

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 20, 2017 which found that the appellant is not eligible for retroactive disability assistance (DA) for October and November 2016 for:

- Failing to comply with reporting obligations pursuant to section 11 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA). Specifically, the ministry found that the appellant failed to report any changes to her income pursuant to section 29 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) by failing to submit the Self-employment Program (SEP) form pursuant to section 70.2 of the EAPWDR for the months of August 2016 and September 2016; and
- The appellant's eligibility for DA commenced in December 2016, the date of her re-application for DA, pursuant to Section 23 (1.2) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – Sections 3 and 11.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 23, 29 and 70.2.

PART E – Summary of Facts

Preliminary Matters

- The hearing was originally scheduled for April 21, 2017 but was adjourned at the written request of the appellant with the consent of the ministry and the Tribunal chair. The appellant's submission includes the following basis for the adjournment request: She requested a 10-day adjournment as she was still waiting for a FOI [Freedom of Information] disclosure.
- A rescheduled hearing was to be conducted on May 31, 2017 but was adjourned for a second time at the written request of the appellant with the consent of the ministry and the Tribunal chair. The appellant's submission includes the following basis for the adjournment request: She had just found out that her FOI paperwork is ready for pick-up and she needs time to prepare. The appellant wrote that she needs 3 weeks to see an advocate before attending a hearing.
- The hearing was rescheduled to take place on August 4, 2017 but was adjourned for a third time at the written request of the appellant with the consent of the ministry and the Tribunal chair. The appellant's submission includes the following basis for the adjournment request: the appellant has "health issues." She wrote that she is not feeling well enough to present her appeal and she asked for 14 days to "get in better shape physically and mentally."
- The hearing was rescheduled to be conducted on September 13, 2017 but was adjourned at the written request of the appellant, with the consent of the ministry and the Tribunal chair. The appellant's submission includes the following basis for the adjournment request: her health issues are "continuing." She wrote that she has fibromyalgia "with cyclical physical, emotional and cognitive limitations" and "this is the time of the year when I seem to struggle most" and that she "may need another couple months to get back in shape."
- The hearing was rescheduled for October 2, 2017. On September 29, 2017, the appellant submitted a written request for an adjournment which includes the following basis for the adjournment: Her health issues are "continuing." She wrote that she has fibromyalgia "with cyclical physical, emotional and cognitive limitations" and "this is the time of the year when I seem to struggle most" and that she "requested a couple months." She wrote that she was in pain as she was writing.
- The ministry consented to the adjournment request but the adjournment was not approved by the Tribunal chair. The Tribunal chair declined to consent to the adjournment request for reasons set out in a letter dated September 29, 2017 as follows:
 1. This is the appellant's 5th Appeal Adjournment Request and the reason for the request is the same as in her last two requests for adjournment, which were for health reasons and she stated that she struggles the most this time of year.
 2. The Tribunal received the appellant's Notice of Appeal on March 31, 2017 and is legislated to hold hearings within 15 business days to ensure a timely process.
 3. A long time has passed since March 31, 2017 and the appellant has the ability to attend the hearing by telephone.
- The appellant called into the in-person hearing and requested an adjournment. The appellant stated that she is unable to deal with the hearing because she is in bed with the chills. She has fibromyalgia and has been in pain, she is unable to sleep at night and it is hard to find her words. She may have a cold and feels it is best to stay in bed.

- In response to questions from the panel, the appellant stated:
 - the documents from her FOI request were available in May 2017.
 - she met with an advocate some time ago and received advice. At that time the advocate was too busy and could not attend the hearing with the appellant.
 - she “goes through cycles of feeling better and worse” and was “eager to do the hearing” in the summer but the Tribunal could not schedule a hearing because the panel members were not available.
 - she has a harder time in the fall, likely because she “tends to overdo it” over the summer months.
 - when asked what she proposed to do to “get in better shape physically and mentally” as she wrote in her request for an adjournment of the hearing scheduled for August 4, 2017, the appellant stated that it takes time to improve her sleep, she has sleep apnea, and she is incontinent. She tries to get enough sleep and takes vitamins. The appellant stated that she cannot predict when she will be sick and when she will be well.
 - she has new information that she wants to present on her appeal but she cannot get into a discussion about what the information is because she does not feel well.
 - she was not aware that she could have a family member act as her advocate and she was not aware that she could request a hearing by telephone.

- The ministry objected to an adjournment of the hearing on the basis that this appeal has gone on “long enough,” with the disputed months of assistance being from a year ago. There is no prediction of when the appellant will be well enough for a hearing.

- The panel deliberated and was not prepared to grant an adjournment of the hearing for the following reasons:
 1. When viewed in the context of the history of the 4 previous adjournment requests by the appellant over the course of several months, there was insufficient evidence that the appellant was unable to proceed with the hearing by telephone.
 2. The appellant has not provided any verification from her physician as to the nature of the “cycles of feeling better and worse” and to confirm that she is currently unable to participate in a hearing by telephone. The appellant was able to make arguments on her own behalf over the telephone regarding her adjournment request. The appellant previously requested adjournments of the August 4 and the September 13, 2017 hearings to be provided an opportunity to “get in better shape physically and mentally;” however, she admitted that she cannot predict when she will be well.
 3. The Tribunal is legislated to hold hearings within 15 business days of receipt of the Notice of Appeal to ensure a timely process, and the appellant was not able to predict when she would be sufficiently well to attend a hearing in the future.
 4. The appellant obtained her FOI documents in May 2017 and met with an advocate for advice. She has been afforded almost 5 months to submit further information to the Tribunal and to find an alternate advocate to represent her on the appeal.
 5. The appellant stated that she was not able to obtain an advocate to attend the hearing in May 2017. However the appellant had from May 2017 to October 2017 to secure an advocate to represent her at a hearing if she could not attend in person.
 6. The appellant stated that she did not know that she could attend hearings via teleconference. However, on the appellant’s notice of appeal, the appellant specifically asked for an in-person hearing as opposed to the teleconference or written options set out on the form.

- The appellant asked how to appeal the panel’s decision to not grant her adjournment request and after 40 minutes of discussion regarding the adjournment request, the appellant disengaged from the teleconference. The panel maintained the teleconference for the balance of the hearing, but the appellant did not rejoin the call.

The evidence before the ministry at the time of the reconsideration decision included:

1. SEP Questionnaire and Acceptance of Terms signed and dated July 16, 2014. The acceptance of terms states that the information collected in the questionnaire is for the purpose of establishing eligibility for assistance and by signing the document the appellant agrees to abide by the terms and conditions of the SEP and provided any additional information about her business as needed.
2. Page from the ministry's original decision dated February 2, 2017 with the appellant's comments in handwriting.
3. 5-page Gmail summary showing that multiple emails were sent to the ministry from the appellant on December 23, 2016.
4. 4-page account of the appellant's interactions with the ministry. Included here are also the phone records indicating outgoing calls to and incoming calls which the appellant claims are with the ministry from August 16, 2016 to February 2, 2017. The appellant outlines the challenges she faced when dealing with the ministry worker.
5. SEP report titled 'September' and 'reporting month for August', and SEP report titled 'October' and 'reporting month for September'.
6. Fax dated December 30, 2016 from the appellant to the ministry attaching a monthly report for August 2016 which is signed and dated October 25, 2016.
7. SEP report for August 2016 which is signed and dated October 25, 2016 with an attachment showing expenses.
8. Vehicle insurance document pertaining to the red vehicle with a handwritten account of expenses including the cost of the vehicle, taxes, and insurance.
9. Vehicle transfer document dated August 20, 2016 for a red vehicle
10. Insurance document from a private insurance company showing an amount owing of \$529.98 pertaining to the red vehicle and a copy of the receipt showing payment.
11. Copies of 3 cheques totally \$972.00 payable to a company owned by the appellant.
12. Vehicle transfer document dated August 23, 2016 for a white vehicle.
13. Insurance document for the white vehicle dated August 23, 2016.
14. Copies of receipts showing payment for insurance for the white vehicle.
15. Mobile phone bill for the period of July 10, 2016 - August 9, 2016 for \$91.02.
16. Internet services bill for the period of August 1, 2016 – August 31, 2016 for \$61.60.
17. Invoice for services paid dated August 26, 2016 for \$59.95 CND (\$44.95 US).

18. Invoice for website design dated August 27, 2016 for \$10.49.
19. Invoice for online advertising dated August 31, 2016 for \$44.56.
20. Invoice for business insurance dated August 8, 2016 for \$119.00.
21. Invoice from BC Registry Services dated August 29, 2016 for \$31.50 and November 2, 2016 for \$351.50.
22. Electricity bill dated August 10, 2016 for \$178.42.
23. Shopping receipt dated August 9, 2016.
24. 3- shopping receipts dated August 16, 2016, August 30, 2016 and August 19, 20 and with a total of \$41.87.
25. 4- shopping receipts totaling \$123.16. 2 receipts were dated August 6, 2016 and August 10, 2016, 1 receipt does not show the entire receipt and the 4th receipt does not indicate the date.
26. 4-shopping receipts dated August 3, 2016, August 12, 2016 and 2 receipts do not indicate the dates. The total for these receipts is \$221.27.
27. 2-shopping receipts for supplies dated August 10, 2016 and totaling \$77.68.
28. Bank statement from institute 'A' showing the balance as of August 30, 2016, and indicating payments to a web-design company for \$59.95 and to a cell phone company for \$44.80.
29. Bank statement from institute 'B' showing the balance as of August 20, 2016 in the appellant's personal account.
30. Bank statement from institute 'B' showing the balance as of August 23, 2016 in the appellant's company account.
31. 2 receipts for supplies for a vehicle dated August 30, 2016 and August 31, 2016 and totaling \$101.75.
32. 2-page Gmail summary showing that multiple emails were sent to the ministry from the appellant on December 30, 2016.
33. Account of expenses of (\$5,073.01) and net income of (\$951.00) with no month indicated.
34. Fax from the appellant to the ministry dated December 30, 2016 attaching a monthly report for November 2016 dated December 30, 2016.
35. SEP Report dated December 30, 2016 showing expenses of \$1,083.22 and net income of a loss of \$693.22, with attached supporting receipts and documents [items #36-42].
36. Invoice for a distributor kit for \$50.00 US (\$68.85 CND).

37. BC Registry Services invoice dated November 2, 2016 for \$351.50.
38. Internet services bill dated November 3, 2016 for \$208.74 with a carry-over balance of \$159.63.
39. 2 receipts dated November 27, 2016 and November 28, 2016 and totaling \$103.50.
40. 6 receipts for gas for various dates in November 2016 and totaling \$137.90.
41. Bank statement from institution 'A' showing the balance as of December 7, 2016.
42. Special statement of account from institution 'B' dated November 10, 2016.
43. Fax from the appellant to the ministry dated December 30, 2016 attaching a monthly report for October 2016 dated December 5, 2016, with supporting documents [items #44-53].
44. SEP- simplified- report for October 2016 and dated December 5, 2016.
45. SEP report for October 2016.
46. Shopping receipts for \$60.61 and dated October 17, 2016 and October 24, 2016.
47. Electricity bill dated October 11, 2016 for \$162.45.
48. 7 receipts from gas stations, dated October 15, 2016 for \$10.00, October 15, 2016 for \$10.00, October 6, 2016 for \$52.35, October 30, 2016 for \$60.36, October 2, 2016 for \$25.00, October 10, 2016 for \$30.00, October 12, 2016 for \$40.00 and October 14, 2016 for \$10.00
49. Internet service bill dated October 1, 2016 for \$159.36 with a carry-over balance of \$107.73
50. Mobile phone bill dated October 9, 2016 for \$44.80.
51. Mobile phone bill dated October 25, 2016 for \$44.80.
52. Account activity – historical details from institution 'A' showing a balance as of October 29, 2016.
53. Bank statement from institution 'B' dated November 1, 2016.
54. Fax from the appellant to the ministry dated December 30, 2016 attaching a monthly report for September 2016 dated November 30, 2016.
55. SEP –simplified- report for September 2016 and dated November 30, 2016.
56. SEP report for September 201 , with attached supporting receipts and documents [items #56-67].
57. Internet services bill dated September 1, 2016 for \$107.73 with a carry-over balance of \$61.60.

58. Web design services bill dated September 29, 2016 for \$102.83.
59. 3 receipts for supplies dated September 12, 2016 for \$53.15, September 12, 2016 for \$31.74, and September 28, 2016 for \$46.73.
60. 3 receipts for equipment dated September 11, 2016 for \$67.20, undated for \$97.36 and September 8, 2016 for \$5.08.
61. Insurance document for a white vehicle for \$103.00 with a receipt for the same amount.
62. Receipt from an auto parts store dated September 6, 2016 for \$11.19.
63. Receipt from an auto parts store dated September 6, 2016 for \$264.79 and a refund receipt from the same store for \$256.96.
64. 5 receipts from gas stations dated September 1, 2016 for \$30.00, September 11, 2016 for \$23.57, September 18, 2016 for \$25.28, September 23, 2016 for \$25.39, and September 28, 2016 for \$25.00.
65. 1 receipt for transit dated September 4, 2016 for \$16.00.
66. Bank statement from institution 'B' dated October 1, 2016.
67. Bank statement for institution 'A' dated September 19, 2016.
68. Request for Reconsideration (RFR) signed and dated March 20, 2017 which stated that the ministry's decision was based on incomplete information and wrong reports. The RFR also included a 4 page summary of events, telephone logs and the appellant's argument.

Evidence on Appeal

Notice of Appeal (NOA), which is signed and dated March 30, 2017, stated "Decision made on wrong info[rmation] from worker. Please allow 2 extra weeks to receive FOI file disclosure or include adjournment form with the hearing date notice".

Evidence at the Hearing

The ministry relied on its reconsideration decision and added that the appellant requested and was granted an extension for reporting for the months of June 2016 and July 2016 but the appellant did not contact the ministry and was not granted an extension for her reporting for August 2016 or September 2016. The ministry stated that the appellant only contacted the ministry in December 2016 when she did not receive her October 2016 and November 2016 DA cheques.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision was reasonable. The ministry's decision found that the appellant is not eligible for retroactive disability assistance (DA) for:

- Failing to comply with reporting obligations pursuant to section 11 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA). Specifically, the ministry found that the appellant failed to report any changes to her income pursuant to section 29 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) by failing to submit the Self-employment Program (SEP) form pursuant to section 70.2 of the EAPWDR for the months of August 2016 and September 2016; and
- The appellant's eligibility for DA commenced in December 2016, the date of her re-application for DA, pursuant to Section 23 (1.2) of the EAPWDR.

EAPWDA provides as follows:

Eligibility of family unit

- 3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
 - (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

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
- (a) submit to the minister a report that
 - (i) is in the form prescribed by the minister, and
 - (ii) contains the prescribed information, and
 - (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 provides as follows:

Effective date of eligibility

- 23** (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance
- (a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and
 - (b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.
- (1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17

years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient;

(v) any warrants as described in section 14.2 (1) of the Act;

(vi) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 3.1 of Schedule B, the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) if the calendar month is within the calendar year in respect of which the family unit qualifies for an exemption under section 7.1 of Schedule B, the amount of unearned income that is compensation paid under sections 29 and 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Monthly report

70.2 If a recipient who is participating in a self-employment program is operating a small business under the program, the recipient must, in addition to any report required under section 29, provide a monthly report to the minister in the form and at the time specified by the minister, setting out, for the period covered by the report, as required by the form, the business activities, earnings, expenses, assets and liabilities of the small business the recipient is operating.

The Panel's Decision

The appellant argued that she had been in contact with the ministry several times in November 2016 as noted in the telephone logs. She submitted her reports December 22, 2016 once she was able to secure information regarding her vehicles as agreed upon with the worker on November 29, 2016. She had a verbal agreement with the worker that she could submit her reports without penalty on December 23, 2016. She was not informed that the reports did not reach the ministry offices until December 29, 2016 at which point it was too late. She reported the purchase of two vehicles on September 12, 2016.

In the reconsideration decision, the ministry wrote that as a participant of the SEP, the appellant is required to submit the simplified SEP monthly report by the 5th of the following month as a requirement to participate in the program and as a condition of eligibility. The ministry argued that it did not receive the appellant's monthly reports for August 2016 and September 2016 until December 30, 2016 and therefore she did not satisfy the continuing conditions of eligibility for her DA for October 2016 and November 2016. The ministry also argued that the appellant did not contact the ministry at that time to inquire about her assistance or request an extension. There is no record in the ministry file notes of an extension being provided to the appellant and she did not provide any medical evidence to support that she had been too sick to submit a monthly report October 2016 or provide any justification as to why she did not submit her reports in November 2016. Therefore, the appellant was required to re-establish her eligibility for DA.

The panel notes that, pursuant to section 11 of the EAPWDA, the appellant is obligated to provide reports to the ministry as specified by regulation. In the case of the appellant, pursuant to section 29 of the EAPWDR, she must report a change in circumstances to the ministry by the 5th day of the month following the month in which the change occurred. Since the appellant is a part of the SEP, she is obligated to submit the SEP forms by the 5th of every month as they contain specific information, such as business activities, earnings, expenses, assets and liabilities, regarding the small business she is operating pursuant to section 70.2 of the EAPWDR. The evidence establishes that the appellant did not submit her SEP forms by the 5th of September and October of 2016, and the appellant does not dispute this. Though the appellant stated that she had a verbal agreement with the worker for an extension without penalty, the appellant was unable to provide any confirmation of this and the ministry does not have any records regarding an extension. In addition the appellant has not provided medical evidence for not submitting her August 2016 report by September 5, 2016 and any explanation for not submitting her September 2016 report by October 5, 2016. On appeal, the appellant's argument is based on dealings with the ministry worker in November 2016 and December 2016, which was well after her reports were required to be submitted.

Once her file with the ministry was closed, the appellant was required to establish that she satisfied the continuing conditions of eligibility established under the EAPWDA [Section 3]. Section 23 of the EAPWDR stipulates that a family unit of an applicant for DA who has been designated as a person with disabilities (PWD) becomes eligible for DA under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance. There was no dispute that the appellant is designated

as a PWD or that the date of the appellant's re-application for disability assistance was December 2016. Therefore, the panel finds that the ministry reasonably determined that the appellant's eligibility for disability assistance commenced in December 2016 according to Section 23(1.2) of the EAPWDR. The panel finds that the evidence establishes the ministry's decision to find the appellant ineligible for DA for October and November of 2016 was a reasonable application of the legislation and was supported by the evidence.

Conclusion

The evidence establishes that the appellant has not met the reporting criteria set out in sections 29 and 70.2 of the EAPWDR and that the appellant's eligibility for DA commenced in December 2016, pursuant to Section 23 (1.2) of the EAPWDR. The panel therefore finds that the ministry's decision to find the appellant ineligible for DA for October and November of 2014 was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision.