

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") November 29, 2012 reconsideration decision denying the Appellant a Persons with Disabilities ("PWD") designation application form because it determined that:

1. The Appellant did not meet the eligibility criteria or income test for disability assistance prior to being provided with a PWD designation application and there is no legislative requirement for it to provide a PWD designation application if the person is not going to apply for disability assistance;
2. The Ministry does not have the legislative authority to collect personal information other than for the purposes of determining eligibility for income assistance or disability assistance programs or benefits; and,
3. The Appellant would not qualify for Medical Services Only ("MSO") supplements under section 61.1 of the Employment and Assistance for Persons with Disabilities Regulation because he is not a PWD who ceased to be eligible for disability assistance and a PWD designation application is not a way to obtain other programs and services, other than disability assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act ("EAPWDA") Sections 1, 2, 3, 4, 5 and 10.

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Sections 1, 4, 4.1, 9, 61.1 and Schedule A.

PART E – Summary of Facts

The Appellant did not appear at the hearing. His sister, as his legal representative, and his advocate appeared on his behalf.

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's records indicating that:

- The Appellant is under 65 years old and would be a new sole applicant for assistance.
- The Appellant does not have PWD designation.
- The Appellant has not received disability assistance from the Ministry.
- The Appellant receives monthly \$979.02 Canada Pension Plan Disability ("CPPD") benefits, which includes a \$16 tax exemption.

2. Appellant's request for reconsideration with a written submission from his advocate. That submission consisted of written argument and the following information about the Appellant's circumstances and position:

- The Appellant received a letter dated December 21, 2010 confirming his CPPD benefits.
- The Appellant's CPPD benefits are inadequate to meet his basic health needs.
- The Appellant wants to apply to the Ministry to access extended medical benefits not covered by his CPPD benefits.
- The Appellant's representative holds Power of Attorney on behalf of the Appellant.
- On September 28, 2012, the Appellant's representative was advised by the Ministry that he would not be allowed to apply for PWD designation because his current CPPD income exceeds the Ministry's income assistance rate for a single recipient of PWD.
- The Appellant's monthly CPPD income of \$963.20 exceeds the disability assistance rate for a single PWD recipient by \$56.60.
- The Appellant does not dispute that he receives income exceeding current Ministry rates for PWD disability assistance.
- The Appellant wants to apply for PWD designation to obtain MSO benefits. He was advised by staff at a hospital to apply for extended medical benefits from the Ministry to meet his health and safety needs.
- The Appellant does not dispute that he is not eligible for disability assistance from the Ministry because of his income from CPPD benefits.

At the hearing, the Appellant's advocate provided information about a workplace accident the Appellant had in 2008 resulting in injuries and various medical conditions. As a result, the Appellant is no longer capable of managing his daily affairs. He relies on his sister to assist him with daily living activities and with his affairs. The advocate also provided information about the Appellant's financial circumstances and submitted that his monthly expenses exceed his monthly CPPD income. The Appellant is unable to meet medical expenses that may arise, risking his health and safety. In support of the Appellant's medical needs, the advocate submitted a letter from a psychiatrist who has been treating the Appellant for one and a half years. In that letter, dated January 3, 2013, the doctor wrote that the Appellant needs medical, dental and optical care to remain healthy and recover from his many illnesses. He has complex medical challenges. The doctor stated that without adequate coverage the Appellant's health and well-being will suffer substantially.

The Ministry did not object to the admissibility of this evidence.

The Appellant's representative described her efforts to help her brother and his ongoing need for medical and other assistance.

The Ministry submitted a copy of the first page of its PWD designation application. The form states, "the purpose of this form is to collect the information necessary to determine eligibility for the Person with Disabilities designation under the *Employment and Assistance for Persons with Disabilities Act*." At the bottom of the page there is a section headed "Office Use Only", followed by these statements: "The following must be signed in order for the application to be processed. The Applicant intends to apply for disability assistance and is likely to meet the eligibility criteria for disability assistance under the Employment and Assistance for Persons with Disabilities (EAPWDA) Act within 6 months of the date the application is requested." The Ministry explained that a Ministry staff person must complete and sign this section as the part of the application processing step.

The Appellant did not object to the admissibility of this form.

The Panel finds that the information submitted by the Appellant about his medical and financial situation, including the doctor's letter, and the information from the page from the PWD application submitted by the Ministry are all related to information about the Appellant's circumstances that the Ministry considered when it made its reconsideration decision. Therefore, the Panel admits both documents and the other information from the Appellant as being in support of evidence before the Ministry when it made its reconsideration decision in accordance with section 22(4) of the Employment and Assistance Act.

The Panel makes the following findings of fact which are not in dispute:

1. The Appellant is under 65 years of age and would be a sole applicant for PWD designation.
2. On September 21, 2010, the Appellant became entitled to CPPD benefits and he has been receiving those benefits since then.
3. He receives CPPD benefits of \$963.02 a month.
4. His monthly CPPD benefits exceed the current monthly (support and shelter) PWD allowance for a single person as provided for in Schedule A of the EAPWDR.
5. He wants PWD designation to obtain MSO benefits only, not disability assistance.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant a PWD designation application form because it determined that:

1. The Appellant did not meet the eligibility criteria or income test for disability assistance prior to being provided with a PWD designation application and there is no legislative requirement for it to provide a PWD designation application if the person is not going to apply for disability assistance;
2. The Ministry does not have the legislative authority to collect personal information other than for the purposes of determining eligibility for income assistance or disability assistance programs or benefits; and,
3. The Appellant would not qualify for MSO supplements under section 61.1 of the EAPWDR because he is not a PWD who ceased to be eligible for disability assistance and a PWD designation application is not a way to obtain programs and services, other than disability assistance.

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

EAPWDA

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"disability assistance" means an amount for shelter and support provided under section 5 *[disability assistance and supplements]*;

"family unit" means an applicant or a recipient and his or her dependants;

"person with disabilities" means a person designated under section 2 *[persons with disabilities]*;

2 (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either (A) continuously, or (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires (i) an assistive device, (ii) the significant help or supervision of another person, or (iii) the services of an assistance animal.

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit to whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

4 To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

EAPWDR

1 In this regulation,

"application for disability assistance (part 1) form" means an application for disability assistance (part 1) form specified by the minister;

"application for disability assistance (part 2) form" means an application for disability assistance (part 2) form specified by the minister;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(f) any type or class of Canada Pension Plan benefits.

4 The eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.

4.1 (1) The first stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (2).

(2) The applicants for disability assistance in a family unit

(a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit except a person who is not described in section 6 (2), and

(ii) the information, authorizations, verifications and declarations specified by the minister, as required in the application for disability assistance (part 1) form, and

(b) subject to subsections (4), (5) and (6), must

(i) complete searches for employment as directed by the minister for the 3 weeks immediately

following the date of the application under paragraph (a), or
(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a), and in either case provide information about and verification of the searches for employment, in the form specified by the minister.

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act.

9 (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

61.1 For the purposes of this Division, a person may be eligible for medical services only if
(a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of
(iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan.

Schedule A

Maximum amount of disability assistance before deduction of net income

1 Subject to sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule

Monthly support allowance

2 Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42 monthly support
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Monthly shelter allowance

4 1 person	maximum monthly shelter allowance	\$375
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The Ministry's Position

The Ministry's position is that:

- Because the Appellant failed to meet the income eligibility criteria for disability assistance, it would not provide him with a PWD designation application. The Ministry submitted that there is no legislative requirement for it to provide a PWD designation application when a person is not going to be applying for or eligible for disability assistance.
- It does not have the legislative authority to collect personal information other than for the purposes of determining eligibility for income assistance or disability assistance.
- The Appellant is not a person with disabilities who ceased to be eligible for disability assistance due to CPP income; therefore, he would not qualify for MSO supplements under section 61.1 of the EAPWDR if he was later designated as a PWD. The Ministry interpreted "ceased" in section 61.1 to mean to stop receiving or to discontinue benefits and a "person with disabilities" means a person designated a PWD under section 2 of the EAPWDA. The Ministry concluded that the Appellant is not a recipient of disability assistance and does not have "person with disabilities" designation. When the Appellant's CPPD income started, it only

resulted in a loss of potential eligibility for assistance. The Ministry's position is also that a PWD designation application is not to be provided as a way to obtain programs and services other than disability assistance.

The Appellant's Position

The Appellant's position is that the Ministry's decision to deny him a PWD designation application was not a reasonable application of the applicable enactments in his circumstances and there is no legal basis for that refusal. The Appellant's advocate submitted extensive arguments to support the Appellant's position. The Panel has considered those arguments and summarizes them as follows.

First, the advocate argued that there is no legislative authority requiring a person to be assessed for eligibility for disability assistance before there is a determination of PWD designation or before a person applies for PWD designation. The advocate's position is that the failure to accept and consider an application would amount to a refusal of a PWD designation. There are two determinations that the Ministry must make when considering a PWD application. The first decision under section 2 of the EAPWDA is whether a person should be designated a PWD based on satisfying the criteria in that section. Section 2(2) of the EAPWDA has no requirement that an applicant must meet income requirements for the purpose of determining whether or not an applicant meets the PWD criteria in that section. The second decision is whether a family unit is eligible for disability assistance based on the process set out in sections 4, 4.1 and 4.2 of the EAPWDR. To be eligible for disability assistance a family unit must include a person with disabilities.

In addition, the advocate argued that failure to provide the Appellant with a PWD designation application means that the Ministry has no authority to determine that the Appellant is not eligible for PWD assistance. The advocate argued that section 4.1(2)(a) of the EAPWDR stipulates that a family unit applying for disability assistance - which must include a person with disabilities - must complete and submit to the Ministry an application for disability assistance form. The Appellant was never provided with a PWD designation application form or an application for disability assistance form; therefore, he was unable to meet the regulatory requirements. By refusing to provide the Appellant with the appropriate forms, the Ministry determined the Appellant's eligibility for PWD designation and/or disability assistance without adhering to the legislative mandated process for such determinations.

Second, the Ministry misinterpreted the law as it relates to the collection of personal information. The Ministry's decision to deny the Appellant a PWD designation application form on the basis that it cannot collect information relevant to the Appellant's request for that form and the MSO supplement is not supported by the EAPWDA, the EAPWDR or the *Freedom of Information and Protection of Privacy Act*.

Third, the Ministry's refusal to give the Appellant an application form on the basis that a PWD designation application is not a way to obtain other programs and services, had no legal basis and therefore was unreasonable. The MSO supplement is a benefit that is available to PWD designates who cease to be eligible for disability assistance as a result of CPPD payments, as set out in section 61.1 of the EAPWDR. It is illogical and inconsistent with the EAPWDA to infer that the Appellant cannot obtain a PWD application to obtain benefits outside of financial support.

Fourth, the Ministry improperly fettered the Minister's discretion by apparently relying on policy inconsistent with the relevant legislation and by applying that policy without consideration of the

Appellant's particular circumstances. The advocate acknowledged that the Ministry's reconsideration decision did not specifically refer to any policy. However, he argued that the reasons given in that decision reflect and apply the arbitrary requirements in that policy, which pre-determines PWD designation by way of income and asset tests. The advocate submitted that such a policy contradicts the provisions in the EAPWDA and the EAPWDR. Also, the policy is not law and therefore must not be used to arbitrarily and unlawfully deny the Appellant the right to apply for PWD designation. The Minister must consider the relevant legislative provisions and may consider relevant policy, but must then consider the unique circumstances that would warrant an exercise of discretion to not apply the policy in the Appellant's particular case.

Fifth, the Ministry failed to apply the direction of the courts and the *Interpretation Act* when it interpreted and applied the legislation dealing with a benefit like the MSO supplement. By denying the Appellant the opportunity to apply for PWD designation, the Ministry failed to respect the intent of the EAPWDA. The advocate cited the *Hudson v. Employment and Assistance Appeal Tribunal* decision and the court's statement that the PWD legislation must be interpreted with a benevolent purpose in mind. When that case is applied to sections 2 and 4 of the EAPWDA, the advocate submitted, it is clear that the effect of denying the Appellant the opportunity to apply for PWD designation is contrary to the benevolent intent of that Act, the intent being to encourage persons with disabilities to meet their basic needs.

In addition, the advocate submitted that even if there is ambiguity regarding sections 2(2) and 4 of the EAPWDA, the Ministry is bound by section 8 of the *Interpretation Act*, which provides that legislation must be interpreted in a remedial and liberal manner rather than a restrictive manner. When section 8 is applied to the EAPWDA and the EAPWDR, it is clear that the remedial intent is to first determine PWD designation based on the criteria in section 2 of the EAPWDA before considering an applicant's financial circumstances for the purpose of assessing eligibility for disability assistance.

Sixth, the Ministry's interpretation of section 61.1 of the EAPWDR results in the grossly unfair situation where an individual, who complies with the requirement in the EAPWDR to apply for CPPD and possibly relies on hardship assistance until the CPPD benefits start, is ineligible for MSO supplements. This situation should be contrasted with one where an individual with the same disability and the same financial circumstances applies for and obtains disability assistance under the EAPWDA, and then applies for and is paid CPPD but nevertheless remains eligible for the MSO supplements. The Ministry's application of section 61.1 of the EAPWDR in the Appellant's case produces an absurd and inequitable outcome whereby disabled citizens in the province will be subject to a lower standard of medical coverage simply by virtue of the order in which they have applied for provincial and federal disability benefits. The advocate cited the Supreme Court of Canada decision *Rizzo & Rizzo Shoes (Re)* [1998] 1 SCR 27 for the principle that legislation must not be construed in a manner that will result in absurd consequences. The advocate also argued that section 8 of the *Interpretation Act*, and the directions of the courts in the *Hudson* and *Rizzo Shoes* cases do not support the Ministry's interpretation and application of section 61.1 of the EAPWDR to the Appellant's circumstances.

The advocate further submitted that if the Appellant is designated a PWD, he would meet the requirements for MSO supplements in section 61.1 because he ceased to be eligible for PWD disability assistance payments on September 21, 2010, the date he became entitled to CPPD benefits. The advocate pointed out that applicants for disability assistance are required to access

other sources of income, such as CPPD benefits. Because CPPD benefits can be higher than disability assistance rates a person designated as a PWD may not receive disability assistance, but would be eligible for the MSO supplements. Given the intent of benefits-conferring legislation such as section 61.1 of the EAPWDR, it would be illogical and inconsistent with the intent of that legislation to restrict the Appellant from accessing extended medical coverage through the MSO supplements based on the order in which he applied for provincial and federal benefits. The advocate argued that section 8 of the *Interpretation Act* requires that the term "ceased" be given a large interpretation, one that would not penalize people like the Appellant who complied with the EAPWDR's requirement to apply for CPP benefits.

The advocate also submitted that if there is any ambiguity or doubt in the Ministry's application of section 61.1 to the Appellant's case, then that doubt or ambiguity should be decided in favor of the Appellant. The *Hudson* decision reaffirms that this is a fundamental principle of statutory interpretation in the case of social benefit legislation. Therefore, if it is unclear whether the Appellant, if he is designated as a PWD, is eligible for the MSO supplement, the binding common law principles of statutory interpretation state that the Ministry must decide in favor of the Appellant.

The Panel's Findings

Under section 24 of the Employment and Assistance Act, the Panel's jurisdiction is limited to determining whether the Ministry's reconsideration decision is reasonably supported by the evidence or is a reasonable application of the applicable enactments in the Appellant's circumstances. In this case, the principle facts are not in dispute. The Appellant is under 65 years of age and has been receiving CPPD benefits which exceed the amount of disability assistance he would be eligible for as a sole PWD applicant. The Appellant is not a PWD designated under section 2(2) of the EAPWDA and therefore is also not a person with disabilities as that term is used in the EAPWDA and EAPWDR. He acknowledges that he would not be eligible for disability assistance because of the amount of CPPD benefits he receives. He only wants to receive the MSO supplement.

The Appellant's position is that the Ministry's reconsideration decision should be rescinded because it was not a reasonable application of the applicable enactments or its policy. The Panel finds that, in its reconsideration decision, the Ministry did not cite any Ministry policy or indicate that it was following any policy guidelines when it made its decision. Therefore, the Panel will consider only the Ministry's application of the applicable enactments in the Appellant's case.

The Ministry determined that before being given a PWD designation application, the Appellant must meet what it called the eligibility criteria for disability assistance. The Ministry also referred to this eligibility criteria as the income test. Because the Ministry decided that the Appellant did not meet this income test for disability assistance, the Ministry refused to give him a PWD designation application. The Ministry provided no statutory or regulatory authority for this position.

The Panel notes that there is nothing in section 2 of the EAPWDA about an income test or about giving the Ministry the authority to impose a disability assistance eligibility test before someone can apply for PWD designation or get an application form. That section only deals with the criteria that must be satisfied for PWD designation. However, section 10(1) states that for the purposes of determining whether a person "wanting to apply for disability assistance" or hardship assistance "is eligible to apply for it" the Minister may direct an applicant or a recipient to supply the Minister with information within the time and in the manner specified by the Minister. The Panel finds that this

provision clearly gives the Ministry the authority to obtain information from an applicant for the purposes of determining eligibility to apply for disability assistance, not just for the purposes of determining eligibility for disability assistance. Therefore, the Panel further finds that, based on the information the Ministry received from the Appellant that his CPPD income exceeds the disability assistance he would be eligible for, the Ministry reasonably determined that the Appellant would not be eligible for to apply for disability assistance.

The Ministry also asserted that it does not have the legislative authority to collect personal information other than for the purposes of determining eligibility for income assistance or disability assistance. The Panel finds that section 10 of the EAPWDA specifically grants such authority to the Ministry for purposes related to PWD applicants, but for no other purpose. Therefore, the Panel finds that the Ministry reasonably determined that its legislative authority to collect personal information is limited to determining a person's eligibility under the EAPWDA.

The Panel also notes that section 4 of the EAPWDA states that to be eligible for disability assistance or hardship assistance under the EAPWDA, a family unit must include a person with disabilities. Section 1 of the EAPWDA defines a "person with disabilities" as a person who has satisfied the criteria and been designated under section 2 of the EAPWDA. In this case, the Panel finds that because the Appellant has not been designated as a PWD, he is not a person with disabilities and so he is not eligible as a family unit for disability assistance or even to apply for such assistance.

In this case, the Appellant acknowledges that he wants to apply for designation as a PWD so that he can be eligible for MSO supplements. The Ministry, however, refused to give the Appellant a PWD application form because it determined that he would not be eligible for MSO supplements. The Ministry found that the Appellant is not a PWD receiving CPPD benefits who ceased to be eligible for disability assistance and he therefore would not be eligible for MSO supplements under section 61.1(a) of the EAPWDR. The Appellant's position is that if he is designated as a PWD, he will be eligible for MSO supplements. The Appellant disagreed with the Ministry's interpretation and application of EAPWDR section 61.1(a) in his circumstances.

The part of Section 61.1(a) of the EAPWDR at issue states that a person may be eligible for medical services only if the person is a person with disabilities who is under 65 and that person's family unit ceased to be eligible for disability assistance as a result of any person in the family unit receiving a pension or other payment under the Canada Pension Plan. The Appellant is under 65 and receives a pension or payment under the Canada Pension Plan. However, the Appellant acknowledges that he is not a person with disabilities as the term is used in the EAPWDA and the EAPWDR. He also has not received disability assistance and was not receiving disability assistance when he started receiving CPPD benefits in 2010. Based on these facts, the Panel finds that the Ministry's interpretation and application of section 61.1(a) to the Appellant's circumstances was reasonable.

Conclusion

Having reviewed the facts, the applicable legislation and the positions of both parties, the Panel finds that the Ministry's reconsideration decision was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore, the Panel confirms that decision.