

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of April 5th, 2012 wherein the ministry denied the appellant a reimbursement for the Family Maintenance Enforcement Program (FMEP) income deduction made to the appellant's disability assistance from May 2011 through January 2012 because the appellant did not submit a stub to the ministry notifying the ministry of the change in the appellant's circumstances or information as required by section 11(1) Employment and Assistance for Persons with Disabilities Act (EAPWDA).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 11

PART E – Summary of Facts

The facts before the ministry at the time of reconsideration were:

- Request for reconsideration dated March 22nd, 2012

On March 18th, 2011 the appellant reported receiving a Family Maintenance Enforcement Payment (FMEP) as income. The ministry deducted the income from the appellant's April disability assistance. The appellant did not submit a monthly reporting stub from May 2011 through to January 2012 and therefore the ministry concluded there were no changes (from the previous month's declaration) in the appellant's circumstances or information that could affect the appellant's eligibility for disability assistance. The FMEP that the appellant reported in March 2011 continued to be deducted from the appellant's monthly disability assistance from May 2011 to January 2012 because the appellant did not report the change (non-receipt of FMEP) in his income to the ministry.

At the commencement of the hearing the advocate raised the following issue:

- The advocate stated that on March 22nd, 2012 she asked the ministry to send a copy of the stub completed by the appellant declaring the FMEP to the Reconsideration Branch and when it was not provided, she asked the ministry to include a copy of the stub in the Appeal Record.
- There is no copy of the stub in the Appeal Record.
- The ministry acknowledged the appellant's file was examined and the stub or a copy of the stub was not found in the file.

The panel finds that the stub or a copy of the stub is not required at the hearing as the appellant acknowledged that he did complete the stub reporting the FMEP income and further, the panel finds that the presence of a stub is not the issue under appeal (reconsideration).

The appellant introduced the following documents for the panel consideration:

1. Statement of facts and legal argument – one page.
This document is a submission prepared by the advocate; it does not contain new evidence but provides an overview of the facts in this matter that were before the ministry at the time the reconsideration decision was made. The document also contains the arguments to be made by the advocate on behalf of the appellant.
2. Copy of section 2 EAPWDR legislation.
3. Page 2 of 3 (only) of a job information bulletin for Employment and Assistance worker.
The panel finds this document does not contain information or evidence that was in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is not admissible as evidence under section 22(4) EAA.
4. Opinion Editorial headed "Fairness is key to providing supports".

At the hearing the ministry relied on the facts as stated in the reconsideration decision.

In response to questions from his advocate at the hearing, the appellant testified that he only received one child support payment (FMEP) and that he would not have reported this to the ministry if it had not been for a friend's advice. The appellant testified he is illiterate and did not know that he was required to make these reports to the ministry; nor could he recall if he was told to submit a report if/when circumstances changed. The appellant testified that if he does go to the ministry office, which is not very often, he will usually take someone with him to assist him. No one was available to go with him, on this occasion, so the front line EA worker

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assisted him in completing the stub to report the FMEP income. The appellant testified this is the first time he had completed a monthly stub because all his cheques go into his bank account by direct deposit.

The panel finds the appellant's testimony is in support of the records and information that were before the ministry at the time of reconsideration and is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of April 5th, 2012 wherein the ministry denied the appellant a reimbursement for the reported income deduction made to the appellant's disability assistance from May 2011 through January 2012 because the appellant did not submit a report to the ministry notifying the ministry of the change in the appellant's circumstances or information as required by section 11(1) *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

The Legislation considered: EAPWDA

Reporting obligations

Section 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 prescribed 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 affirmed by the signature of each recipient.

The ministry argued that section 11 EAPWDA states the appellant is required to notify the ministry of any change in the appellant's information or circumstances that may affect the eligibility of the family unit, and was previously reported to the ministry. The ministry argued that on March 11th, 2011 the appellant reported receiving income (FMEP) which was deducted from the appellant's disability assistance in April 2011. The ministry argued that since the deduction(s) from disability assistance are computer generated from the monthly stub submitted by the appellant reporting a change, the ministry would not be aware the FMEP was a one-time payment for the month of March only. The ministry argued that the process resulted in the FMEP deduction to continue from month to month until the appellant reported the change (error in deduction) January 2012. The ministry argued the front line ministry worker has no authority to return the FMEP deduction. The ministry stated this circumstance is referred to as an underpayment and if during an internal ministry review or internal ministry reconsideration the review determined there had been an administrative error then a special code could be entered into the computer which will provide for a repayment. The ministry argued the ongoing deduction was deemed to be a client error and therefore the return of FMEP deductions was denied. The ministry also argued that FMEP deductions are not subject to data match on the system and therefore the ministry is not aware if a client receives FMEP payments or not so they would not be aware that a certain deduction was being improperly applied to a client's account/file.

The appellant argued that Persons with Disabilities (PWD) do not have to complete a monthly stub and only complete them when there are changes in their circumstance. The appellant argued this is the first time he has had to complete a stub and because of his disability he didn't know what to do and had to seek the assistance of the front line ministry worker. The appellant argued he was not informed that he had to submit another stub the next month to show he did not receive another FMEP. The appellant had assumed that since he didn't receive another FMEP he didn't have to complete another stub. The appellant argued the ministry worker has an obligation to provide assistance for recipients who are challenged and that the *Interpretation Act* supports his argument. On the appellant's request to the ministry for reconsideration on the ministry's decision, the panel noted that the appellant stated he did know to report the FMEP income.

Section 11(1) EAPWDA requires a recipient to submit a report to the minister, in the prescribed form and containing the prescribed information, to notify the ministry of any change in information or circumstances that may affect a family unit's eligibility for disability assistance. Eligibility for disability assistance is not the issue under appeal; it is the lesser amount of disability assistance because of the non-reporting of the change in FMEP income that is the issue.

It is the appellant's position that the ministry should be more liberal in its interpretation of "assistance" pursuant to the *Interpretation Act*, and that the ministry worker has a duty to assist recipients especially PWD's; however, the matter of assistance is not the issue under reconsideration. In the appellant's request for reconsideration the appellant acknowledged he knew he had to report the income and he went to the ministry office to report the income and the ministry worker assisted him in completing the stub. There is no evidence before the panel that the appellant had requested further assistance or information and was denied.

The evidence before the panel supports that the appellant went to the ministry office in March 2011 to report FMEP income. The panel finds the appellant received assistance from the ministry worker to complete the monthly stub reporting FMEP income in compliance with section 11(1)(b) EAPWDA which resulted in the FMEP income being deducted from his monthly benefit in May 2011. The panel also finds the evidence supports that the appellant did not submit a monthly stub to the ministry between April and December 2011 to report the change (that the FMEP was a one-time payment) in his circumstances as stated in section 11(1)(b) EAPWDA. This resulted in the continuation of the monthly computer-generated deduction of the FMEP income received by the appellant in March 2011.

The panel finds that even if the ministry worker did not inform the appellant that he was required to submit another stub when his circumstance changed (no longer was in receipt of FMEP) that this would not have absolved the appellant of his responsibility as stated in the legislation.

The panel finds that the ministry's decision to deny the appellant's request for reimbursement for deductions which were made to the appellant's disability assistance as a result of the appellant's failure to notify the ministry of the change in the appellant's income, as required by section 11(1)(b) EAPWDA, was reasonable.

Therefore, the panel finds that the ministry's reconsideration decision is supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.