

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) Reconsideration Decision dated February 17, 2017, which denied the Appellant's request for a supplement to cover the cost of transportation and living costs to attend a hearing in another community because the Ministry found that the request did not meet the criteria listed in Section 55(2)(g) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the Ministry determined that the transportation and living costs did not result from the Appellant's required attendance at a hearing or requirements that the Appellant must fulfil in connection with the exercise of a maintenance right assigned to the Minister.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 17 and 55

PART E – Summary of Facts

The Appellant is a single parent in receipt of Persons with Disabilities (PWD) assistance.

The evidence before the Ministry at the time of the Reconsideration Decision included:

- 1) Scheduling Notice dated November 18, 2016 for a hearing to be held on November 25, 2016 under the *Family Maintenance Enforcement Act* in the Law Courts located in another BC community; and,
- 2) Request for Reconsideration dated February 24, 2017.

In her Request for Reconsideration the Appellant wrote that she has never received written notice that her rights were not assigned to the Ministry because she had moved and her house was destroyed, and as a result the letter notifying her that her rights were no longer assigned was returned to the Ministry. In addition, she indicated that her previous appeal was successful.

Additional Information

In her Notice of Appeal dated February 27, 2017, the Appellant wrote that she had won her previous appeal. The panel accepted the information in the Notice of Appeal as argument.

The Appellant did not attend the hearing. After confirming that the Appellant was notified of the hearing, the hearing proceeded in her absence in accordance with section 86(b) of the Employment and Assistance Regulation.

The Ministry did not submit any additional written evidence at the hearing.

In its Reconsideration Decision, the Ministry provided a summary of the results of a January 6, 2017 Employment and Assistance Appeal Tribunal (EAAT) appeal hearing relating to the Ministry's earlier Reconsideration Decision denying the Appellant a transportation and living cost supplement to attend a November 25, 2016 hearing. Following the earlier EAAT appeal hearing, the EAAT had provided a written decision in which it determined that the Ministry's Reconsideration Decision was not a reasonable application of the applicable legislation because it did not address the section of the EAPWDR which provides for transportation cost or living cost supplements if prescribed criteria are met. The Ministry then reviewed the Appellant's request and made a new Reconsideration Decision on February 17, 2017 which again denied the Appellant transportation and living costs for the above-noted November 25, 2016 hearing. The subject of this appeal is the Ministry's February 17, 2017 Reconsideration Decision.

In its Reconsideration Decision, the Ministry also explained that Section 55(2)(g) of the EAPWDR states that a supplement may be provided for transportation costs and living costs that result from an eligible applicant's required attendance at a hearing or that result from other requirements of an eligible applicant to fulfil in connection with the exercise of a maintenance right assigned to the Ministry under Section 17 of the EAPWDR. The Ministry argues that the Appellant is eligible for consideration because it was satisfied that she met the following eligibility requirements as set out under Section 55(3) of the EAPWDR when she applied for the transportation and living cost supplement: her family unit was in receipt of disability benefits, there were no resources available to

the family unit to cover the transportation or living costs, and the Appellant had sought the Ministry's approval before incurring those costs. However, the Ministry determined that the Appellant was not eligible for transportation and living costs because she had provided no evidence to show that her attendance was required at the hearing or that her presence was required to fulfil a requirement in connection with the exercise of a maintenance right. In addition, the Ministry said in the Reconsideration Decision that the Appellant's assignment of maintenance rights was terminated on June 25, 2016 pursuant to Section 17 of the EAPWDR.

At the hearing, the Ministry relied on its Reconsideration Decision and explained that the reference in the Reconsideration Decision to June 25, 2016 as the date that the Appellant's assignment of maintenance rights were terminated was a typographical error as the actual date was June 25, 2015.

The Ministry stated that prior to June 2015, all family units applying for income assistance that included a dependent child were required to assign maintenance rights to the Ministry as a condition of receiving assistance. The legislation was amended in May 2015 and effective June 2015 all clients who had previously assigned maintenance rights to the Ministry had the assignment terminated, and, if he or she met certain conditions, including one which required that there be no existing court order with respect to child maintenance currently in effect, the client could voluntarily reassign maintenance rights to the Ministry. If a current court order was in effect and maintenance payments were in arrears, the client would be represented by the Family Maintenance Enforcement Program (FMEP), which is a program managed by a different ministry of the Provincial Government (Ministry of Justice). The Ministry also confirmed that the Appellant had a court order which was currently in effect, and, as the hearing in question was a default hearing in relation to a pre-existing court order, the Appellant was not in a position to reassign her maintenance rights.

The Ministry also emphasized that it had no evidence that the Appellant was required to attend the default hearing. The Ministry explained that clients were very rarely require to attend default hearings. Where FMEP, as the client's representative, did require that a client attend, the client would be advised of this in writing, and if the court required the client's attendance, a summons would be issued.

Regarding the Appellant's argument that she had not received notice of the termination of the assignment of her maintenance rights by the Ministry in June 2015, the Ministry stated that a computer-generated form letter was sent in June, 2015 to all clients who had assigned the Ministry their maintenance rights advising them of the termination of that assignment, but acknowledged that a copy of that letter which purportedly went to the Appellant in June 2015 was not in the appeal package and the Ministry did not present a copy of that letter at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which denied the Appellant's request for a supplement to cover the transportation and living costs required to attend a family maintenance enforcement hearing as the Ministry found that the request did not meet the legislated requirement of Section 55(2)(g) of the EAPWDR, was a reasonable application of the applicable legislation in the circumstances of the Appellant, or was reasonably supported by the evidence.

The criteria that must be met for the Ministry to provide a transportation cost supplement are as follows:

EAPWDA

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.

EAPWDR

Assignment of maintenance rights

- 17** (1) A ... recipient who has ... a maintenance right ... for a dependant may, with the consent of the minister, assign the maintenance right to the minister.
- (2) An assignment under this section is terminated if ...
- (b) the minister or the assignor delivers written notice to the other of the termination.

Supplements for moving, transportation and living costs

55 (1) In this section:

"living cost" means the cost of accommodation and meals; ...

"transportation cost" means the cost of travelling from one place to another.

(2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance ... to assist with one or more of the following: ...

(g) transportation costs, living costs, child care costs and fees resulting from

(i) the required attendance of a recipient in the family unit at a hearing, or

(ii) other requirements a recipient in the family unit must fulfil

in connection with the exercise of a maintenance right assigned to the minister under section 17 [*assignment of maintenance rights*].

(3) A family unit is eligible for a supplement under this section only if

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- (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
 - (b) a recipient in the family unit receives the minister's approval before incurring those costs.

(4) A supplement may be provided under this section only to assist with

- (a) the cost of the least expensive appropriate mode of ... transportation, and
- (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate living costs.

Appellant's Position

The Appellant's position is that she was required to attend the hearing because she was not notified that her maintenance rights were no longer assigned to the Ministry and that she had won her previous appeal.

Ministry's Position

The Ministry's position is that no evidence has been submitted to indicate that the Appellant's attendance was required at the default hearing and that the assignment of the Appellant's maintenance rights was terminated in June 2015.

Panel Decision

Section 5 of the EAPWDA says that the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it. As the Appellant is receiving disability assistance, the panel finds that she may be provided with a transportation cost and a living cost supplement provided the criteria set out in Section 55 of the EAPWDR be met.

Section 55(4) of the EAPWDR states that a supplement may be provided under Section 55 only to assist with the cost of the least expensive appropriate mode of transportation costs and the least expensive appropriate living costs. The Ministry has determined that the transportation and living cost supplements applied for by the Appellant in this instance are the least expensive appropriate costs.

Section 55(3) of the EAPWDR states that a family unit is eligible for a supplement under Section 55 only if there are no resources available to the family unit to cover the costs for which the supplement may be provided, and a recipient in the family unit receives the minister's approval before incurring those costs. The Ministry has determined that there are no resources available to the family unit to cover the transportation costs and living costs, and that the Appellant received the minister's approval before incurring those costs.

Section 55(2) of the EAPWDR states that, provided the conditions set out in Section 55(3) and (4) are met, the Ministry may provide a supplement to a family unit that is eligible for disability assistance to assist with transportation costs or living costs resulting from the required attendance of a recipient in the family unit at a hearing in connection with the exercise of a maintenance right assigned to the minister under EAPWDR Section 17, or for other requirements a recipient in the family unit must fulfil, also in connection with the exercise of a maintenance right assigned to the minister under EAPWDR Section 17.

Section 17 of the EAPWDR states that a recipient who has a maintenance right for a dependant may, with the consent of the Ministry, assign the maintenance right to the Ministry, but that an assignment under Section 17 is terminated if the Ministry delivers written notice of the termination to the assignor. The Ministry states that the Ministry had delivered written notice of the termination of assignment rights to the assignor (in this case, the Appellant) on or about June 25, 2015, but could not provide written evidence of this. The Appellant states that she did not receive written notice of the termination of assignment rights. The panel finds that there is insufficient evidence to support the Ministry's contention that the Ministry delivered written notice of the termination of assignment rights to the Appellant.

With respect to the provisions under Section 55(2) that restricts the payment of a supplement for transportation costs or living costs to circumstance under which the recipient is required to attend a hearing or any other requirements a recipient must fulfil in connection with assigned maintenance rights, the Appellant argues that she had to attend the default hearing but did not provide any written evidence, such as a letter from FMEP or a court summons naming her as a party required to attend the hearing, to support her claim. The panel finds that the Ministry reasonably concluded that there is no evidence to indicate that the Appellant's attendance was required at the default hearing, or that there were any other requirements that the Appellant must fulfil in connection with the exercise of a maintenance right assigned to the minister under Section 17. Therefore the panel finds that the requirements of EMPWDR Section 55(2)(g)(i) and (ii) were not met.

With respect to the Appellant's argument that she won her previous appeal, Section 24(1) of the *Employment and Assistance Act* states that a panel must determine whether the decision being appealed is, as applicable, reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The panel notes that the decision being appealed in this case is the above-noted Reconsideration Decision dated February 17, 2017, and finds that the panel's decision under the previous appeal has no bearing on its decision under this appeal.

Conclusion

The panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore the panel confirms the decision and the Appellant is not successful in her appeal.