

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) Reconsideration Decision of April 16, 2014 in which the ministry denied the appellant’s request to apply for a Persons with Disabilities (PWD) designation for his spouse (“J”) under Section 10 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Sections 1, 2, and 4
Employment and Assistance Regulation (EAR) Sections 1, 10 and 28
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule A
Sections 1, 2 and 4
Employment and Assistance Regulation (EAR) Schedule B Sections 1, 6, 7 and 8

PART E – Summary of Facts

With the consent of the appellant an observer from the ministry attended the hearing.

The evidence before the ministry at the time of reconsideration was:

- 1) Part 3 of the appellant's request for consideration, to which was attached:
 - a. The appellant's letter to the ministry dated April 2, 2014 in which the appellant sought the following assistance from the ministry:
 - i. A declaration of J's eligibility for assistance as a PWD to enable immediate payment of benefits to her after his death. The appellant explained that his wife suffers from permanent mental and physical disabilities and in the event of his death she would be unable to apply for PWD benefits because of her cognitive impairments.
 - ii. A supplement for J's medication costs which are beyond his ability to pay. In 2013 the appellant paid \$3,700.00, and in the first three months of 2014 has paid \$1,700.00 as his share of J's drug costs under the BC Pharmacare plan. The appellant also sought financial assistance from the ministry to pay for diabetic pump sensors which provide accurate blood sugar readings for the management of J's diabetes. Due to her cognitive impairment J is unable to analyze her blood sugar readings and insulin doses accurately.
 - iii. A yearly bus pass for J.
 - iv. A supplement for dental and eye care and glasses for the appellant.
 - v. Respite funding to enable the appellant to take a break from his responsibility as full-time caregiver for J.
 - b. A letter to the ministry from the appellant's pastor dated April 2, 2014 in which the pastor described the seriousness and critical nature of the mental and physical disabilities experienced by the appellant's wife.
 - c. A two-page chart summary from J's family physician listing her diagnoses and medications.
 - d. A handwritten note from J's psychiatrist dated April 2, 2014 and addressed "To Whom It May Concern" stating that J suffers from a cognitive/developmental disability, depression and Borderline Personality Disorder together with multiple medical conditions. The psychiatrist added that J incurs significant expenses due to her mental and physical disabilities.

On May 9, 2014 the appellant filed a Notice of Appeal in which he reiterated his request for a health supplement or other assistance for J's medications, medical equipment and supplies, and bus pass. The appellant added new information concerning J's needs, including a Lifeline personal help button and a CPAP breathing device recently prescribed by J's family physician to treat her sleep apnea. The appellant also appended two additional letters:

- 1) A handwritten note from J's psychiatrist dated May 2, 2014 and addressed "To Whom It May Concern" reiterating J's intellectual disability, mental illness and physical illness, and adding that J has been hospitalized for suicide attempts and diabetic complications that have been life threatening.
- 2) A letter to the ministry from the appellant's pastor dated May 2, 2014 in which the

pastor expressed his concern for the appellant's ability to care for J on a full-time basis, and for the financial burdens the appellant is required to meet.

At the hearing the appellant's advocate tendered the appellant's pastor as a witness. The pastor informed the panel that the appellant is not capable of looking after J's needs by himself, and that neither the appellant nor J has family members who can assist with J's care.

The ministry did not object to the evidence submitted with the appellant's Notice of Appeal or to the pastor's oral evidence at the hearing. The panel found that the written evidence submitted with the appellant's Notice of Appeal and the pastor's oral testimony at the hearing were admissible under EAA Section 22(4) (b) as evidence in support of the information before the minister at the time of reconsideration because they both provided additional information respecting the severity of J's medical conditions and expenses as well as the financial and caregiving burdens upon the appellant.

At the hearing the appellant and his advocate added the following oral evidence:

- The appellant does not have the resources to meet J's medical needs;
- The appellant's exceptional circumstances require J to be designated as a PWD in advance of the appellant's death;
- Neither the appellant nor J is covered by any additional benefits arising from the appellant's former employment;
- The appellant and J do not want PWD benefits other than medication, medical equipment, dental, vision, bus pass and respite supplements at this time;
- The appellant and J have not yet applied for a health supplement for a life threatening health need under EAR Section 76.

The panel found that the oral evidence of the appellant was admissible under EAA Section 22(4) (b) as oral testimony in support of the information before the minister at the time of reconsideration because it clarified the reason for the appellant's requests for PWD designation, health and transportation supplements.

The ministry representative relied on the reconsideration decision and in oral evidence explained that PWD designation is dependent upon the applicant's eligibility for assistance at the time of application. The appellant and J have a monthly net income of \$2,660.64 calculated under Schedule B, which exceeds the \$1,519.06 amount of disability assistance determined for their family unity under EAPWDR Schedule A. Section 10 (2) of the EAR specifies that a family unit is not eligible for income 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. Future circumstances cannot be taken into account. The ministry representative added that she is unaware of any exceptional circumstances by which J could be declared eligible for PWD now but with disability assistance to commence at some future date.

The ministry representative also explained that the family unit consisting of J and the appellant is not eligible for health or transportation supplements unless they are recipients of PWD or income assistance, but may be eligible for a health supplement for a life threatening health need provided under EAR Section 76.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's Reconsideration Decision of April 16, 2014 in which the ministry denied the appellant's request to apply for a Persons with Disabilities designation for his spouse under Section 10 of the EAR because the appellant's net income exceeded the rate of income assistance for his family unit under Schedule A of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

The relevant legislation is set out in the EAA, EAR, EAPWDR and the EAR:

EAA:

1 (1) In this Act:

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

"supplement" means any form of assistance specified by regulation, other than income assistance, hardship assistance or financial assistance provided under section 6 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

Eligibility of family unit

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

(a) each person in the family unit on whose account the income 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 income assistance, hardship assistance or supplement under this Act.

EAR:

1 (1) In this regulation:

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

(e) superannuation benefits;

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

(u) Federal Old Age Security and Guaranteed Income Supplement payments.

Limits on income

10 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

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

under Schedule A for a family unit matching that family unit.

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

The appellant argues that J should receive PWD designation in advance of receiving financial assistance from the ministry because due to her cognitive impairment J would be unable to apply for PWD benefits if the appellant predeceased her. The appellant also argues that he requires a supplement to pay for J's medications, medical supplies and bus pass. In addition the appellant seeks supplements for his own dental and eye care and for respite services to relieve him of his full-time caregiving responsibilities.

The ministry argues that PWD designation is dependent upon the applicant's eligibility for assistance at the time of application. The ministry considered eligibility based on the higher DA rates because of the intention to apply for PWD designation for J. The appellant and J have a monthly net income of \$2,660.64 calculated under Schedule B which exceeds the \$1,519.06 amount of disability assistance determined for their family unit under EAPWDR Schedule A. Section 10 (2) of the EAR specifies that a family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A. Future circumstances cannot be taken into account.

The ministry representative argues further that because the family unit consisting of J and the appellant is not a recipient of income assistance it is not eligible for health or transportation supplements, other than a health supplement for a life threatening health need provided under EAR Section 76.

Panel Decision

Section 10 (2) of the EAR states that a family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A. There is no dispute that the appellant's monthly net income of \$2,660.64 as calculated under Schedule B exceeds the maximum amount of disability assistance of \$1,519.06 that would be payable for his family unit under EAPWDR Schedule A. Therefore the family unit of the appellant is not eligible for income or disability assistance.

Accordingly, this panel finds that the ministry's decision to deny the appellant's request to apply for a PWD designation for his spouse because the appellant's net income exceeds the rate of income and disability assistance for his family unit is a reasonable application of the applicable enactments in the circumstances of the appellant, and confirms the decision.