



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) September 21, 2016 reconsideration decision denying the appellant [backdated] income assistance for December 2015, and January and February 2016 because she was not eligible for income assistance in December 2015 under section 3 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), and she failed to provide the information requested by the ministry under section 10.

PART D – Relevant Legislation

Employment and Assistance Act for Persons with Disabilities Act (EAPWDA) sections 3, 5, 10, 11.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 23, 28.

PART E – Summary of Facts

The appellant is a sole recipient of disability assistance.

In a letter dated June 29, 2016 the appellant's landlord states that the appellant has been paying \$300 per month for rent on behalf of her roommate from August 01-2015 to present.

In her September 7, 2016 request for reconsideration letter the appellant writes that in August 2015 she filled out her monthly report sheet incorrectly as she took on a roommate and claimed her roommate's portion of the rent as additional income. This contributed to her exceeding the Annual Earnings Exemption (AEE) of \$9600 and becoming ineligible for income assistance and her file being switched to MSO. The appellant contacted the Ministry in January 2016 to inquire about AEE and inform the ministry that her seasonal employment stopped. On February 5, 2016 it was determined that the \$300 was not actual income and should not have been declared as such. The appellant was requested to amend stubs for January and February to remove the \$300 roomer rent amount. The AEE was also reset back to \$9600 for January – December 2016. The appellant was provided with March assistance.

On July 29, 2016 the appellant submitted a letter from the landlord and a request for approval for a \$510.96 underpayment. The letter is stamped "Ministry of Social Development Jul 04 2016" Penticton, British Columbia".

On August 22, 2016 this request was denied.

The Panel finds the following fact:

"On February 19, 2016 the appellant's Annual Earnings Exemption (AEE) was reset for the year 2016. (Reset: \$9600 AEE applied to file to begin tracking earnings for January – December 2016)."

At the hearing the appellant said that she has always been mailing in her stubs every month. The appellant did not know of the cut-off when it occurred, she was not informed of it by the ministry. The ministry did not convey any urgency when they asked for the landlord letter. She thought the ministry would have her best interest at heart.

The ministry relied on its reconsideration decision and added the following information: There was no deadline given to the appellant when to provide the landlord letter, neither does legislation provide for a time line. Usually clients contact the ministry immediately after they find something unexpected in their assistance check. The ministry's computerized reporting system was not able to record and apply the appellant's information retroactively - it can only go back one month. Checks are computer generated; if a client reports in month A the check is released in month B for month C [A,B and C are consecutive months]. The ministry does not know if this is supported by legislation.

Pursuant to section 22(4) of the Employment and Assistance Act the panel admits the appellant's statements at the hearing as well as the ministry's additional information as being in support of the information that was before the ministry at reconsideration; these statements provide additional information on the appellant's communication with the ministry regarding her income assistance, and on the ministry's reporting system.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant [backdated] income assistance because she was not eligible for income assistance in December 2016 and because she failed to provide information requested by the ministry was a reasonable application of the legislation or reasonably supported by the evidence.

EAPWDA

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.

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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.

Reporting obligations

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.

EAPWDR

Effective date of eligibility

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

(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.

...

(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.

...

(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.

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.

Position of the parties

The appellant argues that she is entitled to receive backdated disability assistance because her income did not exceed the prescribed AEE limit: she had been mistakenly adding \$300 to her

monthly income sheet since August 2015 when in fact she was passing on these monthly amounts to her landlord because this was her roommate's rent; and because of this mistake her disability assistance was cut off. This mistake was later rectified when the ministry determined that the \$300 were not actual income and should not have been declared as such. When the ministry asked her to provide a letter from her landlord there was no urgency conveyed. Nevertheless, she provided that letter as soon as possible. She is disabled, requires assistance and thought the ministry would have her best interest at heart.

The ministry argues that it does not have the ability to backdate assistance if the appellant had not been determined eligible for it previously. When the appellant's AEE was exhausted she was no longer eligible for assistance; as a result was switched to MSO and did not receive benefits for December, January and February. This cut-off was due to the client's error, not the ministry's, and therefore no administrative underpayment occurred. While the ministry acknowledges that the appellant made initial contact for assistance the end of January and advised the ministry of the mix-up in February the appellant did not submit the required information until July. The ministry is unable to approve assistance for December in accordance with section 3 of the EAPWDA because the appellant did not request December assistance until February which is for a period prior to her eligibility being established and for a month prior to her request. The ministry is unable to approve assistance for January because she did not advise the ministry of the mix-up until February and confirmation from the landlord about her roomer income was not supplied until July. The ministry finds further that there was no ministry error for denying the appellant February assistance because the appellant's 2015 AEE apply to February 2016 benefits and the ministry did not have confirmation from the appellant's landlord as requested until July. As a result the appellant did not satisfy section 10 until July.

Further, the ministry is unable to provide assistance when the ministry's computerized reporting system does not record and apply the appellant's information. This system cannot enter information retroactively except for one month, and checks are computer generated. The ministry expects that clients contact the ministry immediately after they find something unexpected in their assistance check.

Panel decision

While the ministry argues that according to section 3 of the EAPDA it does not have the ability to backdate assistance if the appellant had not been determined eligible for it previously, the panel finds that there is evidence from ministry files that starting January 2016 the appellant was in fact eligible for disability assistance in January and February: "On February 19, 2016 the appellant's Annual Earnings Exemption (AEE) was reset for the year 2016. (Reset: \$9600 AEE applied to file to begin tracking earnings for January – December 2016)." As the appellant's file is active in January and February and there is no evidence of her having reached the \$9600 limit in either of these months it is unclear why the appellant did not receive income assistance for January and February.

Further, it is unclear why the ministry reinstated the appellant's eligibility back to January 2016 and not to December 2015 when the ministry had determined that the \$300 income declared since August

2015 was not actual income and should not have been declared as such.

Conclusion

The panel determines that the ministry's decision that the appellant was not eligible for income assistance for January and February was not reasonably supported by the evidence and was not a reasonable application of the applicable legislation in the circumstances of the appellant; in regards to the appellant's December 2015 assistance, the appellant's AEE limit had been exceeded and as a result the ministry reasonably determined that she was not eligible for December assistance. Therefore the panel rescinds the ministry's decision and the appellant is successful on appeal.