

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (the ministry) dated 06 July 2016 that denied the appellant's request for backdated disability assistance for the months of February through April 2016. The ministry determined that, as the ministry was unable to determine her eligibility until 17 May 2016, under section 28(1) of the Employment and Assistance for Persons with Disabilities Regulation, her date of eligibility for disability assistance is 17 May 2016, with the initial amounts calculated pursuant to section 23(2.1) of the Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 10 and 11.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 23(5), 28(1) and 29.

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The information before the ministry at reconsideration consisted of the following:

1. The appellant is a sole recipient of disability assistance,
2. The following chronology, as set out in the ministry section of the appellant's Request for Reconsideration:
 - 08 December 2015: the appellant's disability for February 2016 was signaled to ensure she reported rental income from a trailer on her property. The ministry sent the appellant a letter reminding her to report rental income on her monthly stub.
 - 12 February 2016: the appellant's disability assistance cheque was cancelled as "uncalled for" and cheque the production was turned off because eligibility had not been established.
 - 19 March 2016: the appellant's file was auto closed due having no assistance issued to her for two cycles, in the appellant's case February and March cheques.
 - 25 April 2016: the appellant attended the ministry office to advise that her renter was leaving at the end of May. She was advised that her file was closed and that she would have to reapply if she wished to receive assistance.
 - 26 April 2016: the ministry noted the signal letter had been mailed to the appellant in December 2015. She advised that she was not made aware of what was happening.
 - 27 April 2016: the appellant applied for disability assistance.
 - 03 June 2016: the appellant signed the Application for Income/Disability Assistance Part 1 and Part 2. The appellant advised the Ministry that she did not receive notification that her February cheque would be held. She stated that she did not check her mail – that her mail goes to her son and daughter-in-law and they give to her. She did not check her bank account because her children manage it for her. She did not realize that they were taking money from their own accounts to cover her per portion of the mortgage. She now owes her children money for those months that she did not receive assistance.
 - [In the reconsideration decision, the ministry noted that on 01 June 2016 the appellant was issued pro-rated assistance for May and full assistance for June 2016.]
3. The appellant's Request for Reconsideration dated 21 June 2016. Under Reasons, the appellant writes:

"Because I did not receive Feb, March and April's cheques, I am behind on my bills and my cupboards are completely bare. A family friend needed a place to stay so my son [name] let him rent his trailer that is on our property. They put my name on the rent because I am still part owner of the house and property with my son. I am begging you to please

reconsider the denial for Feb, March and April so I can catch up on everything and not have so much stress.”

The appellant’s Notice of Appeal is dated 19 July 2016. Under Reasons for Appeal, she explains her position (See Part F, Reasons for Panel Decision, below),

The hearing

The appellant did not make a submission on appeal. In an email dated 18 August 2016, the ministry stated that its submission is the reconsideration summary provided in the Record of the Ministry Decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision, which denied the appellant's request for backdated disability assistance for the months of February through April 2016, was reasonable. More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant: as the ministry was unable to determine her eligibility until 17 May 2016, under section 28(1) of the Employment and Assistance for Persons with Disabilities Regulation, her date of eligibility for disability assistance is 17 May 2016, with the initial amounts calculated pursuant to section 23(2.1) of the Regulation.

The applicable legislation is from the following section of the *EAPWDA*:

Information and verification

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,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

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.

And from the following sections of the *EAPWDR*:

Effective date of eligibility

23 (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

Consequences of failing to provide information or verification when directed

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.

The positions of the parties

In the reconsideration decision, the ministry reviewing the relevant legislation:

- Under section 10 of the *EAPWDA*, for the purpose of auditing eligibility for assistance, the ministry may direct recipient to supply verification of any information supplied to or received by

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the minister if that information relates to the eligibility of the family unit; if the recipient fails to comply with the direction, the minister may declare the family unit ineligible for assistance for the prescribed period.

- Under section 28(1) of the EAPWDR, the prescribed period for which the recipient is ineligible for assistance lasts until the recipient complies with the direction to supply the information.
- Under section 11 of the *EAPWDA*, to be eligible for disability assistance, the family unit must submit a report to the Minister notifying of any changes or information that may affect the eligibility of the family unit. A recipient of disability assistance is not required to submit a monthly report unless there is a change in circumstances that affects eligibility.
- Under section 29 of the *EAWDR*, the recipient must report any changes in income by the fifth day of the calendar month following the calendar month in which the change occurred.

Referring to the need to report any change in income by the fifth day of the calendar month following the calendar month in which the change occurred, the ministry noted that if the appellant had received rental income in December, she was required to report that income on a stub for continued assistance by 05 January 2016. Had the appellant reported the change, the ministry would have removed the signal from her February disability assistance. When assistance cheques are directed to the ministry office on cheque issue, the ministry's computer system automatically sends out a letter advising the client that their assistance cheque is being held at the office and to contact the ministry for further information. The ministry noted that the appellant had advised that she never received the letter. The appellant's February assistance was cancelled because she failed to contact the ministry office to claim the cheque. The ministry did not close her file but turned cheque production off awaiting further contact from her. As per policy, disability assistance files systematically auto close when cheques have not been issued for two calendar months. As the appellant failed to contact the ministry and did not receive a cheque for February and March, the system automatically closed her file on 18 March 2016.

The ministry noted that the appellant reapplied for disability assistance and completed the Application for Disability Assistance Part 2 form and submitted all the necessary documents requested in order to determine her eligibility on 17 May 2016. Therefore the effective date of eligibility for disability assistance was 17 May 2016. The position of the ministry was that it was unable to determine her eligibility until 17 May 2016, on which date, pursuant to section 23(1.2) of the *EAPWDR*, she was eligible for, and was provided, pro-rated disability support effective 17 May 2016 and full shelter for May 2016.

The position of the appellant is explained in her Notice of Appeal. She writes that she didn't receive a letter or phone call – when she went into the ministry to see about orthotics they did not inform her she had been cut off. The camper is not hers but her son's. He was also the landlord of the fifth wheel he owned and another person rented from him through the ministry and there was no problem. She believes the mix-up came when the cheque was made out to both herself and her son, when it should have only had her son's name on it. She has had to drain the savings she had for her grandchildren to support herself. This was to be their graduation gifts and she had been putting \$10 per month in for them.

She still has not caught up with her bills. The stress of all this has just been too much.

The panel finds that the information provided by the appellant in her Notice of Appeal is in support of

the information before the ministry at reconsideration, as it tends to corroborate that provided by the appellant in her Request for Reconsideration. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*. The extent to which this information is relevant is discussed below.

Panel decision

The issue in this appeal is strictly limited to the reasonableness of the ministry's reconsideration decision to deny the appellant backdated disability assistance for the period during which the ministry determined she was not eligible for assistance – February through April 2016. While the appellant argues in her Notice of Appeal that she was not informed of the ministry placing a hold on her February cheque and that there was a “mix-up” in how the rental cheques were made out, the issue is **not**, as the appellant implies, the reasonableness of the ministry's original decision that she was ineligible for assistance for failure to provide information as directed by the ministry. That original decision is beyond the jurisdiction of the panel, as it is not the issue addressed in the reconsideration decision.

The legislation is clear: under section 10 of the *EAPWDA*, for the purpose of determining or auditing eligibility for income assistance, the minister may direct a recipient of disability assistance to supply the minister with information within the time and in the manner specified by the minister; if a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for income assistance for the prescribed period; under section 28(1) of the *EAPWDR*, the prescribed period lasts until the recipient complies with the direction to provide the required information. The evidence is that the appellant complied with the minister's direction on 17 May 2016, providing the information required to satisfy the ministry of her eligibility. It follows that the ministry was reasonable in finding that the appellant is not eligible for disability assistance for the period beginning from when she was declared ineligible until she provided the required information. From that point, section 23(1.2) applies, and she was eligible for pro-rated disability support effective 17 May 2016 and full shelter for May 2016.

Accordingly, the panel finds that the ministry's decision to deny the appellant backdated disability assistance for the period February through April 2016 was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.