

PART C – Decision under Appeal

The decision under appeal is the June 29, 2015 reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) in which the Ministry determined the Appellant was not eligible for disability assistance in February and March 2015 or full support allowance in April 2015 because she did not provide the required information under Section 10 of the EAPWDA to determine eligibility for disability assistance (DA) until April and didn't reapply and get approved until April.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the Ministry at the time of reconsideration included the following:

- A R4R dated June 3, 2015 with a submission dated June 11, 2015 from the Appellant's Advocate that states the Appellant's arguments and that she also did not receive her December 2014 assistance and only part of her April 2015 assistance.
- A fax cover sheet dated March 17, 2015 which the Advocate notes he is having a great deal of problem communicating with the Appellant and the following doctor comments may explain why.
- A Disability Tax Credit Certificate which specifies the Appellant is markedly restricted in performing the mental functions for everyday life, that these restrictions are present all or substantially all of the time, and that the restrictions began in 2008. The effects of the impairment are described as impaired in decision making, judgement, making appropriate decisions and lacking in support. The diagnosis is chronic anxiety disorder with a delusional component.
- A letter and associated blank forms from the Ministry to the Appellant dated October 31, 2014 stating her file had been selected for review and asking her to submit 17 items of information and documents by November 14, 2014.
- A letter and associated bank statements from the Ministry to the Appellant dated January 9, 2015 stating the Appellant had not yet submitted the information requested in the October 31, 2014 letter and asking an explanation of the highlighted sections of her bank accounts and assets.

The Appellant's file had been open since June 2009. In September 2014 the Appellant advised the Ministry she had received \$9,000 from her parents as a gift, had not deposited it, but was holding it in cash and planning to use it as a down payment for a mortgage. Then the Appellant informed the Ministry she had not received it, she will receive it, that is was money to care for her father, and finally that she had received it but as a loan that must be paid back. The Ministry submitted an allegation for undeclared assets and October 31, 2014 a review of the Appellant's file by an investigative officer (IO) was commenced.

On November 19, 2014 the Appellant met the Ministry and the worker provided her with the letter and attachments from the IO and advised her to contact the IO with questions or concerns.

On December 3, 2014 the Appellant advised the IO that she was working on submitting the requested documents and that she had not received any money and it was all a misunderstanding.

On December 10, 2014 the Appellant submitted a letter stating her parents were alive and she had not received an inheritance.

On December 16, 2014 the Appellant submitted a bank profile stating no accounts or holdings. When confirming this information on January 9, 2015, the IO obtained statements of the Appellant's closed accounts indicating a number of deposits and activities totaling to over \$100,000 which is over her eligible asset level. The IO then turned the Appellant's cheque production off and sent a letter to the Appellant requesting an explanation about the banking activity by January 19, 2015. Information about reconsideration and appeal procedures were included.

On January 27, 2015 the IO received some information but still required the requested banking information.

On February 11, 2015 the Appellant and her Advocate met the IO and the list of outstanding documents were reviewed and they were told that the Appellant needed to explain the highlighted deposits and withdrawals and provided a current status of her assets and where the funds were held or how they were disbursed.

On February 19, 2015 the Appellant called the Ministry and requested shelter allowance. The Ministry referred her to the IO to sort out her outstanding eligibility concerns.

On February 23, 2015 the Appellant called the Ministry concerned about her eviction notice. The Ministry again referred her to the IO to sort out her outstanding eligibility concerns.

Some information was provided to the IO on February 27, however at a meeting with the Appellant and Advocate on March 3 the IO again requested the same information. The Appellant's file was auto closed on March 20, 2015 as no assistance was issued for two months because the cheque was turned off January 9, 2015, resulting in the Appellant receiving no assistance for February and March.

On March 27, 2015 the IO advised the Appellant that her file was closed and her eligibility for assistance still had not been determined. The Appellant was made aware that she had to re-apply for assistance and her eligibility would be determined once the documents requested were submitted.

On April 1, 2015 the Appellant, her son and her Advocate met with the IO with some of the requested documents which were reviewed. The IO again advised the Appellant that she would need to reapply for assistance and her current eligibility would be determined once the remaining documents were submitted.

On April 17, 2015 the Appellant re-applied for assistance and on April 22, 2015 she submitted the outstanding documents required to determine her eligibility. The Ministry determined the Appellant is eligible for disability assistance on April 23, 2015 and issued the Appellant pro-rated support and full shelter assistance for April 2015. The Appellant is currently receiving disability assistance as a sole recipient.

The Appellant states in her notice for appeal that she did not know she should have requested a reconsideration of the decision for February, March and April 2015.

The Appellant's Advocate in the August 10, 2015 submission states that the Appellant told the IO she was having great difficulty getting the requested information and that she had problems with both language and disability related issues. The Appellant has said she spoke with the Ministry on a couple of occasions in February and March of 2015 and that she told them she had no money and needed her disability assistance and at no time was she informed that her file would be closed or auto closed. The Appellant understood her February and March cheques would be released once the issues were resolved. The Advocate submitted the IO had the authority to keep her file open and the Appellant should not have been required to go through the application process and be subject to a partial payment in April 2015.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably determined the Appellant was not eligible for disability assistance in February and March 2015 or full support allowance in April 2015 as per Section 10 of the EAPWDA and Section 28 as well as Schedule A, Section 3 of the EAPWDR.

The following legislation applies to this appeal:

EAPWDA Section 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, 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.

(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 Section 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.

EAPWDR Schedule A Section 3

In the calendar month that contains the date of the applicant's submission of the application for disability assistance (part 2) form, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission.

The Appellant's argument refers to her eligibility for December 2014 DA. However, as the December 2014 eligibility was not part of the original decision, it was not subject to review with decision of appeal.

The Appellant argues she had great difficulty providing the documentation and understanding what was needed. She argues the Ministry failed to comprehend her situation, that she had every intention of cooperating and sought help from an Advocate. The Advocate was limited in the amount of assistance he could provide and had trouble communicating with the Appellant. The Appellant argues the Ministry has the discretion to release assistance while seeking information and verification, that she was not comfortable talking to the IO and that the Ministry could have acknowledged the challenges she was facing.

The Advocate argues that it was not reasonable for the Ministry to auto-close the Appellant's file without prior notification or discussion. Furthermore it was unreasonable for the Ministry to effectively deny the Appellant over two months of disability assistance.

The Ministry notes that the Appellant's request for reconsideration for the February, March and April 2015 assistance was not received until April 30, 2015 which is past the legislated limit of 20 business days. However, a review of the Appellant's file does not show that she was advised of this time limit, therefore a reconsideration decision was completed.

The Ministry argues the Appellant's recent and past banking activities involved cash asset amounts over her eligible asset limit while receiving disability assistance and therefore the requested information for the explanation of deposits and withdrawals was required for the purpose of determining and auditing her eligibility. The Appellant was notified and aware of the outstanding requested information since January 2015 and did not provide it until April 22, 2015. The Ministry can only act with discretion to provide assistance while seeking assistance only when pertaining to past eligibility, not current eligibility. In this case the information was needed to determine current eligibility. Furthermore, if a request for reconsideration of the Appellant's denial of assistance had been made at the time, a reconsideration supplement may be issued, however this option would still not make the Appellant eligible for disability assistance because the requested information to determine eligibility was still outstanding. Lastly, support is pro-rated from the eligibility date as per the EAPWDR, Schedule A, Section 3 and in this case the Appellant was determined eligible once again on April 23, 2015.

The Appellant's banking records involved cash assets in amounts over her asset limit during the period she was receiving disability assistance, therefore the Panel finds the Ministry reasonably determined that an explanation and verification of her current assets was necessary as per Section 10(1) of the EAPWDR.

The Ministry's review of the Appellant's file by an IO began on October 31, 2014 and on January 9, 2015 the IO obtained statements of the Appellant's closed accounts indicating amounts over her eligible asset level and turned off the Appellant's cheque production for February, 2015. The lack of an explanation and verification of asset levels did not make it possible for the Ministry to determine the Appellant's eligibility for disability assistance. The Panel finds the Ministry reasonably determined the Appellant ineligible as per Section 10(4) of the EAPWDR and stopped issuing DA cheques.

The Appellant and her Advocate were aware that the disability assistance was not received in February and they attended at least two appointments with the IO during the month to review outstanding information needed to establish the Appellant's eligibility. The outstanding information was still not submitted by March 27, 2015 when the Appellant was notified by the IO that her file had been auto-closed because she had not received assistance for 2 months. The Panel finds the Ministry reasonable determined the information continued to be lacking in order to determine the Appellant's eligibility as per Section 28 of the EAPWDR.

The Appellant submitted the outstanding requested information on April 22, 2015 and on April 23, 2015 the Ministry determined the Appellant eligible for disability assistance. The Panel finds the Ministry reasonable determined the Appellant eligible for a partial support payment for the month of April 2015 as per the EAPWDR, Schedule A, Section 3 which allows for prorated support based on the date of submission of the application for DA.

Accordingly, the Panel finds the Ministry's determination that the Appellant was not eligible for disability assistance in February and March 2015 or full support allowance in April 2015 was a reasonable application of the legislation in the circumstances of the Appellant. The Panel therefore confirms the Ministry's decision.