

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 5 July 2017, in which the minister determined that the appellant is required to repay assistance he was not eligible to receive, pursuant to Section 18 of the EAPWDA, as a result of:

The minister determining that, in accordance with section 15 of the Employment and Assistance for Persons with Disabilities Regulation, the appellant was not eligible for assistance he had received when he was outside of British Columbia for more than a total of 30 days in the year.

The minister determining that, in accordance with Schedule A, section 4(2) of the Employment and Assistance for Persons with Disabilities Regulation, the appellant was not eligible for the shelter allowances he received from November 2013 when he left his previous residence and his actual shelter costs could not be determined.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA) – section 18

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 15 & 24, Schedule A, section 4

## PART E – Summary of Facts

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

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

- The appellant is a sole recipient of disability assistance.
- An annual eligibility review of the appellant's file commenced in August 2016.
- In September 2016 the appellant confirmed had not lived at his former address since November 2013.
- The shelter portion of the appellant's assistance was discontinued from October 2016 to May 2017, when he provided shelter costs for his current residence.
- In October 2016 the appellant confirmed that he spends December to April outside of Canada and provided copies of his passport confirming dates he had been outside of BC.
- Photocopies of the appellant's passport pages, reflecting the dates of his exit and/or return to Canada from November 2013 to April 2016.
- A letter dated 18 November 2016 to the appellant from a ministry investigative officer outlining the consequences of the assessed overpayment and detailing the appellant's ability to request reconsideration of the overpayment assessment.
- Ministry overpayment chart, containing calculations of the appellant's assistance eligibility and overpayments from December 2013 to June 2016.
- On November 18, 2016 the appellant informed the ministry he would be leaving Canada for the winter. The appellant was advised he was not eligible for further assistance and his file was closed.
- The appellant returned to BC in April 2017 and his eligibility for assistance was established. Repayment of the overpayment amount commenced with his May 2017 assistance.
- A **Request for Reconsideration** (RFR) dated 22 June 2017, signed by the appellant.
- Included with the RFR was a 1-page letter from the appellant explaining that he has travelled outside of Canada every winter since 2012 and upon his return collected funds that had been deposited into his account. He stated that he has lived in Canada since 1985 and did not collect any social assistance until 2012. He explained that he was unfamiliar with the system and unaware of the rules. He stated that he has difficulties with comprehending government rules due to a language barrier because English is his second language and the staff at the ministry had not taken the time to explain the rules to him. He argued that he had made an honest mistake in not reporting his time out of the province and asked that the amount he owed be reduced or eliminated, as it constitutes a significant financial burden for him. He also stated that he has been paying rent informally to acquaintances with whom he has lived since November 2013 and has not been issued receipts.

### Notice of Appeal

In his Notice of Appeal dated 24 July 2017, the appellant gives as Reasons for Appeal: *I made an involuntary mistake as I was not aware of ministry rules in regards to overpayments.*

With his Notice of Appeal the appellant submitted:

- A 1-page letter dated 24 July 2017, of which he is the author. The letter contains the same content as the letter submitted with the RFR with the addition of one passage, which states the following:  
*I go to [another country] every year, because the weather makes it very painful for me to stay in [BC city of residence]. Please find attached a note from my family doctor who confirms that*

*in order to better deal with pain associated with my medical conditions including arthritis and hepatitis C, is beneficial for me to be staying in [another country] during winter months.*

- A 1-page letter dated 18 July 2017, from a medical doctor, which stated: [Appellant] *feels he is unable to stay in [BC city of residence] because the cold and damp weather makes his arthritis and fatigue from hepatitis C unbearable.*

### **Appeal Submissions**

The appellant resubmitted his Notice of Appeal, 1-page letter dated 24 July 2017 and 1-page doctor's letter dated 18 July 2017.

The ministry indicated that its submission would be the reconsideration summary.

### **Admissibility**

The panel finds that the information contained in the Notice of Appeal is a reiteration of the appellant's argument at reconsideration that he was not aware of the rules and has made a mistake. The panel therefore admits this information in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel finds that the content of the added passage in the appellant's 24 July letter relates to his reasons for leaving British Columbia and is not in support of the information and records before the minister at reconsideration and does not speak to the issues in this appeal. The panel finds that this information is not admissible in accordance with section 22(4) of the *Employment and Assistance Act*. The panel finds that the balance of the 28 July letter was before the ministry at reconsideration and admits this information in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel finds that the content of the 18 July letter from the appellant's doctor also relates to the appellant's reasons for leaving British Columbia and is not in support of the information and records before the ministry at reconsideration and is not relevant to the issues in this appeal, thus it is not admissible in accordance with section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision, which determined that the appellant is required to repay assistance he was not eligible to receive, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Specifically, the panel must assess the reasonableness of the following ministry determinations:

- The appellant was not eligible for assistance he had received during several periods of between 2013 and 2016 when he was outside of British Columbia.
- The appellant was not eligible for the shelter allowances he received from November 2013 when he left his previous residence and his actual shelter costs could not be determined.

The following sections of the EAPWDA apply to this appeal:

### **Overpayments**

**18** (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 [*reconsideration and appeal rights*].

The following sections of the EAPWDR apply to this appeal:

### **Effect of recipient being absent from BC for more than 30 days**

**15** The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

### **Amount of disability assistance**

**24** Subject to section 24.1 (3), disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

### **Schedule A**

**4** (1) For the purposes of this section:

"**family unit**" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"**warrant**" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

*Absence from BC*

Section 15 of the EAPWDR states that a recipient of assistance who is outside of BC for more than 30 days in a year ceases to be eligible for assistance unless the minister has given prior authorization for continuation of assistance. The ministry determined that the appellant was absent from BC in excess of 30 days for 3 different years and has made eligibility findings for those absence periods. The panel notes that the appellant has not disputed the accuracy or correctness of the ministry's determination as to travel dates and corresponding ineligibility. Rather, he argues that he was unfamiliar with the applicable rules due to a language barrier and ministry staff did not explain the rules to him.

The ministry determined that the appellant was absent from BC from November 26, 2013 to January 20, 2014 and, therefore, found the appellant ineligible for assistance for December 2013 and the first 20 days of January 2014. The appellant does not dispute that he was outside of BC during this period of time. The panel notes that the stamps in the appellant's passport reflect these dates of departure and return and finds the ministry's determination that the appellant ineligible for assistance for December 2013 and the first 20 days of January 2014 is reasonable.

The ministry was unable to determine the date of the appellant's departure in 2014/2015 and found his return date to be February 24, 2015. In the reconsideration decision, the ministry states that it found the appellant ineligible for assistance for January 2015 and the first 24 days of February 2015. The appellant does not dispute this assessment of the dates that he was ineligible due to being outside of BC during this period and acknowledged in his RFR that he has travelled outside British Columbia for every winter season since 2012. However, the panel notes that original decision summary and the ministry's overpayment chart reflect a finding of ineligibility for the first 24 days of February 2015 only and not for January 2015. The panel concludes that there is an error in the reconsideration decision summary but finds that the ministry's determination of ineligibility for the first 24 days of February 2015 was reasonable and notes that the stamp in the appellant's passport reflects February 24, 2015 as the appellant's date of return.

The ministry determined that the appellant was absent from BC from January 21, 2016 until April 23, 2016 and, therefore, found the appellant ineligible for assistance from March 1, 2016 to April 24, 2016. The appellant does not dispute that he was outside of BC during this time. The panel notes that the stamps in the appellant's passport reflect these dates of departure and return and finds the ministry's determination that the appellant ineligible for assistance from March 1 2016 to April 24, 2016 is reasonable.

### Shelter Allowance

Schedule A, section 4(2) of the EAPWDR sets out the monthly shelter allowance, for a family unit size of 1 person, as the smaller of the family unit's actual shelter costs and \$375.

The ministry found that the appellant had been issued the maximum shelter cost of \$375 for his former residence from July 2013 to October 2016 but had left his former residence in November 2013 and had not submitted new shelter information. The appellant submitted at reconsideration that he had paid rent on an informal basis but did not have receipts for verification. The ministry concluded that the appellant was not eligible for shelter allowance from November 2013 to October 2016.

The panel notes that the appellant has argued at reconsideration and on appeal that he did pay rent on an informal basis but was not issued receipts. However, the panel notes that the appellant has not offered any information, verification or argument as to the amount of rent he paid for any portion of the period between November 2013 and October 2016. As the shelter allowance is the lesser of the actual shelter costs and \$375, information as to the appellant's actual shelter cost is essential to determining eligibility for any shelter allowance. The panel therefore finds that the ministry's determination that the appellant is ineligible for shelter allowance from November 2013 to October 2016 is reasonable.

### Overpayment Liability

Section 18(1) of the EAPWDA specifies that individuals who receive assistance for which they are not eligible are liable to repay the overpayment to the government. Section 18(2) states that the minister's decision as to the amount of repayment is not appealable.

At reconsideration, the ministry concluded that the appellant had received assistance he was not eligible to receive and must repay those funds. At reconsideration and on appeal, the appellant has requested that his overpayment debt be reduced or eliminated. The panel finds that it does not have jurisdiction to address or consider this request as section 18(2) of the EAPWDA is clear that the minister's decision about the amount a person must repay is not appealable.

The panel has concluded (above) that the ministry's determinations with respect to the appellant's ineligibility for assistance and shelter allowance are reasonable. Thus, the panel concludes that the ministry's determination that the appellant is liable for repayment of funds received for which he was not eligible is also reasonable.

### **CONCLUSION**

The panel finds that the ministry's reconsideration decision, which determined that the appellant is required to repay assistance he was not eligible to receive, was a reasonable application of the legislation in the appellant's circumstances and was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful on appeal.