

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated March 20, 2015 in which the ministry determined that the appellant was not eligible for \$120 of the \$350 she requested as a clothing supplement available to persons living in specified special care facilities because she did not satisfy the ministry that she had no funds available from her comforts allowance or other available resources as required by Section 50 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and because she failed to satisfy the ministry that she needed to replace all of the items specified in her request.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 50 (1)

PART E – Summary of Facts

The appellant is a recipient of disability assistance and resides in a special care facility. The evidence before the ministry at the time of reconsideration included:

- appellant's request for reconsideration received by the ministry March 16, 2015 to which was appended:
 - handwritten note from the appellant asking the ministry to come to her care facility to see what clothing she needs and confirming that she purchased 2 pairs of pyjamas, 2 tops, a jacket, underwear, a winter coat and winter boots, but she still requires \$120 to purchase shoes, runners, pants and tops;
 - March 1, 2013 letter to the ministry from the care facility director stating that the appellant resides in the care facility, receives only a monthly \$95 comforts allowance and needs a clothing allowance;
 - appellant's bank activity statement for the period January 3 – February 28, 2013;
 - adult care clothing allowance request in the prescribed form dated May 30, 2014 for clothing items totaling \$350;
 - appellant's bank activity statement for the period February 25 – April 30, 2014 showing monthly deposits of \$95 comforts allowance and quarterly GST rebate of \$105.16;
 - adult care clothing allowance request in the prescribed form dated November 2014 for clothing items totaling \$350, itemized as follows:
 - winter jacket \$70
 - winter boots \$60
 - socks \$15
 - underwear \$15
 - 4 shirts/sweaters @ \$20 = \$80
 - 4 pairs of pants @ \$20 = \$80

In her Notice of Appeal dated March 30, 2015 the appellant stated that in March she asked for \$350 for clothing. She walks everywhere and goes through shoes and clothes but received only \$230, and she does not understand why ten other residents received \$350 whose circumstances are no different. She added that she has a social worker to assist her with shopping, and can hand in receipts if needed.

At the hearing the special care facility client service facilitator ("D") testified that she takes the appellant shopping and that the appellant does not shop recklessly. D added that the appellant requires all of her \$95 comforts allowance and her GST rebate (\$105) received quarterly, approximately \$35 per month) to buy hygiene items, some medication and to attend eye appointments. Because she walks everywhere she needs to replace her shoes more frequently than others.

The panel finds that the oral evidence of the appellant is admissible as evidence in support of the information before the ministry at the time of reconsideration under EAA Section 22 (4) because it supports the appellant's statement in her request for reconsideration that she still requires shoes, runners, pants and tops.

The panel also finds that the oral evidence of D is not admissible as evidence in support of the information before the ministry at the time of reconsideration under EAA Section 22 (4) because it introduced new evidence that was not before the ministry at reconsideration concerning:

- details of the appellant's use of her comforts allowance and other available resources;
- the appellant's need for frequent footwear replacement because she walks everywhere .

The ministry relied on its reconsideration decision, which found that:

- on November 20, 2014 the ministry received the appellant's request for an adult care clothing allowance;
- on January 28, 2015 the appellant called the ministry about her request and advised that she was unable to utilize community resources due to health and mobility issues;
- on February 26, 2015 the ministry determined that the appellant was eligible for an adult care clothing allowance of \$230 pursuant to EAPWDR Section 50 (1) as a person in a specified adult care facility but did not satisfy the ministry that she required the additional \$120 she requested for clothing for the following reasons:
 - she did not provide information to demonstrate that she no longer had the pants, tops and shoes that she had purchased over the past 2 years;
 - items of the same type generally last more than 2 years;
 - she did not satisfy the ministry that she had insufficient resources available from her \$95 monthly comforts allowance and \$35 monthly GST rebate to purchase the clothing, or that her \$42.11 monthly cable television bill was an essential monthly expenditure.

At the hearing the ministry representative stated that the adult care clothing allowance is a discretionary supplement that is normally paid to eligible recipients twice each year, usually in the fall and spring, to a maximum of \$700 per year. He added that \$700 is the amount consistently paid to eligible recipients living in adult care facilities where clothing is not provided by the facility, but stated that there is no general policy and that the worker tries to make a reasonable decision that complies with the legislation.

The panel finds that the oral evidence of the ministry representative is not admissible under EAA Section 22 (4) as evidence in support of the information before the ministry at the time of reconsideration because it was not relevant to or corroborative of the information upon which the reconsideration officer made her decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of March 20, 2015 in which the ministry determined that the appellant was not eligible for \$120 of the \$350 she requested as a clothing supplement available to persons living in specified special care facilities because she did not satisfy the ministry that she had no funds available from her comforts allowance or other available resources as required by Section 50 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and because she failed to satisfy the ministry that she needed to replace all of the items specified in her request.

The relevant legislation is as follows:

EAPWDR:

Definitions

1 (1) In this regulation:

"**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);

Clothing supplement for people in specified special care facilities

50 (1) The minister may provide a supplement, for the purchase of necessary clothing, to a person with disabilities who is eligible for disability assistance and receives accommodation and care in a special care facility if

- (a) clothing is not provided in the facility,
- (b) there are no funds available from the recipient's comforts allowance to purchase the clothing, and
- (c) there are no resources available to the recipient's family unit to pay for the clothing.

The appellant argues that all of the items of clothing totaling \$350 that she requested on November 20, 2015 were necessary items and that she is unable to pay for them from her \$95 monthly comforts allowance and has no other resources. She adds that she walks everywhere and must replace her footwear frequently. She also argues that all but one of the other residents of her care facility received the usual \$350 semi-annual clothing allowance and she does not think it is fair that her allowance should be reduced by \$120.

The ministry argues that the appellant was not eligible for \$120 of the \$350 special care facility clothing allowance she requested in November 2014 because:

1. she failed to satisfy the ministry that her purchases were necessary because she no longer had the pants, tops and shoes that she had purchased over the past 2 years and that items of the same type generally last more than 2 years;
2. she did not satisfy the ministry that she had no funds available from her comforts allowance or

other available resources as required by EAPWDR Section 50 (1) because she failed to explain how she had spent the money she had withdrawn from her account and failed to show that her \$42.11 monthly cable television bill is an essential expenditure.

Panel Decision

EAPWDR Section 50(1) states that the ministry may provide a supplement for the purchase of necessary clothing to an eligible recipient of disability assistance living in a special care facility if

1. the clothing is necessary;
2. there are no funds available in the recipient's comfort allowance;
3. the recipient has no other available resources.

The amount of a supplement paid by the ministry under Section 50 (1) is within the discretion of the ministry.

In the reconsideration decision the ministry dealt with (2) the availability of comforts allowance funds and (3) other available resources as one determination.

1. Necessary Clothing

The appellant received \$200 from the ministry in 2013 to purchase pants, tops and runners and \$210 in spring 2014 for runners, sandals, 4 shirts, and 2 pairs of pants. In November 2014 she again requested pants totaling \$80 (4 pairs at \$20 each) and shirts/sweaters totaling \$80 (4 at \$20 each), but did not provide information to demonstrate that she had worn out or no longer had the similar items that she had purchased with her two previous clothing supplements. In her January 28, 2015 call to the ministry she told a ministry worker that she had health and mobility issues but in her Notice of Appeal the appellant stated that she needed to replace her footwear frequently because she walked everywhere. This contradictory statement made by the appellant in her Notice of Appeal was not before the ministry at reconsideration.

The panel therefore finds that on the evidence before the ministry at reconsideration the ministry reasonably determined that the appellant did not provide sufficient information to satisfy the ministry that she required all of the items she requested in her November 2014 clothing allowance request.

2 and 3. No Comforts Allowance Funds or Other Resources Available

The appellant receives \$95 per month comforts allowance and approximately \$35 per month GST rebate. Her bank account statement for the period February 25 – April 30, 2014 shows that she pays a \$4 monthly bank fee and \$42.11 for cable TV. This leaves available funds of approximately \$83 per month which amounts to almost \$500 over a six month period. Although it is reasonable for a care facility resident to spend some money on clothing, transportation and entertainment the appellant has provided no information to explain why she is unable to use any of these available funds for the purchase of clothing.

In conclusion the panel finds that the ministry decision to declare the appellant ineligible for \$120 of the \$350 special care facility clothing allowance she requested in November 2014 because she did not satisfy the ministry that her requested clothing purchases were necessary and that she had no resources available from her comforts allowance or from other resources was a reasonable application of the applicable enactment in the appellant's circumstances, and confirms the decision.