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### **Part C – Decision Under Appeal**

The decision under appeal is the Reconsideration Decision, dated December 4, 2024 of the Ministry of Social Development and Poverty Reduction (the “Ministry”). The Ministry determined that it did not have the jurisdiction to reconsider its decision regarding the Appellant’s and his wife’s liability to repay the Ministry \$11,492.26, paid as hardship assistance in the period from December 2023 to May 2024, according to section 17(1) of the *Employment and Assistance Act*.

Specifically, the Ministry determined that it did not have jurisdiction to reconsider its decision as the decision has not resulted in a refusal, discontinuance, or reduction of income assistance, hardship assistance or a supplement provided under the *Employment and Assistance Act*.

### **Part D – Relevant Legislation**

*Employment and Assistance Act*, S.B.C. 2002, c. 40 (the “Act”)- sections 5 and 17  
Employment and Assistance Regulation, B.C. Reg 263/2002 (the “Regulation”)- sections 39 and 43

Relevant sections of this legislation are set out at the end of this document.

## Part E – Summary of Facts

The hearing of the appeal proceeded on February 27, 2025 by teleconference with the Appellant and a representative of the Ministry in attendance.

The Appellant and his wife were recipients of hardship assistance on six occasions between December 2023 and April 2024 while they awaited the Appellant's wife's receipt of Old Age Security Benefits ("OAS"), Canada Pension Plan payments ("CPP"), and the Guaranteed Income Supplement ("GIS").

### *Information Before the Ministry at the Time of Reconsideration*

The Appellant and his wife were recipients of hardship assistance on six occasions between December 2023 and April 2024 while they awaited the Appellant's wife's receipt of Old Age Security Benefits ("OAS"), Canada Pension Plan payments ("CPP"), and the Guaranteed Income Supplement ("GIS").

The documents before the Ministry at the time of the Reconsideration Decision included the following:

- Promise to Pay form, dated December 5, 2023 and signed by both the Appellant and his wife, acknowledging liability for the repayment of \$1,902.35 to the Ministry;
- Promise to Pay form, dated December 21, 2023 and signed by both the Appellant and his wife, acknowledging liability for the repayment of \$1,902.35 to the Ministry;
- Promise to Pay form (in duplicate), dated February 2, 2024 and signed by both the Appellant and his wife, acknowledging liability for the repayment of \$1,943.75 to the Ministry;
- Promise to Pay form (in duplicate), dated February 22, 2024 and signed by both the Appellant and his wife, acknowledging liability for the repayment of \$1,900.53 to the Ministry;
- Promise to Pay form, dated March 28, 2024 and signed by both the Appellant and his wife, acknowledging liability for the repayment of \$1,943.75 to the Ministry;
- Promise to Pay form (in duplicate), dated April 19, 2024 and signed by both the Appellant and his wife, acknowledging liability for the repayment of \$1,900.55 to the Ministry; and
- An undated and unsigned Request for Reconsideration, in which the Ministry set out a brief history of the matter, including that the Appellant and his wife applied for hardship assistance while awaiting receipt of OAS, CPP, and GIS.

The Appellant's Notice of Appeal was signed on January 2, 2025 but did not include any additional information.

*Additional Evidence Submitted before the Hearing of the Appeal*

Prior to the hearing of the appeal, the Appellant submitted three copies of a note from a doctor, which indicated that the Appellant was, at January 14, 2025, undergoing treatment for what the doctor described as " UCRC", which had started on October 9, 2023.

*The Hearing*The Appellant

At the hearing of the appeal, the appellant indicated that he still doesn't believe that he should have to repay the money received as hardship assistance and that if he was not qualified for it, he should not have been provided with it in the first place.

The Appellant stated that he has not worked for at least a year and is having difficulties with a number of things, including his finances and some health issues. He noted that repaying the hardship assistance that he and his wife received would be difficult due to a number of existing financial strains including the requirement to pay property taxes.

The Appellant confirmed that his wife turned 65 in July, 2023 and that she applied for CPP and OAS shortly after her 65<sup>th</sup> birthday but that it was not received until May, 2024. In the interim, the Appellant and his wife applied for hardship assistance. The Appellant indicated that he did not remember his wife receiving any lump sum payment for retroactive CPP and/or OAS, dating back to his wife's 65<sup>th</sup> birthday when her CPP and OAS started.

The Appellant confirmed that he remembers signing the Promise to Pay forms but that he does not have copies of them and he indicated that he was told that he would not have to repay the money unless it was later determined that he was not qualified for the hardship assistance that he received on each occasion that he and his wife signed a Promise to Pay form.

The Ministry

The Ministry stated that hardship assistance is always repayable when it is paid as a result of the circumstances in section 43 of the Regulation, namely when it is provided to a recipient who is awaiting income from another source, such as CPP or OAS, where a retroactive payment is normally made back to the original date of eligibility. The Ministry indicated that the purpose of hardship assistance in these circumstances was to assist individuals until such time that their applications for other income programs were approved.

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The Ministry advised that the Appellant was the one who called in to advise the Ministry that his wife had started to receive CPP and OAS and that, as far as it knew, the Appellant's wife did receive a retroactive payment backdated to her eligibility date.

The Ministry stated that a demand for repayment, pursuant to a Promise to Pay, executed as a condition to receiving hardship assistance is simply not among the categories of decision that can be reconsidered, under section 17 of the *Act*.

#### *Admissibility of New Evidence*

The panel does not admit the note from the doctor submitted by the Appellant as it has no relevance to the matter that is the subject of the appeal, namely whether the Ministry has any authority to reconsider its demand for repayment of the hardship assistance provided to the Appellant. In short, the doctor's note addressed the Appellant's health only status only.

The panel does find the oral evidence given at the hearing of the appeal is relevant as it relates to the payment of the hardship assistance, the Appellant's understanding of hardship assistance and the Appellant's recollection of what happened when the Promise to Pay forms were signed by he and his wife. Likewise, the evidence of the Ministry at the hearing dealt with the timing of the hardship assistance provided to the Appellant and his wife and the means by which the Ministry became aware that the Appellant's wife started to receive her OAS and CPP. The panel admits the oral evidence given at the hearing of the appeal as information that is necessary for a full and fair hearing on all matters that are in issue in the appeal, pursuant to section 22(4) of the *Act*.

## Part F – Reasons for Panel Decision

### ***Issue on Appeal***

The issue in this appeal is whether the Ministry reasonably determined that it did not have the jurisdiction to reconsider its decision that the Appellant and his wife were liable to repay the Ministry \$11,492.26, paid as hardship assistance in the period from December 2023 to April 2024, pursuant to section 17(1) of the *Act*.

### ***Positions of the Parties***

#### **Appellant**

The Appellant's position is that he should not be required to repay the hardship assistance that he received as it should not have been paid to him and his wife if they were not eligible for it.

#### **Ministry**

The Ministry's position is that the Appellant and his wife were eligible for hardship assistance while awaiting the start of the Appellant's wife OAS and CPP but that the hardship assistance they received was contingent on it being repaid once the Appellant's wife started receiving OAS and CPP. The Ministry also takes the position that the repayment of the hardship assistance is not a matter for which a right of reconsideration exists under section 17 of the *Act*.

### ***Analysis***

Section 43 of the Regulation authorizes the Ministry to provide hardship assistance to persons who are not eligible for income assistance by reason of having applied for funds from another source that they are awaiting the receipt of where the Ministry considers that hardship will occur if the person making the request does not receive assistance and where the applicant for the hardship assistance provides security in a form specified by the Ministry.

In this case, the Appellant made an application for hardship assistance pending receipt by his wife of CPP and OAS. In the case of the Appellant, that security was a promise to repay the hardship assistance.

The Promises to Pay signed by the Appellant and his wife provided for the repayment of a total of \$11,492.26 in hardship assistance received between December 2023 and April 2024. The Appellant confirmed in his evidence that both he and his wife signed the Promises to Pay on each of the occasions that they received hardship assistance.

As such, the decision the Appellant sought reconsideration of was the Ministry's demand for repayment of the hardship assistance in the amount of \$11,492.26, pursuant to the Promise to Pay forms signed by the Appellant and his wife.

Section 17(1) of the *Act* authorizes a person to request a reconsideration of specific categories of decisions only. These categories are:

- (a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
  - (i) the maximum amount of the supplement under the regulations, and
  - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision under section 9 (2) *[client needs assessment and employability plan]* to specify conditions of an employability plan.

The demand for repayment by the Ministry of the hardship assistance received by the Appellant and his wife was not a decision that resulted in a refusal to provide income assistance, hardship assistance or a supplement to the Appellant or anyone in the Appellant's family unit. Instead, the Ministry was merely enforcing the security that it had sought as a precondition for the issuance of hardship assistance which the Appellant and his wife had agreed to. In this case, the Appellant and his wife were given hardship assistance on specified conditions that it be repaid at a specified time. As such, the panel finds the decision does not fit into the first category of decisions in respect of which a right of reconsideration exists.

The demand for repayment by the Ministry of the hardship assistance received by the Appellant and his wife was not a decision that resulted in the discontinuance of income assistance or any supplement payable to the Appellant or anyone in the Appellant's family unit for the same reason as set out above. Here, the Ministry didn't discontinue any benefit or assistance to the Appellant and his wife other than the hardship assistance and that discontinuance of the hardship assistance is not a matter in issue in this appeal. In fact, it was the Appellant who advised the Ministry that he and his wife no longer required hardship assistance. In the result, the panel finds it was not a decision that falls into the second category of decisions in respect of which a right of reconsideration exists.

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The demand for repayment by the Ministry of the hardship assistance received by the Appellant and his wife was not a decision that resulted in a reduction of income assistance or a supplement provided to the Appellant or anyone in the Appellant's family unit. Again, because the Appellant and his wife were no longer in need of hardship assistance, the hardship assistance was stopped at the initiative of the Appellant. In short, the panel finds it was not a decision that falls into the third category of decisions in respect of which a right of reconsideration exists.

The demand for repayment by the Ministry of the hardship assistance received by the Appellant and his wife was not a decision concerning the amount of a supplement provided to the Appellant or anyone in the Appellant's family unit. Again, the Ministry taking steps to enforce the Appellant's obligation to repay the hardship assistance provided to the Appellant and his wife does not concern the amount of any supplement that had been provided nor even the amount of hardship assistance that the Ministry had been providing. As such the panel finds it also does not fall into the fourth category of decisions in respect of which a right of reconsideration exists.

The demand for repayment by the Ministry of the hardship assistance received by the Appellant and his wife was not a decision concerning the conditions of an employment plan. The termination of the hardship assistance by the Ministry was not due to the Appellant's failure to comply with an employment plan nor does the repayment demand have anything to do with an employment plan at all. In the result, the panel finds that the demand also is not a decision that fits into the fifth category of decisions in respect of which a right of reconsideration exists.

Given all of the above, the panel finds that the Ministry was reasonable in its determination that no right of reconsideration exists in respect of its demand for the repayment to the Ministry of \$11,492.26 in hardship assistance received by the Appellant and his wife.

### *Conclusion*

Having concluded that the Ministry was reasonable in its determination that it does not have the legislative authority to reconsider its demand for the repayment of hardship assistance, the Appellant is not successful in the appeal. The panel confirms the Reconsideration Decision.

## ***Relevant Legislation***

### *Employment and Assistance Act*

#### **Hardship assistance**

**5** (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

#### **Reconsideration and appeal rights**

**17** (1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
  - (i) the maximum amount of the supplement under the regulations, and
  - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision under section 9 (2) [*client needs assessment and employability plan*] to specify conditions of an employability plan.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and sections 9 (6) [*client needs assessment and employability plan*], 18 and 27 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in this Act and the regulations.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal.

*Employment and Assistance Regulation*

**Hardship assistance — eligibility and limitations**

**39** (1) For a family unit to be eligible for hardship assistance, the family unit

- (a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.2, and
- (b) must not be ineligible for income assistance for any other reason.

(2) A family unit that is eligible for hardship assistance must be provided with hardship assistance

- (a) in accordance with Schedule D,
- (b) only for the calendar month that includes the income assistance application date, and
- (c) only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance, subject to
  - (i) section 4 (2) of Schedule D for hardship assistance provided under sections 41 to 46, and
  - (ii) section 4 (3) of Schedule D for hardship assistance provided under section 47.2.

(3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in

- (a) section 41, 44 or 46, or
- (b) section 43, unless the source is employment insurance, is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 consecutive calendar months of receipt.

(3.1) Repealed. [B.C. Reg. 141/2023, Sch. 1, s. 2 (c).]

(4) If

- (a) hardship assistance has been provided to a family unit under section 47.2 for the calendar month referred to in subsection (2) (c) of this section,
- (b) the family unit continues to be ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, and
- (c) the member of the family unit who has not satisfied that requirement is, if applicable, taking the steps to satisfy the requirement as directed by the minister, hardship assistance may be provided under section 47.2 for a further 2 consecutive calendar months following the initial calendar month for which the hardship assistance is provided.

**Applicants who have applied for income from another source**

**43** The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant has applied for income from another source if

- (a) the minister considers that undue hardship will otherwise occur, and

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(b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

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**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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2025/03/05

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2025/03/03

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2025/03/03