is not supported by evidence to show that the Appellant had submitted the outstanding:

- 2022 tax information for the Restaurant.
- All monthly point of sale statements from January 2022 for the Appellant’s personal POS used to receive money from the Appellant’s parent.
- Statements from January 2022 for 2 certain bank accounts with verification of all ATM and E-transfer deposits.

The Appellant raised criticism of the process and Ministry concerning not getting questions answered, not feeling supported, and being made to feel like a criminal. These are not relevant to this decision. It is, however, noted that the Ministry offered verbal and face-to-face communication to help, but the Appellant claimed those were unavailable in the Appellant’s circumstances while continuing to use online written communication. The claimed lack of help does not diminish the need for information and verification. Rather the response to the offer reasonably confirms the need for scrutiny.

The criticism that the Ministry staff misunderstand “our situation” or the circumstances highlights the imperative to take up the Ministry’s offer to talk directly on the phone or in person. These are not circumstances that diminish need for information. Rather they highlight the need for exacting adherence to the request for specific information.

The Panel has sympathy for the Appellant’s health circumstances and financial situation. They have likely slowed, and made more difficult, compliance with the Ministry requests for information. However approximately 5 months is, in the Panel’s view, a reasonable time in the circumstances for the Appellant – or the Appellant’s spouse assisting – to provide the documents sought. The documents are ordinarily in possession or obtainable by a person such as the Appellant and the failure to provide them reasonably prompts greater scrutiny or verification of evidence to support a decision.

The Panel finds that, in the circumstances, the Ministry reasonably required the information it requested to decide or audit eligibility for disability assistance. When the Appellant failed to provide that information, the Reconsideration Decision was reasonably supported by the evidence available in that absence and in that circumstance.

Section 10(1)(e) of the *Act* also expressly gives the Ministry the right to direct the Appellant to “supply the minister with information within the time and in the manner specified by the minister”. The Panel finds that the Reconsideration Decision was reasonably supported by the evidence showing that the Appellant failed to supply the information required and in the manner specified. The requests for information were for “determining or auditing eligibility” under section 10(1)(b) of the *Act* and for which consequences as set out in section 28(1) of the *Regulation*. The Panel finds that the Ministry reasonably applied that legislative enactments.

### **Conclusion**

Considering the foregoing, the Panel finds that the Reconsideration Decision was reasonably supported by the evidence. That includes the evidence in hand and the absence of information required for reasonable completeness and verification.

The Panel also finds that the Reconsideration Decision was a reasonable application of the applicable enactment in the circumstances of the Appellant; specifically, the application of section 10(1) of the *Act* and *Regulation* section 28(1) under which the Appellant is “ineligible for assistance ... until the ... [the Appellant] complies with the direction” of the Ministry as described above.

### **Decision**

The panel confirms the Reconsideration Decision for the reasons stated above and having found that it is:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Reconsideration Decision.

**Appendix – Relevant Legislation**

***EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT***

**Information and verification**

**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 the person, the applicant or the recipient 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**

**Division 3 — Factors Related to Providing Information and Verification**

**Consequences of failing to provide information or verification when directed**

**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.

***Employment and Assistance Act SBC 2022 c.19***

**Decision of panel**

**24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

APPEAL NUMBER 2023-0348

**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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/12/14

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/12/14

Print Name

Richard Franklin

Signature of Member

Date (Year

2023/12/15