

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 28, 2016 which denied the appellant's request for retroactive assistance as the appellant's eligibility for disability assistance commenced in December 2015, the date of her re-application for disability assistance, pursuant to Section 23(1.2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 23

*Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 3*

## PART E – Summary of Facts

The hearing had previously been adjourned to provide an opportunity for the appellant to find an advocate to represent her on the hearing. Although she had been unable to secure an advocate, the appellant stated that she was prepared to represent herself, with the assistance of two witnesses who attended the hearing to speak on her behalf.

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

- 1) Line of Credit (LOC) statement as of March 31, 2014 indicating a transfer of \$50,000 and an outstanding balance of over \$175,000;
- 2) Application for Disability Assistance (Part 2) dated December 14, 2015;
- 3) Copies of emails between the appellant's advocate and the ministry over the period November 26, 2015 through January 12, 2016; and,
- 4) Request for Reconsideration dated April 8, 2016 with an attached written submission by an advocate on behalf of the appellant.

In the Request for Reconsideration, the advocate wrote that:

- The ministry made an error and did not accommodate the appellant's disability.
- The appellant has a severe, extreme disability and she is unable to move in her home. She was unable to receive correspondence from the ministry via mail because she could not get outside to access her mailbox.
- The appellant does not have friends or family to assist her. Her benefits were reinstated in December 2015 with the assistance of the advocate.
- The appellant has a LOC which she was using to pay for expenses when she was cut off by the ministry. Of the amount of \$57,896.39, \$50,000 was taken by the appellant's cousin without the appellant's knowledge. The ministry accepted this explanation.
- The ministry did not pay benefits to the appellant for May 2015 to January 2016 and the appellant was forced into debt.
- The appellant cannot cash cheques because she cannot access her mailbox often and rarely gets to the bank.

### ***Additional information***

In her Notice of Appeal dated May 6, 2016, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that she and her advocate will address her concerns at the hearing.

At the hearing, one of the appellant's friends stated that:

- He has known the appellant since 2001 and he has seen that she has mobility issues.
- He does some grocery shopping for the appellant and sometimes gets in to deposit cheques for her.
- She lives in a 3-storey townhouse and he helped the appellant move her bedroom from the third floor to the main living room area because getting up and down the stairs became impossible for her.
- Recently, he moved her bedroom into the large kitchen area so she can easily get to the cooking facilities.
- He has seen that getting out to her doctor appointments was quite a problem for the appellant too. Getting around is difficult for her. He brought the appellant a second-hand wheelchair to help with her mobility on the one floor.

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- The appellant has been “on her own” for several years. She has no family support since both parents passed away several years ago.
  - The appellant’s cousin talked her into signing a LOC and, at this point, he has taken about \$180,000 from her. The cousin’s lawyer recently sent a letter to the appellant demanding that she sell her townhouse to pay off the balance of the LOC because he will not make any monthly payments.
  - The appellant also suffers from depression. He has seen letters and bills at the appellant’s place that have never been opened and some things get misplaced.
  - It does not surprise him that the two letters from the ministry “got lost in the shuffle” and that the appellant did not respond. Depression is a big problem for her.
  - He thought government cheques never get stale-dated.

At the hearing, the other friend of the appellant stated that:

- He talks to the appellant on the telephone several times per week.
- Mobility and health are both issues for the appellant. She is not able to do every day things around the home, even taking a bath or a shower.
- She has difficulty with meals and she is not able to do simple functions. She often orders in food from restaurants.
- Paying the bills is difficult and he has helped her with this. She is not able to do chores around the house or get things paid and this is not improving at all. Her condition is becoming more acute and she confronts difficulties on a daily basis. She is struggling to maintain a roof over her head.
- He encouraged the appellant to go to the bank manager to see if the issue of the LOC could be resolved and, if necessary, for the appellant to hire a lawyer.
- The problems with her cousin are putting extra pressure and anxiety on the appellant and this further burden is causing mental anguish. The additional funds will help the appellant resolve some of the past issues and help her emotionally
- The letter from her cousin’s lawyer indirectly puts pressure on her and the anxiety is building up.
- The appellant’s cousin drew down her LOC and spent the money. The appellant told him that she never exercised her LOC and accessed the money.

At the hearing, the appellant stated that:

- She needs help. She needs the stale-dated cheques replaced and she wishes they were never taken. Her cousin stole some money from her through her home equity LOC.
- She took out the LOC in January of 2014.
- The LOC is like a credit card and she does not have the money.
- On advice from the bank branch manager who said to “get the money out of there,” she transferred money from her LOC into her own bank account so that her cousin would no longer have access to it. The ministry misinterpreted that she actually had the money.
- She could not get to the bank to cash the cheques sent to her because she was in such physical anguish, and she needs them re-issued.
- Some of the postal boxes in her complex have been broken into and mail has been stolen.

The ministry relied on the reconsideration decision. The evidence of the ministry included the following information:

- The appellant has been a recipient of assistance since March 1997 and received Persons With

Disabilities (PWD) designation in September 2002.

- The appellant's was under review in the spring of 2015 because she had cashed several of her monthly disability assistance cheques at one time.
- As the appellant did not respond to the two letters sent to her on April 15, 2015 and June 19, 2015, requesting that she contact the ministry, the ministry closed the appellant's file in June 2015 and she was no longer eligible for disability assistance.
- Her last disability assistance cheque was for the month of April 2015.
- The appellant contacted the ministry in August 2015 and she was advised that she would need to re-apply for disability assistance.
- It was not until the interview on October 7, 2015 that the ministry was informed that the appellant was housebound.
- The bank statement provided by the appellant in October 2015 confirmed that the balance in the appellant's account was \$57,896.39, which the appellant explained had been transferred from her LOC.
- Since the asset limits under the EAPWDR were increased as of December 1, 2015, the ministry re-assessed the appellant's eligibility at that time.

***Admissibility of Additional Information***

The ministry raised an objection to the admissibility of the information about a letter received by the appellant regarding the LOC from the lawyer for the appellant's cousin. The panel admitted the oral testimony on behalf of the appellant as providing further detail of the appellant's circumstances as described at reconsideration and being in support of information that was before the ministry at reconsideration pursuant to Section 22(4) of the *Employment and Assistance Act*, but put little weight on references to the letter from the cousin's lawyer as it did not relate to the issues under appeal.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which denied the appellant's request for retroactive assistance as the appellant's eligibility for disability assistance commenced in December 2015, the date of her re-application for disability assistance, pursuant to Section 23(1.2) of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 3 of the EAPWDA provides:

### **Eligibility of family unit**

- 3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
  - (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Section 23 of the EAPWDR provides in part:

- 23(1) Subject to subsection (1.1), 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, 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) The 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 sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form. . . .

### *Appellant's position*

The appellant's position, as set out in the Request for Reconsideration and in her submissions at the hearing, is that she should be eligible for disability benefits retroactively to May 2015 because the ministry made an error and did not accommodate her disability. The appellant argued that she has a

severe, extreme disability and she is unable to move in or outside her home and, therefore, she was unable to receive correspondence from the ministry via mail because she could not get outside to access her mailbox. The appellant argued that she does not have friends or family to assist her. The appellant argued that the LOC is not an asset because it was only used to pay for expenses when she was cut off by the ministry and that \$50,000 of the total amount of \$57,896.39 was taken by the appellant's cousin without the appellant's knowledge and the ministry accepted this explanation. The appellant argued that the ministry forced her into debt by cutting her off PWD benefits she was rightfully entitled to. The appellant argued that the ministry did not pay benefits to the appellant for May 2015 to January 2016 and this is a significant amount of time not to have an income for someone with severe health conditions, no support and no mobility.

#### *Ministry's position*

The ministry's position is that the appellant's file with the ministry was closed in June 2015 due to no contact from the appellant and she did not re-establish her eligibility for disability assistance until December 2015, the date of her application for disability assistance, pursuant to Section 23(1.2) of the EAPWDR. When the appellant re-applied for disability assistance in October 2015, she was ineligible for disability assistance as she had over \$50,000 in her bank account at that time, which exceeded the asset limit set out in the legislation [Section 10(2) of the EAPWDR] at that time.

#### *Panel decision*

The advocate argued that the appellant should be eligible for benefits retroactively to May 2015 due to ministry error and/or the inability to accommodate the appellant's disability; however, the ministry's decision to close the appellant's file over a year ago is not the subject of this appeal. Although the advocate argued in the Request for Reconsideration dated April 8, 2016 that due to the appellant's severe, extreme disability she was unable to receive correspondence from the ministry via mail because she could not get outside to access her mailbox, the appellant did not appeal the ministry's decision to close her file in June 2015, which was due to no response having been received to the ministry letters sent in April and June 2015.

Once her file with the ministry was closed, the appellant was required to establish that she satisfied the continuing conditions of eligibility established under the EAPWDA [Section 3]. At the time the appellant was in contact with the ministry in October and November 2015, she had over \$50,000.00 in her bank account, which exceeded the allowable asset limit under the applicable legislation at the time [Section 10(2) of the EAPWDR]; the allowable asset limit was increased as of December 1, 2015. Section 23 of the EAPWDR stipulates that a family unit of an applicant for disability assistance who has been designated as a person with disabilities (PWD) becomes eligible for disability assistance under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form. There was no dispute that the appellant is designated as a PWD or that the date on the appellant's re-application for disability assistance (part 2) is December 14, 2015. Therefore, the panel finds that the ministry reasonably determined that the appellant's eligibility for disability assistance commenced in December 2015 according to Section 23(1.2) of the EAPWDR.

#### *Conclusion*

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the ministry's decision pursuant to Section 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*. Therefore, the appellant's appeal is unsuccessful.