

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 4, 2013 which denied the appellant disability assistance for October, November and part of December 2012 as the appellant was determined to be ineligible during this time pursuant to Section 11 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) and his re-application for disability assistance was submitted on December 24, 2012, pursuant to Section 23 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 23

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Sections 3, 10 and 11

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Bank Account Statements for the period covering September 1, 2012 through December 31, 2012 which showed an opening balance of \$1,716.85 and a closing balance of -\$88;
- 2) Letter dated January 23, 2013 from a physician who is a specialist in neuropsychiatry 'To Whom It May Concern' stating in part that the appellant was seen that day and the physician has known him since February 2011. The appellant has a very complex neurological disorder primarily presenting as severe seizures requiring a number of hospitalizations. His cognition can be affected and living alone he has limited supports. He moved recently and, as a result, there may have been some difficulty with contacting social services in the process. He is distressed about the status of his financial support. "This man clearly requires ongoing medical attention";
- 3) Letter dated January 24, 2013 from a family physician 'To Whom It May Concern', stating in part that the appellant has been in her practice since September 2008 and he has multiple medical issues including a seizure disorder, chronic back pain with disc hernia, depression, and hypothyroidism. He has seen multiple specialists in the past and continues to follow up with the family physician on a regular basis. It is imperative that the appellant get his medications covered and take them on a regular basis as he suffers from seizures when the medications are discontinued. This has profound impacts on his overall functioning and cognition. He often requires extra time for tasks and needs to write things down so that he will not forget them. He is coping to the best of his abilities but he does require extra help and guidance given his cognition and psychological impairments; and,
- 4) Request for Reconsideration- Reasons, prepared by an advocate on behalf of the appellant.

At the hearing, the appellant provided the following additional documents:

- 1) Undated list of medications;
- 2) Letter dated December 14, 2012 from the appellant to the ministry which states in part that in June 2012 the appellant notified an office of the ministry about his move and gave them his rental agreement. The appellant stated that he moved on July 1, 2012. Since 2008 he has been saving money from his disability income for an emergency or medications or surgeries not covered by the ministry or PharmaCare, and his savings were under \$4,000. The appellant was hoping to have nose surgery or laser eye surgery since his nose has been broken several times because of seizures due to his epilepsy. The appellant wrote that on November 22, 2012, he had an appointment with a physician to continue with his nose surgery and when he attempted to make payment, there was only \$49.00 in his bank account which was not enough to cover his December rent and food. The appellant wrote that since July his chronic pain has increased and he is on many medications;
- 3) Letter dated December 27, 2012 from the appellant to the ministry which states in part that on December 24, 2012 he went to refill his medications and the pharmacy told him that he had to pay since the ministry had deleted the appellant from the system. The appellant wrote that since 2004 he has been depending on these medications for epilepsy, chronic pain, depression and other small health problems. The appellant stated that the ministry is misled by someone with "...dark feelings to take inhuman action to cause this problem." The appellant wrote that he has the right to be notified by mail or by phone to know what is going on before the ministry takes action;
- 4) Letter dated April 10, 2013 from the appellant as a submission to the panel which states in part that he is currently on many medications, that he has epilepsy, ongoing chronic pain in his back and legs, sometimes headaches, and depression. The side effects from the medications combine together to slow down his brain. The appellant wrote that because of his epilepsy and chronic pain, he has been hospitalized many times and has records in 8 different hospitals. His nose has been broken several times because of seizures and he had been saving money for laser eye surgery or nose surgery. On October 1, 2012, his account balance was \$1,681.83 and he was planning to have nose surgery in December 2012 or January 2013. The ministry twice cut his disability, once because they said his address was invalid and the second time because he did not pick up his cheques. The appellant wrote that he provided notice to the ministry in June 2012 of his change of address. The appellant asks where a copy of the notification is.

The ministry did not object to the admissibility of any of the documents. The panel did not admit the references in the letters dated December 14, 2012 and April 10, 2013 and in the appellant's oral testimony that he notified the ministry of his change of address in June 2012 as this is not information that was before the ministry on reconsideration. The panel admitted the information in the balance of these letters and the December 27, 2012 letter and the appellant's testimony as well as the list of medications, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the appellant's medical conditions and associated circumstances and being in support of information that was before the ministry on reconsideration.

In the Request for Reconsideration, an advocate wrote that the appellant did not receive notification from the ministry in the form of a phone call or a letter summoning him to the ministry office for information and verification. The advocate wrote that the appellant's file should not have been closed on November 16, 2012 and assistance denied for the months of October, November, and part of December 2012. The advocate refers to the letters from the appellant's family doctor and his psychiatrist attesting to the fact that he has a very complex neurological disorder that has profound impacts on his overall functioning and cognition and his need for extra help and guidance due to his impairments. The advocate wrote that the ministry direct deposits the appellant's assistance and due to his health problems and the fact that he had some money saved in order to pay for his surgeries, he did not notice that his bank account was down to the point where he could not pay the rent or buy much food until late November 2012 and, at the end of November, the appellant contacted the ministry and had his file re-opened.

At the hearing, the appellant reviewed the information in his letter dated April 10, 2013 and added that he takes 22 tablets per day, consisting of the medications on the list provided. The appellant also stated that he has fax cover sheets showing fax transmissions to the ministry on December 10, 2012 and December 17, 2012. The appellant stated that he does not have any proof that he notified the ministry of his change of address in June 2012 except that he is telling the truth. The appellant stated that he moved to his current community because he was able to find accommodation for cheaper rent.

The evidence of the ministry included that the appellant has been a recipient of disability assistance since December 2005. The ministry clarified at the hearing that the application for assistance sets out the responsibility to advise the ministry of any change in circumstance and that this would have been explained at the time. The appellant had been receiving his disability assistance by direct deposit to his account and the last contact with the ministry was February 2012. As a Person With Disabilities (PWD), the appellant is only required to submit a monthly declaration to the ministry if there has been a change that may affect assistance, such as an address change or a change in assets or income, etc. The ministry clarified at the hearing that reporting stubs were sent to the appellant every month with an area on the form to set out change of address information.

The ministry received information from a third party that the appellant was working and had moved and, on September 26, 2012, the appellant's October 2012 cheque was sent to the local office instead of a direct deposit to his bank account. In place of the direct deposit notice that was sent to the appellant every month, an automatic notification letter was sent to the appellant providing the address and telephone number to contact the ministry. Since the appellant did not pick up the October 2012 cheque, after 9 business days it was cancelled. The same process occurred for the November 2012 cheque and the cheque was cancelled. The ministry stated that the appellant could have contacted the ministry anytime up to November 16, 2012 to continue his eligibility for disability assistance but, at that time, his file was closed. The appellant signed a re-application for disability assistance on December 24, 2012 and he was provided with a prorated amount of assistance for December 2012. The ministry stated that it does not have any record in its system that the appellant provided information about his change of address, which can be done at any office of the ministry. The ministry explained that a change of address is relevant to a recipient's eligibility for disability assistance because there could be a move out of the province or to accommodations with no rent payable, for example. The ministry stated that it will make arrangements for dealing with a client with special needs if there is a request made and that, otherwise, the ministry will encourage assistance by family members or advocates.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which denied the appellant disability assistance for October, November and part of December 2012 as the appellant was determined to be ineligible during this time pursuant to Section 11 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) and his re-application for disability assistance was submitted on December 24, 2012, pursuant to Section 23 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 3 of the EAPWDA provides:

Eligibility of family unit

- 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 on 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.

Section 11 of the EAPWDA provides:

Reporting obligations

- 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.

Section 10 of the EAPWDA provides:

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

Section 23 of the EAPWDR provides in part:

- 23(1) Subject to subsection (1.1), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance
 - (a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and
 - (b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.
- (1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday
 - (a) is eligible for disability assistance on that 18th birthday, and
 - (b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.
- (1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for
 - (a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form,
 - (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and
 - (c) for disability assistance under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form. . . .

The appellant's position in the Request for Reconsideration is that he did not receive notification from the ministry in the form of a phone call or a letter summoning him to the ministry office for information and verification. The appellant argued that his file should not have been closed on November 16, 2012 and assistance denied for the months of October, November, and part of December 2012. The appellant argued

that the letters from his family doctor and his psychiatrist attest to the fact that he has a very complex neurological disorder that has profound impacts on his overall functioning and cognition and his need for extra help and guidance due to his impairments. The appellant argued that the ministry direct deposits his assistance and, due to his health problems and the fact that he had some money saved in order to pay for his surgeries, he did not notice that his bank account balance was down until late November 2012 and, at the end of November, the appellant contacted the ministry and had his file re-opened. The appellant argued that had the ministry contacted him in October, by phone or by mail, he would have known that he needed to attend the ministry office. Section 10 of the EAPWDR states that if the recipient fails to comply with a direction under the section that the ministry may declare the family unit ineligible for assistance but, in this case, there was no direction given. The appellant argued that since his file should not have been closed on November 16, 2012, he should be remunerated assistance for the months of October, November and part of December 2012.

The ministry's position is that the appellant was automatically sent a notification, in place of his regular direct deposit notice, advising him that his October 2012 cheque was directed to the ministry office and to contact the office if he was still in need of assistance. The ministry argued that, pursuant to Section 11 of the EAPWDA a family unit must notify the ministry of any change in circumstances or information that was previously provided to the ministry and which may affect the eligibility of the family unit. The ministry argued that the appellant moved residences in July 1, 2012 and did not advise the ministry. The ministry argued that since there was no contact by the appellant for two months, his file was closed on November 16, 2012 and he was required to re-apply for assistance. The ministry argued that the appellant signed the re-application on December 24, 2012 and the ministry is unable to backdate assistance because his file had closed. The ministry argued that it is limited to issuing disability assistance based on the month that the re-application is signed and the appellant has received the maximum available under the legislation.

The panel finds that it is not disputed that the appellant moved and changed his address on July 1, 2012. Pursuant to Section 3 of the EAPWDA, a family unit is eligible for disability assistance if each person in the family unit satisfies the initial and continuing conditions of eligibility established under the Act. Section 11 of the EAPWDA stipulates as a condition of eligibility that a recipient must submit a report and notify the ministry of any change in circumstances or information that was previously provided to the ministry and which may affect the eligibility of the family unit. The appellant has been in receipt of disability assistance since December 2005, or for approximately 7 years, and he did not claim that his health conditions or the side effects from his medications affected his understanding of the requirement to notify the ministry of his change in address. The ministry does not have any record of the appellant having reported a change of address.

The appellant argued that due to his medical conditions and the side effects of his medications it takes him longer to perform tasks and he requires help, as set out in the letters from his family doctor and psychiatrist. However, it was not until approximately 4 months following the appellant's move that his assistance cheque was re-directed to the ministry office; during this time, the appellant would not have received his monthly notifications of direct deposit in the mail which would be an indication to him that the ministry did not have his current address. The appellant's disability assistance cheques were held for two months and the ministry allowed until November 16, 2012 for the appellant to meet his reporting requirements. In the Request for Reconsideration, the advocate argued that there was no direction given to the appellant pursuant to Section 10 of the EAPWDA. The panel finds that the ministry did not rely on Section 10(4) of the EAPWDA by declaring the appellant ineligible for disability assistance for failure to comply with a direction. Rather, the appellant was determined to be no longer eligible for disability assistance due to his failure to fulfill the continuing conditions of eligibility by meeting the reporting requirements of Section 11 of the EAPWDA. The panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance for the months of October and November 2012 for failure to meet the reporting requirements of Section 11 of the EAPWDA.

The panel finds that it is not disputed that the appellant submitted his re-application for disability assistance on

December 24, 2012. Pursuant to Section 23(1.2)(a) and (b) of the EAPWDR, the family unit becomes eligible for a support allowance on the date of the applicant's submission of the application for disability assistance and for a shelter allowance on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance, but only for that portion of the month's shelter costs that remains unpaid on the date of that submission. The appellant does not dispute that he was paid a prorated support allowance for the month of December and full shelter allowance for the month of December, and the panel finds that the appellant received the maximum amount payable under Section 23 of the EAPWDR.

The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the ministry's decision pursuant to Section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.