

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 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) Undated Payment Summary Form showing payments in arrears since March 18, 2008 totalling \$33,995.85, including default fees;
- 2) Request for Non-local Medical Transportation Assistance Form (NMTAF) in the name of the Appellant dated January 23, 2017 requesting an unspecified amount to cover the cost of travel by personal vehicle from the Appellant's community to another community in British Columbia; and,
- 3) Request for Reconsideration dated February 24, 2017.

In her Request for Reconsideration the Appellant wrote that the reason for attending court is to obtain a new court order, and that her previous appeal was successful. In addition, she explained that she is a party to the proceedings and has a responsibility to fulfil her duties. She also stated that she has not received notice or a letter that her benefits were not being assigned and that she had moved, her home was demolished and the letter was returned to the Ministry.

Additional Information

In her Notice of Appeal dated February 27, 2017, the Appellant wrote that she had attended and won her appeal.

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 explained that Section 55(2)(g) of the EAPWDR states that a transportation supplement may be provided for transportation 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 further stated that the Appellant had requested that the Ministry provide a transportation cost supplement to attend a default hearing in another community regarding arrears related to ongoing maintenance payments and default fees.

The Ministry argued that the Appellant is eligible for an assessment for a transportation supplement because it was satisfied that she met the eligibility requirements as set out under Section 55(3) of the EAPWDR when she applied for the supplement, specifically: 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 also stated that the hearing that the Appellant had requested assistance in attending was a default hearing between the Family Maintenance Enforcement Program (FMEP) and

the Appellant's ex-spouse. As the Appellant's maintenance order is enrolled with FMEP, FMEP acts as the Appellant's agent to fulfil any requirements in enforcing the maintenance order. 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 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 prospective clients for income assistance that included a dependent child within the family unit 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 the client 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 FMEP, which was a program managed by a different ministry of the Provincial Government (the Ministry of Justice). The Ministry also confirmed that the Appellant had a court order that 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 required to attend default hearings. Where FMEP, as the client 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 by the court.

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 could not present a copy of that letter at the hearing.

In response to a question from the panel as to why the Appellant had completed an NMTAF for a transportation cost supplement, the Ministry explained that normally a transportation cost supplement is applied for without completing a form because a form for that purpose does not exist, but could not explain why the Appellant had completed the NMTAF in this instance.

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:

... **"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 ... 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
- (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 ...

Appellant's Position

The Appellant's position is that she was required to attend the hearing, that she was not notified that her maintenance rights were no longer assigned, 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 hearing to address a new court order 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 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. The Ministry has determined that the transportation costs supplement 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 a recipient in the family unit 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 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, 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 Reconsideration Decision dated February 17, 2017, and finds that the previous panel's decision under the previous appeal has no bearing on the panel's 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.