

## 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 18 July 2017 that found, pursuant to section 28 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant not eligible for disability assistance for the period August 2016 to November 2016 as she failed to comply with a direction of the minister under section 10 of the *Employment and Assistance for Persons with Disabilities Act* to provide information. The ministry further held that, under section 23(5) of the EAPWDR, the appellant is not eligible for retroactive assistance for the period August 2016 to March 2017.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 10*

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 23 and 28.

## PART E – Summary of Facts

The information before the ministry at reconsideration included:

1. The following letters from the ministry to the appellant:
  - 04 March 2016: Requesting the appellant provide a copy of her Canada Pension Plan (CPP) Statement of Contributions (SoC) from Service Canada to determine whether she would likely be eligible to receive CPP benefits. The letter gives instructions for requesting the SoC, including a telephone number to call or how to print out an application form from the Service Canada website. Similar information is provided in the subsequent letters listed below.
  - 04 April 2016: The SoC had not been received and the ministry sent a follow-up letter requesting it.
  - 04 May and 03 June 2016: The SoC had not been received and the ministry advised the appellant that her assistance for July would be held until the SoC was supplied.
  - 17 June 2016: The SoC had not been received. The hold on the appellant's July assistance was removed. The ministry advised the appellant that her assistance for August would be held until the SoC was supplied.
  - 20 July 2016: The SoC had not been received. The ministry advised the appellant that her assistance for August would be held until the SoC was supplied.
  
2. From the ministry's files, the following chronology:
  - 16 August 2016: Cheque production for the appellant's file was turned off as the requested SoC had not been received, and the appellant had not claimed her disability assistance for August. The following day, 17 August 2016, the ministry mailed her a further letter requesting the SoC and advising her that her assistance for September would be held until it was supplied.
  - 12 September 2016: The appellant phoned the ministry and stated that she was way behind in her paperwork and had had seizures. She was directed to supply the SoC from Service Canada and was advised her assistance would be held until it was supplied.
  - 22 October 2016: The appellant's disability assistance file automatically closed because no disability assistance payments had been produced for two months.
  - 22 December 2016: The appellant's SoC was submitted to the ministry by her advocate. In a covering letter, the advocate argues that, given her history of contributions, she should not be obligated to apply for CPP disability benefits. The ministry took no action because her file was closed.
  - 01 April 2017: The appellant completed the online application to reapply for disability assistance.
  - 20 April: 2017: The appellant spoke with a ministry worker, advising the worker that she had been supporting herself through self-employment since she last received disability assistance. She stated she does online contracting work for marketing and administration. She was reapplying because her health had been suffering, so she was unable to work as much as she had worked previously. She confirmed that she was continuing to work at that time. She also stated that she had participated in the ministry's self-employment program when she was last on assistance.
  
3. The appellant's Request for Reconsideration is dated 16 June 2017. Under Reasons, she requests an extension as she and her advocate have been working on this and they are only part way finished, as well as awaiting documents from a hospital. The ministry subsequently received the following documents on 18 July 2017:

a) Reconsideration submission from her advocate on the appellant's behalf (undated).

In the submission, the advocate writes that the appellant suffers from an acquired brain injury, depression, and anxiety, as detailed in her PWD Designation application. Due to complications from these conditions and treatment attempts, she was unable to address the ministry's request to complete a CPP-D [CPP disability benefits] application in a timely fashion and this ultimately resulted in her file being closed. The advocate states that the appellant finds paperwork and interacting with the ministry extremely anxiety provoking, and to comply with the ministry's request, she attempted to recruit the assistance of the advocate's organization in the summer of 2016. Unfortunately, the wait times were such that they were not able to assist her prior to her file being closed. The balance of the submission reviews the chronology up to submitting the requested information in December 2016, then going to argument requesting the ministry reverse the decision to close the appellant's file in October 2016, and dispense the funds that she was eligible for between that date and her file's reopening in April 2017.

b) Explanation of medical costs and appellant's use of administrative capacity (undated, author not given).

This document states that the appellant has been working as a self-employed contractor online in order to attempt to cover the financial burden of treatment costs quoted to her by multiple medical professionals. These include: costs of medications not covered by MSP; dental and orthodontic work to complete the realignment of her jaw so that her sleep disorder can be managed and she can breathe at night; continued treatment with massage therapists, osteopaths, natural doctors, private pain specialists and biofeedback therapists that have been recommended by other specialists and doctors; costs of prescribed nutritional supplements; costs of a gluten- and dairy-free diet; and visual therapy treatment with an ophthalmologist to try to fix the visual hypersensitivity and balance issues she experiences, as recommended by a neural ophthalmologist.

This document concludes by explaining that the majority of the appellant's administrative capacity has been used trying to: research and schedule appointments with appropriate medical treatment options as well as having to find an available and appropriate family doctor; understand the specialist appointments she attends; manage the treatments while weighing the side effects and recording metrics of potential beneficial results; and manage the medical paperwork and liaison between medical offices.

c) Letter from a Registered Physiotherapist dated 13 July 2017.

This letter documents the appellant's "physical attacks" during an (unspecified) 5-week physiotherapy intervention while a participant in a research study. The appellant reported severe headaches, moderate nausea and moderate balance problems, mild dizziness, severe cognitive dysfunction, mild sleep problems, moderate irritability and feeling more emotional, mild sadness and nervousness. It was a big change in her schedule to suddenly have 3 hours per day of physiotherapy and living in a new environment. In the five weeks of the study, the appellant experienced 8 episodes where she would experience a pseudo-convulsion. She had similar events prior to the study. The pseudo-convulsions, which was almost like dystonia, resulted in tightness of the shoulder musculature, neck musculature, tightness in her airway and she would need to lie down and was able to lower herself to the floor. She would just rest, eyes closed and possibly put ice on her head or neck, and she would be exhausted but be able to recover with 10 to 15 minutes rest. However, these attacks would leave her exhausted for the rest of the day.

d) Letter from the appellant's primary care practitioner dated 14 July 2017.

The physician writes that throughout 2015 to 2017 the appellant has struggled severely with

migraines, vision/eye pain, convulsions and other symptoms. These symptoms severely reduce her capacity for administrative-type tasks such as reading, accounting and document creation. She sought medical intervention for these symptoms. The physician also reports that the appellant underwent two neuropsychological evaluations as part of a clinical trial process in the spring of 2017. During these evaluations, the appellant reports that on both occasions she was not able to complete these tests as the cognitive activities triggered immediate head pain, she had difficulty forming coherent thoughts, and she had severe convulsions where it became difficult to breathe without another person's support and she needed an elongated recovery period. The physician writes that the appellant reports that this experience is consistent with other attempts to complete similar numeracy, accounting and administrative tasks, including her monthly ministry reporting, other ministry paperwork, and at times, her business contracts. The physician states that she needs support around this issue and needs a streamlined, accurate, and non-stressful process when dealing with the ministry to lessen the amount of anxiety she encounters trying to fulfill her obligations to it.

e) Cost quote for Full Comprehensive Orthodontic Treatment, dated 15 February 2017. The quote, prepared by a Certified Specialist in Orthodontics, is for \$8500.00.

### **Notice of Appeal**

The appellant's Notice of Appeal is dated 27 July 2017. Under Reasons for Appeal, the appellant writes that the ministry does not understand her "contract work" and the reconsideration decision ruling regarding "mental capacity" is inaccurate. She states that she did not receive several of the letters listed and she thought that she had to submit accounting in self-employment format to count and that CPP was required. She started understanding the issue later in the fall, but a major health crisis prevented fixing the ministry mix-ups. She gets very overwhelmed and confused, and accounting paperwork leads to the convulsions that she has tried to describe. She submits that she should "have been reinstated in December or my advocate told about income, not CPP being issue."

In an email accompanying the Notice of Appeal, the appellant writes:

"I would like to be able to submit earnings or other documents required now that I have advocate support and "catch up" to be able to be eligible for the missing months of support. Without this I cannot afford medical costs, get better and get OFF disability and the system. I was/am very confused by ministry requirements and inconsistent messaging without my advocate to explain which I have not always had access to and was going through worsened health crises and could not take action on advocates help/advice."

### **The hearing**

At the hearing, the appellant described her disability as a "laundry list" of issues. She was diagnosed with anxiety and depression at an early age and this has been compounded by a head injury. She suffers from constant pain, is extremely light-sensitive, has frequent migraines and is prone to daily convulsions. Now her life is "blurry," and she finds it difficult to meet deadlines and expectations. She scrambles to try to keep everything together without things falling through the cracks. Sometimes things work out and sometimes they don't. The medications she takes also have serious side effects, including effecting her vision. She becomes anxious when facing a mentally challenging issue and this leads to convulsions.

The appellant stated that when she first received the letter requesting her to submit the CPP SoC she contacted the advocacy organization that has helped her with her PWD designation application. They were too busy to help at that time it was only after repeated phone calls over the next few months that she was able to have them help in obtaining the SoC and sending it in to the ministry.

The appellant described the contract work she does – no more than 12 hours per week – as working online from home preparing letters for her employer in response to incoming letters, by copying and pasting appropriate standard paragraphs into the reply.

In answer to a question, the appellant's advocate stated that all that what was involved in applying for an SOC was phone call to Service Canada.

The appellant submitted the following:

- Letter dated 03 September 2017 from the appellant's mother. This letter recounts an October 2016 visit by the appellant to her mother in another province, and how she witnessed her daughter having episodes of convulsions up to 3 to 4 times a day, leaving her completely debilitated. The letter notes that during her youth and post secondary education the appellant received significant support to meet deadlines for assignments, etc. and in her adult years has continued to seek help from the medical community. The balance of her letter goes to argument based on the appellant requiring support to perform under deadline pressures because of her disability (see Part F, Reasons for Panel Decision, below).
- Undated letter from a friend in the other province describing his observations of the appellant during a stay with him in the fall of 2016. His record of these observations is consistent with the appellant's testimony at the hearing.
- A "Witness Statement" prepared by a friend of 15 years in the other province, a lawyer. She notes that shortly before arriving in the other province the appellant had started a new anti-seizure medication prescribed by her neurologist, which unfortunately had the effect of increasing the frequency of her seizures rather than decreasing them. She writes that the thing with seizures is, while the actual seizure may last 15 minutes, the effects last hours. She states that math and accounting are not the appellant's natural strengths, and the potential consequences of an innocent mistake on her disability accounting are very stressful. After daily seizures and frequent migraine headaches, the appellant is too drained and in pain to understand and complete various disability paperwork requirements.
- Letter dated 05 September 2017 from the appellant's former roommate. She describes how she had to assist the appellant with many basic functions, including having basic household accounts in her own name, as the appellant was unable to manage them by herself. The roommate also writes that the appellant was having difficulties maintaining and attending medical appointments and that she would often drive her to these appointments rather than letting her take the bus.

The ministry stood by its position at reconsideration. The ministry representative noted that all clients, after being designated as a person with disabilities and becoming recipients of disability assistance, are directed by the ministry to supply a CPP SoC. This allows the ministry to determine if the recipient might, at least on the basis of contributions, be eligible for CPP-D, and if so, require the recipient to pursue a CPP-D application. He explained that a person could apply for a CPP SoC by telephoning the Service Canada number given in the letter sent to the client. All that is required is to provide the

Service Canada agent answers to basic questions to confirm identity. He stated that the usual wait time is 3 – 5 weeks before the client receives the requested SoC in the mail.

**Admissibility of additional information**

The panel finds that the information provided by the appellant in her testimony at the hearing, and in the documents submitted at the hearing, is in support of the information before the ministry at reconsideration, as this information tends to corroborate the information describing the appellant's medical circumstances in the documents submitted at reconsideration. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

- That pursuant to section 28 of the EAPWDR, the appellant is not eligible for disability assistance for the period August 2016 to November 2016 as she failed to comply with a direction of the minister under section 10 of the *EAPWDA* to provide information.
- That, under section 23(5) of the EAPWDR, the appellant is not eligible for retroactive assistance for the period August 2016 to March 2017.

The relevant legislation is from the *EAPWDA*:

### 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.

And from the EAPWDR:

### Effective date of eligibility

**23(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.

## Analysis

### Ineligible for disability assistance August 2016 – November 2016

In the reconsideration decision, the ministry found the appellant ineligible, pursuant to section 28 of the EAPWDR, for disability assistance for August 2016 – November 2016. In making this determination, the ministry noted that it had directed the appellant to supply her CPP SoC from Service Canada in March 2016. The request was made, in accordance with section 10 of the EAPWDA, to determine whether she was obligated to pursue income from another source. The ministry stated that she has not provided any information to indicate that she misunderstood the ministry's request to submit her SoC, and by submitting the SoC she indicated that she understood the request.

The ministry noted that the additional information the appellant submitted at reconsideration indicates that a majority of the appellant's administrative capacity is being used trying to manage her medical conditions. The ministry has considered that, due to her medical conditions, she required additional time as an accommodation to comply with the ministry's request for the SoC. In September 2016, she advised the ministry that she was behind in paperwork and had had seizures. However, based on the case notes on file, at that time she did not indicate that she had attempted to obtain a SoC or that she had had difficulty in trying to obtain it. Nevertheless, her file was kept open another six weeks to allow her additional time to submit the SoC. The ministry noted that neither the appellant nor her advocate advised ministry of any difficulty in attempting to obtain the SoC during this six week period or at any time between her last contact with the ministry in September and the time the SoC was submitted in December. As the ministry began requesting the SoC in March 2016, the ministry found that she was given a reasonable amount of time (8 months) to provide the SoC and that this extended period of time was an accommodation.

The ministry further noted that when the appellant reapplied for disability assistance in April 2017, she stated that she had been financially supporting herself using self-employment income from her online contracting work in marketing and administration. In addition, in the information submitted at reconsideration, she stated that she had been working as a self-employed contractor online, and her advocate stated that she was able to support herself through her work after her disability assistance file was closed. The ministry argued that the ability to financially support herself through this type of work demonstrates that she is able to understand complex information and complete tasks in a timely manner. Although she experiences periodic lapses in her abilities due to her medical conditions, the ministry was not satisfied that she has a cognitive impairment that interfered with her understanding of the request to supply the SoC or that prevented her from contacting the ministry to advise of the ongoing challenges she encountered.

The ministry found that, as the appellant complied with the ministry's direction to provide the SoC in December 2016, she failed to comply with its direction to supply the information during the period August 2016 to November 2016. As such the ministry found that she was ineligible for disability assistance for that period.

In the appellant's oral and written submissions, she argues that she was confused about what was requested and that her medical conditions and worsening health crises made it difficult for her to keep up with things. As her mother explains in her letter:

“The issue of why [the appellant] did not reply in time to the ministry is that her very disability prevented her from doing it. She is not able to perform under deadline pressures without appropriate and adequate support because of her disability.”



In reviewing the ministry's decision and considering the appellant's position, the panel finds the following:

- Contrary to the statement by her advocate in the reconsideration submission that the ministry requested the applicant to apply for CPP-D, the ministry's direction as set out in the March 2016 and in subsequent letters was for the appellant only to provide a CPP SoC. As the Ministry representative explained at the hearing, this was a "one-off" direction, consistent with ministry practice that all clients, after being designated as a person with disabilities and becoming recipients of disability assistance, are directed by the ministry to supply a CPP SoC. This allows the ministry to determine if the recipient might be eligible, at least on the basis of contributions, for CPP-D, and if so, require the recipient to pursue a CPP-D application.
- As the ministry representative noted at the hearing, a person can apply for a SoC by telephoning Service Canada at the number shown on the letters to the appellant, and providing a Service Canada agent with answers to basic questions that would satisfy the agent of identity. No "paperwork" is required, except sending in the SoC when received to the ministry. There is no indication in the information before the ministry at reconsideration that the appellant called Service Canada at the number provided to make this request.
- The ministry set no "deadline" for the appellant to provide the SoC, though the ministry would reasonably expect that she would comply with the request in a timely manner. Taking into account that it takes 3 – 5 weeks for Service Canada to mail out an SoC upon request, the panel considers the 5 months (with monthly follow-up letters) between March 2016 and July 2016 to be a reasonable accommodation on the part of the ministry before it determined that the appellant had failed to comply with the direction and was ineligible for disability assistance in August 2016.
- While in the reconsideration decision the ministry may have overstated how the appellant's ability to financially support herself through her work demonstrates that she is able to understand complex information and complete tasks in a timely manner, given the type of work she described at the hearing and what is involved to making a SoC application, the ministry was reasonable in determining that she was able to understand the request to supply the SoC or that she was not prevented from contacting the ministry to advise of her ongoing challenges that may have precluded her from making the SoC application by telephone.
- Regarding the need for support, in reviewing the information provided by the appellant it appears that she and others submitting letters of support have confused the "one off" direction of the ministry to provide the SoC with the ministry's requirement for monthly reporting of income. Recipients of disability assistance are not required to provide monthly reports, except when in receipt of earned income or in receipt of new sources of, or changes in, unearned income (the latter not an issue here). As disability assistance is an income-tested program, being in receipt of employment or self-employment income brings with it the responsibility to provide the ministry with monthly earnings reports. It follows that it is the responsibility of the recipient, not the ministry, to arrange whatever support might be necessary to meet these reporting obligations.

Based on the foregoing, the panel concludes that the ministry was reasonable in determining that the appellant was not eligible for disability assistance for August 2016 – November 2016.

### Ineligible for retroactive disability assistance August 2016 – March 2017

In the reconsideration decision, the ministry found that the appellant was not eligible for retroactive disability assistance for the period August 2016 – March 2017. In reaching this conclusion, the ministry noted that the appellant's file closed in October 2016 because she had not claimed her assistance cheque for August and did not request assistance for September and October 2016. She then reapplied on 01 April 2017 and requested disability assistance for those months that she did not receive it.

The ministry noted that the appellant incurred living costs for the period August 2016 – March 2017 before requesting assistance with these costs in April 2017. In accordance with EAPWDR section 23(5), the ministry found that she is not eligible for disability assistance for those months in which she incurred the costs before requesting assistance. The ministry also relied on EAPWDR section 23(2.1), which states that an applicant for disability assistance is eligible for disability assistance beginning only for the month of application, and therefore the appellant is not eligible for the support and shelter allowances prior to 01 April 2017.

The appellant's position, as explained at the hearing, is that as she provided the SOC as required by the ministry and is not eligible for CPP-D, it is only reasonable that her disability assistance should be reinstated back to August 2016 when the ministry cut off her benefits.

As discussed above, the ministry reasonably determined that the appellant was not eligible for disability assistance for the period August 2016 – November 2016. The appellant's file was closed in October 2016 and therefore she was also not eligible for disability assistance until she reapplied in April 2017.

As the ministry representative explained at the hearing, unlike an ongoing entitlement such as a pension, disability assistance is a month-to-month program, with eligibility subject to review and verification every month. Once eligibility ceases, it must be re-established. As the ministry pointed out, the legislation makes clear that under EAPWDR section 23(5), a family unit is not eligible for any assistance in respect of a service provided or cost incurred before the calendar month in which the assistance is requested. It follows that as she had not re-established eligibility for disability assistance until April 2017, the panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance for the preceding months in which she was not eligible for assistance.

### **Conclusion**

Based on the foregoing, the panel finds that the ministry decision, which found the appellant ineligible for disability assistance for August – November 2016 and denied her request for retroactive disability assistance for the period August 2016 – March 2017, is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. This appeal is thus not successful.