

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 19, 2015 which found that the appellant is not eligible for disability assistance (DA) for the month of October 2014 for failing to comply with the ministry's direction for information and verification of eligibility pursuant to sections 10(1) (b), (e) and (4) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), section 23 (1)(a) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), and remained ineligible until she complied with the ministry's direction pursuant to section 28 (1) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – Section 10
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 23 and 28

PART E – Summary of Facts

After verifying that the ministry had received the notice of the hearing, the hearing proceeded in its absence in accordance with section 86(b) of the Employment Assistance Regulation.

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

1. 1-page letter dated December 17, 2014 from Service Canada advising the appellant that her application for a retirement pension cannot be approved;
2. Shelter information form signed and dated May 11, 2013 and a note which states the shelter allowance has been sent to the wrong address for the past few months; and
3. Request for Reconsideration signed and dated January 13, 2015 which states that the facts of the case are not in dispute, but a reconsideration is in order because the appellant:
 - has a mental handicap and did not understand that she had received a cheque hold letter (which also gave the appellant direction to complete and return the CPP form) on August 8, 2014;
 - relies on the experience and wisdom of her caregivers, who did not understand the importance of opening the correspondence; and
 - appreciate that her file has been reopened but does not think it is fair that she should have to cover her rent for the month of October.

Documents submitted after the reconsideration decision included:

1. Notice of Appeal signed and dated March 2, 2015 which states that the ministry did not consider the magnitude of the appellant's mental handicap and she should not be punished financially due her lack of awareness of the importance of the letter sent to her; and
2. Addendum to the Notice of Appeal dated March 5, 2015 which states that the original letter dated August 8, 2015 was never received.

At the hearing the appellant's advocate stated that:

- The appellant did not receive the letter sent to her by the ministry on August 8, 2014;
- No follow-up letter was sent to the appellant or a follow-up phone call;
- In December 2014 the landlord noticed that the appellant's shelter allowance was not submitted as rent since September 2014;
- The ministry should realize that she is not able to work, did not pay into CPP and therefore would not qualify for CPP;
- In general, others in her situation do not receive instruction to apply for CPP due to severe handicaps;
- Through no fault of her own, she is being penalized by the ministry.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which held that the appellant is not eligible for DA for the month of October 2014 for failing to comply with the ministry's direction for information and verification of eligibility pursuant to sections 10(1) (b) (e) and (4) of the EAPWDA, section 23(1)(a) of the EAPWDR and remained ineligible until she complied with the ministry's direction pursuant to section 28 (1) of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

EAPWDA provides as follows:

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.

(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.

EAPWDR provides as follows:

Effective date of eligibility

23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), 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

Consequences of failing to provide information or verification when directed

28 (1) For the purposes of section 10 (4) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

Appellant's Position

The appellant's position is that due to her severe disabilities she has not contributed to CPP and therefore would not qualify to receive the CPP benefit at age 60. This is something the ministry should have been aware of and should not have issued an information and verification letter to her on August 8th, 2014. She also argues that she did not receive the letter and that the ministry is unfairly penalizing her for its own error.

Ministry's Position

The ministry's position is that the appellant is ineligible for October 2014 benefits because she did not contact the ministry to request assistance until December 2014 and not receiving October benefits was not due to ministry error. Furthermore, since her October 2014 benefits were cancelled and file closed in November 2014, pursuant to section 23(1)(a) of EAPWDR, she is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

Panel Decision

Section 10 (b) and (e) of the EAPWDA state that the ministry can request, from a recipient or applicant, information or verification of information already provided in order to determine eligibility for DA, within the time and manner specified by the ministry. Section 10(4) of the EAPWDA states that if there is failure to comply with the ministry's direction, it may declare the recipient ineligible for DA for a prescribed period and section 28 of the EAPWDR states that the recipient will remain ineligible until he/she complies with the ministry's direction. Though it is the experience of the appellant's caregivers that those with similar disabilities are not normally requested to verify CPP information or apply for CPP, the panel notes that the ministry cannot make the assumption that the appellant did not contribute to CPP at any point of her life. The panel further notes that due to the appellant's severe mental disabilities, it is the responsibility of the her caregivers to assure her affairs are in order and to note that not only did her shelter support stop, but so did any other support she would have received. The panel finds the evidence establishes that the ministry reasonably concluded that the appellant failed to comply with its direction and was reasonable in declaring the appellant ineligible for DA until she complied with its direction.

Section 23(1)(a) of the EAPWDR states that a applicant is not eligible for DA until the first day of the month after the month in which the ministry designates the applicant as a person with disabilities and that the applicant becomes eligible for the portion of that month's shelter costs that remain unpaid on that date. The appellant argues that she should not have to pay her shelter costs for the month of October 2014 from her own savings and that she is being penalized by the ministry. The panel notes that due to a failure to comply with the ministry's direction, the appellant's file was closed in November 2014 and not reopened until December 2014 when she contacted the ministry. According to the legislation the appellant would then only qualify for a portion of the shelter costs for the month

of December 2014. However the ministry has provided complete shelter costs for November and December of 2014. The panel finds that the evidence establishes that the ministry reasonably concluded that the appellant is not eligible for DA for the month of October 2014.

Conclusion

The evidence establishes that the appellant has not met the reporting criteria set out in sections 10 (1) (b), (e) of the EAPWDA. The panel therefore finds that the ministry's decision to find the appellant ineligible for DA for October of 2014 pursuant to section 10 (4) of the EAPWDA and sections 23(1)(a) and 28(1) of the EAPWDR was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision.