



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of December 01, 2015 wherein the ministry found the appellant not eligible to receive assistance that was deducted from her disability assistance because the appellant failed to notify the ministry of a change of circumstances that affected her disability assistance as required by section 11 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) and section 29 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), section 11
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 23(5), 29

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- 3 pages of the appellant's bank account dated 31Jan12.
- Memo from ministry to appellant dated May 1, 2012 with a hand written note stating, "Please come sign doc [document] with worker at office. The other information on the memo had been stroked out.
- Overpayment Notification to the appellant dated May 1, 2012 signed by the appellant and her advocate at the time on May 4, 2012;
- Fax transmission cover sheet dated May 4, 2012 from the former advocate to the ministry referencing an Overpayment Agreement. On the fax it states "If there is any concern regarding her (appellant) ongoing benefits or the attached repayment form please contact me directly."
- Ministry memo - Monthly Reporting Requirement: Procedures – clients with PWD (Persons with Disabilities) Designation: January 19, 2015;
- Computer printout in the name of the appellant covering the period from November 2014 to August 2015 indicating the following:

Date	shelter	Support	Oth	Maint	
Nov-14	553	858.83		180	1231.83
Dec-14	553	858.83	80	0	1491.83
Jan-15	553	858.83		0	1411.83
Feb-15	553	858.83		60	1351.83
Mar-15	553	858.83		60	1351.83
Apr-15	553	858.83		127.36	1284.47
May-15	553	858.83		105.28	1306.55
Jun-15	553	858.83		67.36	1344.47
Jul-15	553	858.83			1411.83
Aug-15	553	858.83			1411.83

- 2 pages from appellant's bank account dated 31May15 with a note, "I work delivering papers and Month of June 2015" written on the bank printout.
- Statement of Family Maintenance Enforcement Program (FMEP) Payments totaling \$2,626.23 that were disbursed to appellant covering the period January 2012 to May 2013.
- Payment Summary showing benefit month from Nov 2014 to June 2015, amount sent by FMEP and amount deducted by the ministry. The table shows that the amount deducted each month was \$321.91, with FMEP actual amounts ranging from \$0 (Nov and Dec 2014) to \$180.00

Benefit Month Client	Amount sent by FMEP	Amount Deducted by
2015-Jun-01	67.36	321.91
2015-May-01	105.28	321.91
2015-Apr-01	127.36	321.91
2015-Mar-01	60.00	321.91
2015-Feb-01	60.00	321.91
2015-Jan-01	0.00	321.91
2014-Dec-01	0.00	321.91
2014-Nov-01	180.00	321.91

-
- A ministry Administrative Error Underpayments Form dated October 1, 2015 in the appellant's name. Under Description of error that has occurred is the comment, "The client faces significant barriers completing her monthly report and she did not report her lower maintenance Income. This is a ministry error as this should have come up on the FM discrepancy report for the EAW (ministry worker) to adjust her Income accordingly. The amount of Eligible assistance was determined as per attached spreadsheet." The analysis covered the period from November 2014 through August 2015 and identified a "Net Underpayment" for each of those months of \$321.91.
 - 6 page submission from appellant's advocate with a 19 page Psycho-Vocational Assessment dated conducted on the appellant in March 2011.
 - Request for Reconsideration dated October 30, 2015.

The appellant has been a recipient of disability assistance since September 2011. In March 2012 the appellant declared family maintenance payments of \$321.91 and she has not submitted a Monthly Report to the ministry since that date to change that amount. In June 2015 the appellant's daughter turned 19 and was removed from her file and the appellant's disability assistance was adjusted accordingly. On June 24, 2015 the appellant received disability assistance for July of \$906.42 instead of \$1411.83 and \$321.91 family maintenance was deducted from her allowances. The appellant noticed the change in the amount of the disability assistance and contacted the ministry explaining that her daughter was still in school and the ministry adjusted the amount of disability assistance the appellant was eligible to receive and issued an adjustment cheque to reflect that the appellant was eligible to receive full disability benefit for a unit two - \$1414.99 for August 2015.

On July 20, 2015 the appellant requested the ministry review her file for an Administrative Underpayment because the ministry had been deducting about \$300 a month from her disability assistance for family maintenance payments when she was only receiving between \$60 and \$120 per month since August 2012 and further, because \$140.00 was deducted for earned income in June 2015 when she had only earned \$110.39.

On October 1, 2015 the ministry completed an Administrative Underpayment review and determined that on May 1, 2012 a letter was sent to the appellant requesting that she attend the local ministry office to complete an undated request for continued assistance report and to discuss with her how to declare her earnings in the future to avoid overpayments because of failing to accurately report her earnings. On May 4, 2012 the appellant's current advocate responded to the ministry advising if there were any concerns with her ongoing benefits to contact her advocate. The ministry concluded the appellant had an advocate willing to accommodate her with her requests for continued assistance.

The ministry was unable to determine her eligibility to discontinue deducting \$321.19 maintenance income until July 20, 2015 when the appellant reported the change through her advocate.

At the commencement of the hearing the appellant's advocate submitted the following document:

- A. A letter dated January 4, 2016 signed by the former advocate who assisted the appellant with an overpayment issue on or about May 4, 2012.

In the letter the former advocate states that he assisted the appellant with respect to a ministry's Overpayment Agreement and the note that was applied to her file. The appellant requested his assistance on or around May 4, 2012 to help her complete the Overpayment

Agreement. He states in the meeting of May 2012 the appellant told him that she did not understand the purpose or meaning of the overpayment but wanted to pay the full amount to avoid any further administrative hurdles. He continued, "I noted on the fax cover letter that should there be any concerns with ongoing benefits the ministry could contact me (him) directly". He continues, "The advocacy services are provided subject to internal merit assessment and on an on-going basis. It was not my role as the appellant's advocate to complete ongoing reporting on her behalf, apart from any contact initiated to my office by ministry staff pertaining to specifically to the overpayment agreement. Ministry staff made no effort to contact me regarding (sic) the appellant's file and I did not provide ongoing advocacy support to accommodate the entirety of her ministry involvement as is the practice of our office."

The ministry did not object to the panel receiving the letter.

The panel finds the letter further explains the former advocate's assistance to the appellant on or about May 4, 2012 and is in support of the record and information that was before the ministry at the time the Reconsideration decision was made. Therefore the panel finds the document is admissible as evidence under section 22(4) of the *Employment and Assistance Act*.

At the hearing the appellant's advocate provided an 8 page submission which re-states the appellant's circumstances surrounding the deduction of the family maintenance payment(s) she received from her monthly disability assistance and argument to support her position.

The panel finds the submission does not contain new evidence and will be considered as Argument.

The ministry relied on the facts stated in the Reconsideration decision.

The panel makes the following finding of fact, which the parties do not dispute:

1. There was an underpayment in the amount of disability assistance provided to the appellant from November 2014 through August 2015.
2. The appellant did not report the change in the amount of family assistance she received from November through August 2015 to the ministry until July 20, 2015.

PART F – Reasons for Panel Decision

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of December 01, 2015 wherein the ministry found the appellant not eligible to receive assistance that was deducted from her disability assistance because the appellant failed to notify the ministry of a change of circumstances that affected her disability assistance as required by section 11 of the EAPWDA and section 29 of the EAPWDR.

The legislation considered:

EAPWDA

Reporting obligations

Section 11

(1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

EAPWDR

Effective date of eligibility

Section 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 (B.C. Reg. 264/2013)

- (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, and
- (b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month’s shelter costs that remains unpaid on that date.

(1.1) A family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday

- (a) is eligible for disability assistance on that 18th birthday, and
- (b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month’s shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

- (a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant’s submission of the application for disability assistance (part 2) form,
- (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant’s submission of the application for disability assistance (part 2) form, but only for that portion of that month’s shelter costs that remains unpaid on the date of that submission, and
- (c) for disability assistance under section 6 to 9 of Schedule A on the date of the applicant’s application for disability assistance (part 2) form.

(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it. (B.C. Reg. 264/2013)

[]

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
- (b) the applicable of the dates referred to in section 72 of this regulation. (B.C. Reg. 264/2013)

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01). (B.C. Reg. 264/2013)

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
- (b) the applicable of the dates referred to in section 72 of this regulation. (B.C. Reg. 264/2013)

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11). (B.C. Reg. 340/2008) (B.C. Reg. 264/2013)

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

- (a) the date the family unit became eligible for disability assistance;
- (b) 12 calendar months before the date of payment.

(5) A family unit 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.

Monthly reporting requirement

Section 29

For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and (B.C. Reg. 332/2012)

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient.
- (v) any warrants as described in section 14.2 (1) of the Act. (B.C. Reg. 85/2012) (B.C. Reg. 335/2007)
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income; (B.C. Reg. 226/2014)
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month. (B.C. Reg. 226/2014)

Ministry's Position

The ministry's position is that it is the appellant's responsibility to report any changes to her income (family maintenance payments) as required in the EAPWDR legislation; that the ministry is unable to provide services of financial management to clients and if the client (appellant) needs assistance the ministry's expectation is that the client will ask for assistance or the assistance will be provided by a third party, i.e. family, friend or advocate. The ministry argued that in this case the note from the advocate on May 4, 2012 indicated that if there was a concern with the appellant's benefits that he (Ad-2) could be contacted directly. The ministry stated the legislation in the *Employment and Assistance For Persons with Disabilities Act* (EAPDWA) only addresses overpayments by the ministry and not underpayments to clients. The ministry stated the FMEP discrepancy report, which is not always reviewed, is only used as a tool to gather information, to ask questions but the report is not utilized to adjust the deductions of a client.

Appellant's Position

The appellant's position, as summarized in the conclusion of her advocate's submission at the hearing, is that the ministry had a 'duty to accommodate' the appellant because of the substantial cognitive barriers and severe challenges she faces with her disability in just carrying out basic activities. The advocate argued that the letter dated January 4, 2015 clearly states the assistance from the advocate in May 2012 was only to address an Overpayment issue and makes no reference to assisting the appellant with her monthly reporting requirements. The advocate argued the ministry had prior knowledge of the change in the maintenance payments received by the appellant through the family maintenance discrepancy report and did not act on that information.

Panel's Decision

Section 11 of the EAPWDA requires the appellant to report any changes to the ministry that will affect her eligibility for disability assistance. That fact that the appellant did not report any change in the amount of the family maintenance payments she received until July 20, 2015 is not in dispute. When the appellant noticed a change in the amount of disability assistance (in June 2015 eligibility changed from unit of two to a single unit) she was able and did contact the ministry to clarify the situation and had her eligibility changed back to a unit of two.

The advocate's argument is that it is the ministry's responsibility to assist the appellant (their client) in monitoring her income/deductions (the family maintenance payments) given the appellant's neurological assessment is not supported by the legislation. Section 11 EAPWDA states it is the recipient who must report information that may affect their eligibility. Section 29 EAPWDR states when the report must be submitted and the information requested.

The appellant makes an argument based on the Human Rights Code. Section 19.1 of the EAA states that section 46.3 of the Administrative Tribunals Act applies to the Tribunal and this section states that the Tribunal does not have the jurisdiction to apply the Human Rights Code.

The panel finds that the ministry's decision that the appellant was not eligible to receive assistance that was deducted from her disability assistance a reasonable application of the legislation because the appellant failed to notify the ministry of change of circumstances that affected her eligibility for disability assistance as per section 11(b) EAPWDA and section 29 EAPWDR.

Therefore, the panel confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.