

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 23, 2014 which held that the appellant received \$9,103.42 that he was not eligible for from September 2012 to April 2014, and is liable to repay the government as set out in section 18 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry found that the appellant resided in special care facilities from September 2012 to April 2014 and received a monthly amount greater than that permitted under the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule A, item 8(1), which provides for a comforts allowance in the amount of \$95.00 for each person for each calendar month.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 18.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1(1), Section 24, and Schedule A, item 8.

Community Living Authority Act (CLAA).

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

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

- The appellant is currently receiving a comforts allowance as a single person with a Persons with Disabilities (PWD) designation.
- A letter from a Health Authority social worker dated August 28, 2012 confirmed that the appellant was a resident of a long term forensic psychiatric care facility.
- The long term forensic psychiatric care facility is a hospital, and does not provide services under an agreement with a service provider through Community Living BC.
- The ministry's files were not updated when the appellant moved into the long term care facility.
- The appellant's sister was appointed his committee by way of court order dated April 8, 2013.
- An admittance form from another licensed care facility specializing in adult residential care indicates that the appellant moved to this facility on April 7, 2014.
- The adult residential care facility is approved by the minister, and does not provide services under an agreement with Community Living BC.
- On April 9, 2014 the ministry updated the appellant's status to long term care, and his comforts allowance was set at \$95.00 monthly.
- The appellant or his committee received \$531.42 monthly support from the ministry from September 1, 2012 to April 30, 2014.
- On May 29, 2014 an overpayment notification prepared by the ministry outlining the calculation of the overpayment from September 1, 2012 to April 30, 2014 and providing the total amount of \$9,103.40, was mailed to the appellant. The overpayment consisted of 436.42 monthly (531.42 – 95.00) support over 20 months, and \$375.00 for shelter in September 2012.
- The committee kept the appellant's belongings and furniture in her basement suite and although he moved to a long term care facility in August, 2012, the appellant was brought by her regularly to the suite (on at least 100 occasions) to eat, have showers, a comfortable bed, and back rubs.
- The committee incurred costs for purchasing food, cigarettes, toll bridge expenses and bus passes for the appellant between September 1, 2012 and April 30, 2014, as well as legal fees to obtain committee status.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that determined that the appellant received \$9,103.42 disability assistance that he was not eligible for from September 2012 to April 2014 because he lived in a special care facility and the EAPWDR Schedule A, item 8(1) provides a comforts care allowance in these circumstances of only \$95.00 per month, and that he is accordingly liable to repay the government as set out in section 18 of the EAPWDA, was either a reasonable application of the legislation or reasonably supported by the evidence.

The EAPWDR Section(1) definition section includes the following:

"special care facility" means a facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the minister under subsection (3);

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a license under the *Community Care and Assisted Living Act* is not required.

The EAPWDR Section 24 reads:

Amount of disability assistance

24 Disability 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 EAPWDR Schedule A, item 8 reads:

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24

(a) [amount of disability assistance] of this regulation is the sum of

(a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus

(b) a comforts allowance of \$95 for each person for each calendar month.

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

(a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;

(b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the

amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of
 (a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus
 (b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

Section 18 of the EAPWDA reads:

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16(3) [*reconsideration and appeal rights*].

Ministry's position

The ministry argues that when the appellant moved to the long term care facility on August 28, 2012, he was no longer entitled to the \$436.42 support for September 2012 through April 2014 or the \$375.00 shelter for September 2012. The ministry argues that the amount of assistance is determined under schedule A, Section 24 of the EAPWDR.

Neither facility the appellant lived in from September 2012 through April 2014 were designated special care facilities under EAPWDR Schedule A, item 8(3), or a drug or alcohol treatment centre under item 8(2). The initial facility (August 2012 residential move) is an extended care hospital. The second facility (April 2014), meets the definition of a special care facility under section 1 of the EAPWDR, specifically a specialized adult residential care setting approved by the minister as detailed in subsection 3 of the definition.

The ministry argues that item 8(1) of the EAPWDR Schedule A applies, and as there are no additional costs billed to the appellant or the ministry beyond the facility's per diem, item 8(1)(b) sets a comfort allowance of \$95.00 payable to the appellant.

Appellant's position

The appellant's notice of appeal was submitted by the committee, who argues that the appellant requires more than \$95.00 in comfort funds monthly.

The committee writes that the monies received beyond this amount during the period September 2012 through April 2014 were used for the appellant's actual needs, including food and clothing.

The committee further points out that the appellant's cigarette costs are very high, and because of the stress of his environment, his addiction has worsened.

Panel Decision

The appellant was living in a long term forensic psychiatric care facility as of September 2012, and in April 2014 he moved to a licensed adult residential care facility; neither of these facilities are operated by a CLAA service provider, nor are the facilities alcohol or drug treatment centres. While the appellant, through his advocate, argues that \$95.00 a month is insufficient to meet his actual expenses as a single applicant, he does not dispute the licensing arrangements of the facilities. There is no evidence of additional costs billed to the appellant or the ministry beyond the facilities' per diem rate. The panel accepts that effective September 2012, the appellant's disability assistance is properly addressed under the EAPWDR, Schedule A, item 8(1).

Although the ministry was notified of the initial move and change in the appellant's living arrangements, his file was not updated in September 2012 and he continued to receive full disability support assistance until his April 2014 move to the second facility, when his benefit entitlement changed and an overpayment was declared. Receipt of the monies is also not in dispute, although the appellant argues that the monies were used for his actual needs, including food and clothing.

Section 27(2) of the EAA states the decision about the amount a person is liable to repay is not appealable.

The panel determines that the ministry's decision that the appellant received disability assistance that he was not eligible for from September 2012 to April 2014 because he lived in a special care facility and the EAPWDR, Schedule A, item 8(1) limited his direct disability entitlement to a \$95.00 monthly comforts allowance during this time frame was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

Therefore the panel confirms the ministry's decision.