

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 27, 2016 in which the ministry determined that its denial of backdated shelter allowance is not subject to reconsideration under section 16(1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA). The ministry refused to reconsider its denial of the appellant's request for shelter allowance for October, November, and December 2015.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act - EAPWDA - sections 11 and 16

Employment and Assistance for Persons with Disabilities Regulation - section 23(2)

PART E – Summary of Facts

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

1. A Request for Reconsideration (RFR) signed by the appellant on April 1, 2016 with attached submissions:

(a) A letter from a provincial mental health case manager (the health authority) dated April 4, 2016 with the following information:

- On January 4, 2016, the manager of a social housing facility informed the health authority that the appellant had not paid rent since he moved into the facility on October 6, 2015. He was at risk for eviction, had been evicted from another facility previously, and is considered a “hard-to-house” client.
- On February 11, 2016, the health authority contacted the ministry on the appellant’s behalf (once it received his *Release of Information*) and reported that he owed \$1,875 in rent arrears and was at risk of eviction due to non-payment of rent.
- On October 6, 2015, the appellant had signed a ministry *Intent to Rent* form but due to his mental disabilities, not understanding the importance of the form, he neglected to submit it to the ministry. The ministry therefore listed him “as NFA” [no fixed address] and no shelter allowance was issued for 5 months. In addition, the society that operates the social housing facility “did not catch” the accounting error.
- The ministry agreed to pay the appellant’s rent for January and February 2016, but denied “back rent” for October - December 2015 and the society is still owed for 3 months of rent for October, November, and December 2015.
- Due to the appellant’s disability and his need for services from social housing staff, the ministry was not informed of his move in October 2016 [*sic*, the correct date is October 2015].
- The health authority is requesting “back rent” for October - December 2015 on the appellant’s behalf as “fair compensation” for his accommodation and care at the social housing facility during that period. The case manager writes that if the appellant were evicted, he would end up “street homeless” or in a shelter due to his inability to care for himself.

(b) A letter from the social housing facility’s building coordinator dated February 12, 2016. The letter confirms that the appellant has been a resident since October 6, 2015 and has not paid rent for the months of October, November, and December 2015 and January and February 2016, nor did the housing society receive a damage deposit for his suite. The total amount of rent owing is \$1,875 plus damage deposit of \$187.50.

(c) *Intent to Rent* form signed by the appellant and social housing facility manager on October 6, 2015. The rent is \$375 per month including utilities and a damage deposit of \$187.50 is required. The appellant authorizes the rent to be paid directly to the society that manages the facility.

(d) Case notes (17 pages) dated from October 6, 2015 to March 16, 2016, noting the appellant’s move to the social housing facility and non-payment of rent, and the ministry’s confirmation that it had not received the appellant’s *Intent to Rent* form.

- On February 11, 2016, the client’s address update was provided to the ministry.
- On February 19, 2016 the ministry indicated that rent payments for January, February, and March 2016 will be forwarded to the housing society, and back payments for October, November, and December 2015 must be approved at a managerial level.

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- On March 16, 2016, the ministry informed the writer that rent for these months has been denied.

2. Information from the ministry's record (*Reconsideration Decision* and *Decision to be Reconsidered*) indicating:

- The appellant is a single person with *Persons with Disabilities* (PWD) designation who requested reconsideration of the decision to deny him a shelter allowance for October, November, and December 2015.
- On September 9, 2015, the ministry received confirmation of the appellant being admitted to a group home effective September 9, 2015. Per diem for accommodation was approved.
- On October 15, 2015, the ministry received confirmation that the appellant was discharged from the group home effective October 6, 2015. His file was updated to PWD assistance with "no fixed address." The discharge document indicated that shelter was going to be maintained.
- On December 22, 2015, the ministry's "signal letter" came back as "Return to Sender". No signal was placed on the file because it was determined the appellant was in long term care.
- On February 3, 2016, the ministry received a *Release of Information* for rent payments for the social housing facility.
- On February 11, 2016, the health authority advised the ministry that the appellant had been living at the facility since October 6, 2015, that a shelter form had not been submitted, and that the appellant now owed rent incurred since October 2015.
- On February 12, 2016, the health authority confirmed the appellant owed \$1,875 for rent and \$187.50 for a security deposit.
- On February 15, 2016, the ministry issued shelter funds for the months of January and February 2016. A security deposit was not issued.
- On February 19, 2016, the health authority stated the appellant was provided with a shelter form to submit to the ministry but due to his disability, did not understand the importance of submitting the document.
- On March 2, 2016, the ministry denied the appellant's request and advised him of the decision. Upon review, the ministry noted the appellant was found eligible for PWD designation on September 10, 2014 due to a severe mental impairment; however, his request for shelter funds was denied on the basis that the appellant is not eligible for backdated disability assistance (DA) under section 11 of the EAPWDA and section 23(2) of the EAPWDR.
- On March 7, 2016, the ministry mailed the RFR to the appellant and he submitted it on April 4, 2016.

3. Copies of two *Admittance and Discharge* forms confirming the appellant's admission to the group home and discharge effective October 6, 2015.

Additional submissions

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an e-mail to the tribunal, the ministry indicated its submission on appeal will be the reconsideration summary. In his *Notice of Appeal* dated January 4, 2017 the appellant provides his submission on appeal which the panel accepts as argument in support his position at reconsideration, that he would like shelter funds for his rent arrears. The panel will consider the positions of both parties in *Part F - Reasons for Panel Decision*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of April 27, 2016 that denied the appellant reconsideration, under section 16 of the EAPWDA, of the ministry's decision to not provide funds for the appellant's October - December 2015 rent, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Legislation respecting reconsideration and appeal rights applies to the issue under appeal:

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a)** a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b)** a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c)** a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d)** a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e)** a decision respecting the conditions of an employment plan under section 9 [employment plan].

In addition, the ministry cites the following legislation as the basis for denying shelter allowance for October - December 2015:

EAPWDA

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

- (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 (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.

(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.

(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).

Positions of parties

The appellant argues that he deserves to be a recipient of shelter funds (for his outstanding rent) after being moved to the social housing facility and having to furnish his new home. The ministry's position is that the appellant is not entitled to reconsideration.

Panel's decision

Section 16(1) Of the EAPWDA sets out categories of decisions that the minister may reconsider. Subsections 16 (1)(a) to (e) stipulate that the specific decisions the minister may reconsider include a decision to refuse to provide disability assistance [ss. 16(1)(a)], a decision to discontinue assistance [ss. 16(1)(b)] and a decision that results in a reduction of assistance [ss. 16(1)(c)].

In analyzing whether the ministry reasonably determined that the decision to deny the appellant shelter funds is not one of the decision categories the ministry is authorized to reconsider under section 16 of the EAPWDA, the panel must consider whether the ministry's decision resulted in a refusal to provide disability assistance (DA) or a discontinuance or reduction of DA. The ministry argues that the appellant is currently receiving "full disability assistance" and therefore his request for reconsideration [of the decision to deny shelter funds for October-December 2015] is not in respect of a decision to "deny, discontinue, or reduce" his disability assistance as required under section 16(1) of the EAPWDA. The ministry argues that the legislation has no provision to provide backdated assistance and, therefore, no reconsideration of the matter will be conducted.

However, the evidence is that while the ministry provided "full DA" [consisting of both the support and shelter allowance] for January - March 2016, the ministry denied a shelter allowance for rent for the 3 month period requested by the appellant: October - December 2015. The panel determines that the ministry's decision to deny shelter funds for rent for a 3 month period "results in a refusal to provide disability assistance" under subsection 16(1)(a) of the EAPWDA.

In regards to the ministry's argument that there is no provision in the legislation to provide backdated assistance, the evidence is that the original decision of March 2, 2016 denied shelter funds for rent for October - December 2015 under section 11 of the EAPWDA and section 23 of the EAPWDR. Section 11 sets out the requirement for changes in the client's circumstances/information to be reported to the ministry within the time limits specified in the Regulation, and section 23 of the EAPWDR states that [subject to other subsections], 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.

Given that the ministry made a decision to deny shelter allowance for a 3 month period, the panel finds that the ministry's refusal to offer reconsideration was an unreasonable application of the legislation in the circumstances of the appellant and rescinds the decision in accordance with section 24(2)(b) of the *Employment and Assistance Act*. The panel sends the matter back to the minister for a decision as to the amount.