

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 January 27, 2016, which held that pursuant to section 14.1(1) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), the appellant received assistance for which he was not eligible between January 2014 and August 2015, as a result of inaccurate or incomplete information provided by the appellant who failed to take the necessary steps to ensure the accuracy or completeness of the information. Consequently, in accordance with section 14.1(2) of the EAPWDA and section 28.1(a) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant's disability assistance will be reduced by \$25 for the next 3 calendar months.

PART D – Relevant Legislation

EAPWDA, section 14.1

EAPWDR, sections 28.1 and 29

PART E – Summary of Facts

From January 2014 through August 2015, the appellant received disability assistance as a single person family unit. During this time period, the appellant and “P” resided together with their minor child and both the appellant and “P” acknowledge a parental role for their child. Tenancy agreements for the shared accommodations during this period are included in the appeal record.

Ministry records record contact with the appellant as follows.

- March 2013 – the appellant contacted the ministry regarding a crisis supplement for furniture. The appellant had moved to residence “A” on February 1, 2013.
- No further contact was recorded until February 4, 2014.
- February 4, 2014 – the appellant was requested to provide confirmation of residence from July 2013 to January 2014 following the return of ministry correspondence in December 2013, and confirmation from the landlord of residence “A” that the appellant had abandoned the residence in July 2013.
- February 5, 2014 – the appellant submitted a Tenancy Agreement for residence “B”, effective July 1, 2013 and signed by the appellant and “P.” At that time, the appellant told the ministry that his relationship with “P” was as roommates only. The appellant was advised of the importance of reporting changes of circumstances in a timely manner.
- April 15, 2015 – the appellant requested a Special Transportation Subsidy.
- August 13, 2015 – the appellant requested to have “P” added to his file as a dependant.
- September 2, 2015 – the appellant stated he had been living with “P” for over a year. He stated that “P” was currently working and that she had a medical condition. The appellant was requested to provide required documents including current shelter information.
- September 3, 2015 – “P” and the appellant’s daughter were added to the appellant’s file as dependants.
- September 15, 2015 – the appellant stated that a certain ministry worker was aware that the appellant lived with “P” since June 2013 and that they had a child together. The appellant did not provide the name of the ministry worker.
- September 16, 2015 – the appellant submitted a copy of his current tenancy agreement, showing that he and “P” had resided at this residence since October 15, 2014. As the signature page was not included, the appellant provided copies of rent receipts. The appellant had not previously advised the ministry of the move from his previous residence.

The appellant’s evidence is that he had advised the ministry on several occasions about his living circumstances, including when he attended the ministry office in February 2014. He states that he was advised on each occasion that he was only eligible as a single person and the neither “P” nor his daughter could be added to his file as dependants as his daughter was in the direct care of “P.” The appellant states that he was not advised of the ministry definition of “dependant” and that if he had been made aware, he would have added them to his file which would have increased the amount of assistance he received.

Additional information submitted at reconsideration comprised a 10-page January 25, 2016 submission prepared by the appellant’s advocate, with attachments, including an “Underpayment

Chart” showing the amounts the appellant would have received if assistance had been provided for a 3-person family unit, and banking information for the appellant and “P.”

In his submission, the advocate provides the following information.

- February 2014 – when attending the ministry in person, the appellant advised that he was living with “P” and his daughter, and the he was not in a spousal relationship with “P.” The ministry advised that he would continue to receive assistance as a single recipient as their daughter was living under the direct care of “P.”
- In August 2015, “P” became ill and was subsequently hospitalized and was too ill to return to work and was without any form of income.
- September 3, 2015 – fearing possible eviction, the appellant attended the ministry office and requested that ministry staff attend the hospital to assess “P” for eligibility as a single income assistance recipient. This request was denied and the ministry advised that “P” would have to be added to his file in order for any income assistance to be issued as she was his dependant. This is the first time the appellant was advised by the ministry that his family unit was not in accurate standing with the ministry. The appellant reluctantly agreed to the change as he had no alternative way to ensure that his rent would be paid. The appellant disagreed that “P” was his dependant as he was unaware of the legislated definition.

Information provided on appeal

At the hearing, the appellant’s advocate stated that the appellant did not intentionally mislead the ministry, and reported information as best he could. The advocate provided a 7-page written submission comprised of information already before the ministry and argument.

The ministry relied on its reconsideration decision.

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PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision, that pursuant to section 14.1(1) of the EAPWDA, the appellant received assistance for which he was not eligible between January 2014 and August 2015, as a result of inaccurate or incomplete information provided by the appellant who failed to take the necessary steps to ensure the accuracy or completeness of the information and, in accordance with section 14.1(2) of the EAPWDA and section 28.1(a) of the EAPWDR is subject to a reduction in disability assistance of \$25 for the next 3 calendar months, was reasonably supported by the evidence or a reasonable application of the legislation.

Relevant Legislation

EAPWDA

Consequences for providing inaccurate or incomplete information

14.1 (1) The minister may take action under subsection (2) if the minister determines that

(a) disability assistance, hardship assistance or a supplement was provided to or for a family unit that was not eligible for it,

(b) the disability assistance, hardship assistance or supplement was provided to or for the family unit either

(i) on the basis of inaccurate or incomplete information provided by the applicant or recipient

(A) under section 10 (1) (e) [*information and verification*], or

(B) in a report under section 11 (1) [*reporting obligations*], or

(ii) because the recipient failed to report as required under section 11 (1), and

(c) in the minister's opinion, the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister.

(2) In the circumstances described in subsection (1), the minister may reduce the disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

(3) The periods prescribed for the purposes of subsection (2) may vary with the number of determinations made under subsection (1) in relation to a family unit.

EAPWDR

Consequences for providing inaccurate or incomplete information

28.1 If the minister determines under section 14.1 (1) of the Act that the minister may take action under section 14.1 (2) of the Act in relation to a family unit, the disability assistance or hardship assistance provided to or for the family unit may be reduced by \$25 for

(a) a first determination, for the next 3 calendar months for which disability assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month

(i) following the calendar month in which the minister made the determination, and

(ii) for which disability assistance or hardship assistance is provided to or for the family unit,

Monthly reporting requirement

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) 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.

(vi) the amount of earned income received by the family unit in the calendar month and the source of

that income;

(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.

Appellant's position

The appellant's position is that he had repeatedly advised the ministry that he lived with "P" and their daughter, and that he reported all information concerning his income and family unit accurately and to the best of his ability. As he supplied all of the information required of him, it is unreasonable to apply a sanction for providing inaccurate or incomplete information as the purpose of sanctions is to provide a disincentive to individuals who mislead the ministry to obtain benefits to which they are not entitled. In this case, the appellant actually received less assistance than he would have been eligible for as a 3-person family unit. The appellant rejects any finding on the part of the ministry that he intentionally failed to provide the ministry with accurate and complete information.

Ministry's position

The ministry argues that the evidence does not verify the appellant's assertion that he had notified the ministry on several occasions about living with "P" and their daughter, both of whom have been determined to be his dependants, as he was required to do pursuant to section 29 of the EAPWDR. Rather, ministry records indicate that between March 13, 2013 and August 13, 2015, there were only two occasions of contact. The first, in February 2014, was initiated by the ministry upon the return of undeliverable mail. During that contact, the appellant disclosed that he had been living with "P" since October 2013 as roommates but there was no mention of a baby noted on his file. The second contact, in April 2015, was initiated by the appellant who requested his Special Transportation Subsidy. There was no further contact until August 13, 2015 at which time his daughter and "P" were added to the appellant's file.

Consequently, the ministry determined that the appellant had received assistance for which he was not eligible. As a result, in accordance with section 14.1(1) and (2) of the EAPWDA, the ministry determined that because he received assistance for which he was not eligible based on inaccurate or incomplete information and failed to take steps necessary to ensure accuracy or completeness of the information, his disability assistance is to be reduced for the prescribed amount and prescribed period set out in section 28.1 of \$25 for the next 3 months.

Panel Decision

While the ministry's determination that the appellant had not complied with the reporting obligations set out in section 11 of the EAPWDA was upheld on appeal, the ministry's determination that the appellant received assistance for which he was not eligible was not upheld on appeal, on the basis that the ministry did not make its assessment in adherence with its legislative scheme and policy. The

consequences of section 14.1 of the EAPWDA arise only when the provision of inaccurate or incomplete information and failure to take steps necessary to ensure accuracy or completeness of the information have resulted in the receipt of assistance for which the person was not eligible. As the ministry has not yet assessed the appellant's eligibility for assistance in accordance with its legislative scheme and policy, the panel finds that the ministry unreasonably determined that the appellant's disability assistance be reduced by \$25 for 3 months as prescribed in section 28.1 of the EAPWDR.

In conclusion, the panel finds that the ministry's reconsideration decision to impose a 3-month sanction was not a reasonable application of the legislation in the appellant's circumstances. The reconsideration decision is rescinded in favour of the appellant.