PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 28, 2017, which denied the appellant's request for retroactive assistance as the appellant's eligibility for disability assistance commenced in October 2017, the date of his re-application for disability assistance, pursuant to Section 23(1.2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 23, 29, 30, and 72

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 3 and 11

PART E – SUMMARY OF FACTS

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

1) Copies of email correspondence dated October 1, 2010 from Community Living British Columbia (CLBC) to the ministry indicating that:
   - the appellant resided with a third party caregiver for the past several years and moved out in early August.
   - in the ensuing argument between the third party caregiver and the appellant's family, the family forgot to go to the office and change who received the appellant's contribution.
   - likely the third party caregiver has continued to receive the appellant's funds for the past 3 months, unless the third party caregiver went to the office to have it changed.
   - the balance of the funds were going into a joint account that the appellant had with the third party caregiver, which is not a good situation.
   - the new information for the appellant's file is that his brother and sister-in-law are his new caregivers, who will bring him into the office in the next few weeks to formalize this.
   - the appellant's brother and sister-in-law are "in the midst of becoming" the appellant's caregivers and the appellant's contribution will be $716 per month as all clients who live in a supported arrangement.
   - asking that the ministry "do it rather than (CLBC) going through the intake process."
2) Consent to Disclosure of Information by the ministry to the appellant's current caregivers, his brother and sister-in-law, dated October 12, 2010 and signed by the appellant;
3) CLBC client shelter information dated October 20, 2010 for the appellant, indicating that he has chosen to reside with his brother as of September 10, 2010 at his brother's address as set out and agrees to be responsible for payment of a monthly user fee to the caregiver and the balance of his Persons With Disabilities (PWD) benefits to be paid to the appellant;
4) Credit Union letter dated October 26, 2010 providing the appellant's bank account information in order to set up an automatic deposit to the appellant's account; and,
5) Request for Reconsideration dated December 12, 2017 with an attached written submission by an advocate on behalf of the appellant.

In the Request for Reconsideration, the advocate wrote that:

- The appellant is non-verbal, deaf, and functionally illiterate. Any documents that have been provided to the appellant have been reviewed and acted upon by his current caregiver, his brother.
- Prior to living with his brother and sister-in-law, the appellant lived with a caregiver who treated him poorly and ending up stealing funds from the account she shared with the appellant.
- Not having the funds to pursue return of the money taken by the previous caregiver, the appellant's brother was forced to abandon his attempt to retrieve the funds.

- The process undertaken by the appellant's brother to recover the funds occurred concurrently with his attempt to secure funding as caregiver for the appellant, through CLBC. There was some confusion in terms of what was required of them to secure the appellant's assistance going forward.
- The appellant's brother learned in the fall of 2017 that it was the ministry's responsibility to undertake an investigation regarding the funds taken from the appellant in 2011. The ministry has reimbursed the appellant with the funds taken.
- When the appellant's brother and his sister-in-law applied to become the appellant's new caregivers, they provided the ministry with a form letter from the Credit Union, which allowed for direct deposit of funds into their bank account. The intent of this letter is to stand in lieu of a void cheque and includes a request to contact the Credit Union with any questions. The ministry did not provide the appellant's brother with the ministry's Application for Direct Deposit form.
- The appellant's sister-in-law stated that she was told that direct deposit was not an option for them.
- The appellant's brother and sister-in-law ("the appellant's current caregivers") were able to re-establish the appellant's disability payments in March of 2011 and the appellant's assistance file was automatically closed as a result of a postal strike in June of 2011.
- While the ministry wrote that notice was given to clients that they would need to pick up cheques at the ministry office, the appellant notes that there is no record to show that this information was ever provided to the appellant or his current caregivers.
- The appellant's current caregivers state that no such information was ever provided to them in any form and they were never called to be advised by telephone. The appellant is entirely dependent on his current caregivers to receive and interpret documents for him.
- The postal strike ceased on June 25, 2011 when the federal government order postal works back to work. However, the ministry noted that the appellant's July assistance cheque was cancelled on July 13, 2011 and does not detail what happened to the appellant's May or June cheques.
- There was no good reason for the appellant's current caregivers to believe that any failure on their part to attend at the ministry offices would result in the cancellation of benefits for the appellant and the closure of his file.
- The appellant's current caregivers assumed that no further funding was available for them as the appellant's caregivers going forward. Due to miscommunication between the appellant's current caregivers, the appellant's brother assumed that whatever funding was available was being received by the appellant's sister-in-law. The appellant's sister-in-law assumed that no funding was available.
- It was not until the fall of 2017 that the appellant's current caregivers obtained information that they had not been notified by the ministry of the relevant policies necessary to ensure that the appellant continued to receive his assistance.
- The ministry has on multiple occasions incorrectly identified the appellant as living in another community and the caregivers are concerned that the ministry has incorrect information and documents may have been sent to the wrong address.
- The appellant's current caregivers have acted as caregivers for the past 6 years without assistance funding from the ministry, which should have been available to them and would have improved the living circumstances for all the parties.

Additional information

In his Notice of Appeal dated January 12, 2018, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that the reconsideration decision essentially re-stated the original decision and did not address the issues of procedural fairness and natural justice raised by the appellant.

Prior to the hearing, the appellant's advocate provided the following additional documents:

1) Letter dated March 19, 2018 advising that the appellant will be relying on three specific court decisions;

2) Copies of the court decisions in *Baker v Minister of Citizenship and Immigration et al*, [1999] 2 R.C.S. 1999 CanLII 699 (SCC); *Hale v Corporation of the City of White Rock Board of Variance*, SCBC [1985-10-09] 1985 CanLII 705 (BCSC); and *Testa v W.C.B. (B.C.)* 1989-04-14 1989 CanLII 2727 (BCCA); and,

3) Letter dated March 28, 2018 enclosing a copy of an Order obtained March 14, 2018 appointing the appellant's caregivers jointly and severally as the Committee of the estate and person of the appellant.

At the hearing, the appellant's advocate stated that:

- The appellant's caregivers, including the appellant's brother, both work full-time and have been provided care for the appellant. The appellant's previous caregiver mistreated him and stole his money from a joint account.
- The appellant's brother took on the investigation of the previous caregiver and was also looking into the benefits available to help support the appellant.
- This was a stressful and difficult time for the appellant's caregivers ("the caregivers").
- The caregivers wanted to set up direct deposit of the appellant's disability assistance into his bank account in October 2010 and they thought they had filled out the forms needed. They provided a letter from the financial institution in lieu of a cancelled cheque but the direct deposit was not established with the ministry. The ministry required that an application form by completed with the appellant's signature.
- If the direct deposit had been effective, there would have been no subsequent disruption in the appellant's disability assistance as a result of the postal strike in the summer of 2011. The caregivers were never informed by the ministry that the letter from the financial institution would not suffice for setting up direct deposit for the appellant.
- There has never been any dispute or doubt that the appellant qualified for disability status or that the caregivers qualified to act as caregivers for the appellant. Nothing of substance changed with the appellant's circumstances.
- As the direct deposit was not established and two months passed, the ministry's computer program automatically ended the appellant's benefits since two cheques had not been issued.
- In March of 2011, the caregivers realized that they were not receiving funding on behalf of the appellant and they followed up with the ministry.

- There was a postal strike in June of 2011; however, the postal workers were legislated back to work on June 23, 2011. As the appellant's assistance could not be sent by mail, his cheques were held at the ministry office and, again, two months passed and the appellant's benefits were cut off in July 2011. The caregivers were not provided by the ministry with written reasons for why the appellant's benefits were discontinued.
- There is no evidence that letters were sent by the ministry to the caregivers to advise that the appellant's cheques were being held and that they needed to pick them up at the ministry office.
- The caregivers came to the conclusion that the appellant no longer qualified for assistance. They were receiving CLBC funding for his costs in the approximate amount of $2,000 per month.
- It was not until the fall of 2017 that a representative from CLBC advised the caregivers that they should be receiving disability benefits on behalf of the appellant.
- The caregivers are concerned because there have been many instances of the ministry confusing the appellant with another client in a different community and they are afraid he has been misidentified. The appellant is profoundly disabled and needs help even with the most basic needs. The appellant requires 24-hour care every day.

At the hearing, the appellant's caregivers stated that:

- When they re-applied for disability assistance for the appellant, they experienced difficulty in communicating with the ministry. A supervisor was supposed to call and the appellant's brother waited for two days for him to call. The reconsideration package was sent to someone in a different community and when it was finally sent to the correct address, the time had expired the day before it was received.
- They find the whole process overwhelming. They find the process difficult and confusing. They really wanted to have direct deposit set up and when they submitted the letter from the bank they thought that would be enough and they were not told by the ministry that a particular form was required. They were never given a copy of the form and wonder why this was not done. They were just told by the ministry that the appellant did not qualify. It is not in her nature to fight against things and she takes the answer at face value.
- The ministry sent the appellant a letter about him having earned some money from employment. They found this upsetting because there is no way that the appellant has ever earned any income and it was obviously an error and the appellant was being misidentified.
- When the caregivers first had concerns about the appellant's original caregiver, they went to the ministry. The person that the caregivers dealt with at the ministry did nothing so the appellant's brother went to the police. The police were going to interrogate the caregiver, but she ended up getting a lawyer and refusing to be interviewed. It was later determined that the ministry should have conducted the investigation and CLBC reimbursed the money that had been stolen from the appellant by his previous caregiver.
- The appellant has lived in the same community for the past 10 years. When he became an adult, he was originally cared for by his mother. The previous caregiver was in charge of the appellant for about 6 or 7 years after that.
- They have received CLBC funding on behalf of the appellant throughout their time acting as caregivers for the appellant.

- The appellant's caregiver sister-in-law realized that the appellant was not receiving disability assistance and contacted the ministry in March 2011. She does not remember if she went into the ministry office or if she called. She cannot remember how she knew that the funds were not being received but likely because nothing came in the mail. She is not sure why she did not draw the same conclusion after the postal strike in June 2011 and why she did not contact the ministry. She likely just gave up on the process at that time.
- They did not receive any letter from the ministry on behalf of the appellant advising that his disability benefits were being held at the ministry office and that they needed to be picked up there.

The ministry relied on the reconsideration decision. The evidence of the ministry included the following information:

- The appellant was approved for Persons With Disability designation in September 2002. When the intake occurred, the appellant would have received information about the reporting requirements and the importance of the "stubs" to make reports to the ministry. This is part of the standard practice although the ministry does not have specific information about the appellant's case because of the time that has lapsed since then.
- In a case where the client also receives CLBC funding, it is CLBC that takes a large amount of responsibility for communication with the client. A CLBC caseworker is typically assigned to the client and the ministry has someone designated to work specifically with the CLBC clients. The CLBC and the caregivers are to act in the best interests of the appellant. The CLBC typically explains to the caregivers about the need for a Power of Attorney or a Committeeship. The CLBC does not apply for funds from the ministry on behalf of the client. All communication from the ministry will be with the appellant or with the caregivers on his behalf but not with CLBC unless the client is living in a CLBC facility.
- The computer software that cuts off benefits after two months of unclaimed cheques is part of the ministry's case management system. The discontinuation of benefits has nothing to do with whether the client continues to have a disability. Clients are not told in advance that their file will be automatically closed after two months of no contact. In the usual scenario, the client is dependent on assistance to pay rent, or shelter costs, and for support and they will follow up with the ministry as soon as a cheque is missed. The client typically explains why there was a delay in picking up the cheques and the situation is rectified. This is an opportunity for the ministry to make contact with the clients and verify that assistance is still needed. If the client is incapable of going into the office on their own, the ministry will look into the situation and, if it is not practical, they will follow up with the client.
- There is no information available from 2010 for the ministry to consider. The records are not retained for that length of time due to storage considerations.
- Completion of the direct deposit application form in order to establish direct deposit of assistance into an account is a legal requirement of the ministry. The ministry cannot take a risk that the deposit was not approved by the client. In the appellant's situation, there would likely have been concern that the previous caregiver did not continue to receive funds on behalf of the appellant.

- Prior to the postal strike occurring in 2011, the ministry would have conducted a mail out to all clients in receipt of assistance in a "cheque stuffer" mass communication advising that the cheques will be held for pick-up at the local offices. The ministry does not have a copy of the letter sent to the appellant and cannot say for sure that a letter was sent to him. If the caregivers did not receive a letter at this time on behalf of the appellant, it is possible that there was an error in the address on file for the appellant.
- The appellant's cheques were likely held in advance of the postal strike in June 2011 because the ministry did not want cheques to get caught in the mail, not knowing exactly when the disruption would occur. The ministry cannot say for sure what happened to the appellant's May and June 2011 disability assistance cheques, but the standard practice is to hold them in advance of a strike.
- Many years passed with the appellant not receiving assistance and the caregivers never followed up with or contacted the ministry. There was no indication, from the ministry's perspective, that there was a problem.
- There is no doubt that the appellant has a need for assistance but, in this case, the money was not requested by the caregivers. The funds need to be requested each month.
- The "stubs," or monthly reports, only need to be completed by recipients of disability assistance when there has been a change of circumstances.
- Because this appeal involves looking back over many years, there is a lack of information by all parties and the facts that are certain are: the appellant did not receive disability assistance over this time, and his file closed because there was no contact with the ministry.

Admissibility of Additional Information

The ministry objected to the admissibility of the Order appointing the caregivers as Committee for the appellant as this was not before the ministry at reconsideration and is not relevant to the issues on appeal. The appellant's advocate distinguished the Order as "fresh" evidence that was not previously available as opposed to "new" evidence that was available at the time of the original decision and argued that the relevance is as a formal acknowledgement of the ongoing status of the appellant as being unable to manage his own affairs, which has been the case since his birth. The panel admitted the Order, along with the oral testimony on behalf of the appellant, as the Order and related testimony corroborate the information at reconsideration that the appellant requires a caregiver to manage his affairs and, therefore, is in support of information that was before the ministry at reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*.

The arguments by the ministry and by the advocate on behalf of the appellant will be addressed in Part F- Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision, which denied the appellant's request for retroactive assistance as the appellant's eligibility for disability assistance commenced in October 2017, the date of his re-application for disability assistance pursuant to Section 23(1.2) of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Provisions of the EAPWDA provides:

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.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

Provisions of the EAPWDR provide:

Effective date of eligibility

23(1) Subject to subsection (1.1), 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.

(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.01) If the minister decides, on a request made under section 16 (1) [reconsideration and appeal rights] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible for disability assistance;

(b) 12 calendar months before the date of payment.

(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.

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) the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) the amount of unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act received by the family unit in the calendar month.

Requirement for eligibility audit

30 (1) For the purposes of auditing eligibility for assistance or ensuring a recipient's continuing compliance with the Act and the regulations, the minister may do either or both of the following:

(a) require the recipient to attend in person on the date, and at the ministry office, specified by the minister;

(b) require the recipient to complete a form specified by the minister for use under this section and deliver the form to a ministry office specified by the minister.

(2) A recipient who is required under subsection (1) (b) to complete a form but who is not required to attend in person at a ministry office must deliver that form to the specified ministry office within 20 business days after being notified of the requirement to complete the form.

(3) Delivery of the form under subsection (2) may be made by

(a) leaving it with an employee in the ministry office, or

(b) mailing it to that office.

(4) A family unit ceases to be eligible for assistance if

(a) a recipient in the family unit fails to attend in person at the ministry office when required to do so by the minister under subsection (1) (a), or

(c) a recipient in the family unit fails to complete and deliver the form when required to do so by the minister under subsection (1) (b).

How a request to reconsider a decision is made

71 (1) A person who wishes the minister to reconsider a decision referred to in section 16 (1) [reconsideration and appeal rights] of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

(a) leaving it with an employee in the ministry office, or

(b) being received through the mail at that office.

Appellant's position

The appellant's position, as set out in the Request for Reconsideration and in the submissions made on his behalf by his advocate at the hearing, is that the appellant was eligible for retroactive disability benefits, for the period June 2011 to October 2017, because the termination of the appellant's assistance benefits occurred through the application of ministry policy and the workings of a computer software system, which was a ministry decision that materially affected the appellant and was made in breach of a duty of procedural fairness. The advocate relied on the Supreme Court of Canada decision in *Baker* and argued that the fact that this decision by the ministry was administrative, materially affecting the appellant's "rights, privileges or interests," is sufficient to trigger the application of the duty of procedural fairness.

The advocate argued that, in particular, the ministry is required to provide notice to a PWD that their benefits are going to be terminated and to allow the PWD to take any necessary steps to address the cause of the termination. The advocate argued that given the clear indication in October 2010 that the caregivers preferred to have the appellant's funds directly deposited into an account, by tendering of the letter from the financial institution to the ministry, the ministry ought to have provided notice to the caregivers in March 2011 of the steps and the particular ministry application form that was required to establish direct deposit. In the appellant's case, although the ministry required the appellant's signature, the appellant would not have understood the nature of the document required by the ministry or its effect in any event as he has been cared for by caregivers throughout. The establishment of the requested direct deposit of benefits would have avoided the termination of the appellant's benefits with the subsequent postal strike. In the appellant's circumstances, there was also a failure by the ministry to

provide notice to the appellant or his caregivers that a postal strike would result in the termination of his benefits if his cheques were not picked up from the ministry office.

The advocate argued that the ministry's application of the policy that resulted in the termination of the appellant's benefits after two months fails any reasonable review on the basis of procedural fairness and natural justice and led to an unfair result with the appellant's family caregivers providing care in the intervening years without the benefits to which the appellant would have otherwise been entitled. The advocate argued that there are no documents by way of letters, emails or faxes, to show communication by the ministry with the appellant or his caregivers to inform them of the ministry policy or to provide even minimal written reasons for the decisions made to terminate the appellant's benefits.

At the hearing, the advocate argued that the ministry's exercise of discretion was fettered through the use of a computer system that automatically turned off cheque production and that did not require the review of the fact situation by human eyes. The advocate relied on the court decision in *Hale* and argued that the ministry similarly failed to give its mind to the appellant's situation and failed to exercise its discretion by blindly following a policy and a case management system and without considering the merits of the appellant's case. The advocate also relied on the court decision in *Testa* and argued that the ministry had discretion to exercise and to blindly follow a policy laid down in advance was to disable the ministry from lawfully exercising its discretion. The advocate argued that each case must be considered on its own merits.

Ministry's position

The ministry's position is that the appellant's file with the ministry was closed in September 2011 due to no contact from the appellant and he did not re-establish his eligibility for disability assistance until October 2017, the date of his application for disability assistance, pursuant to Section 23(1.2) of the EAPWDR. The ministry argued that while there was a lack of advice or support for the appellant by several parties where there should have been, and the ministry is not completely faultless, the ministry's actions were not outside, or contrary to, the limits of the legislation. The ministry argued that the requirement for an application for direct deposit in the ministry's form, which is an application that must be signed by the client or his legal representatives, is to avoid the risk of funds being paid to an unauthorized source.

There is no provision in the legislation to go back to June 2011 for retroactive benefits, as requested by the advocate, as the maximum allowed is for back-dating for a period of 12 months [Section 23(4) of the EAPWR]. The ministry argued that the court decisions provided by the appellant involved different tribunals and, even if they were decisions of the Employment and Assistance Appeal Tribunal, they are not precedent-setting and can only inform a subsequent decision.

Panel decision

Section 23 of the EAPWDR stipulates that a family unit of an applicant for disability assistance who has been designated as a PWD becomes eligible 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. There was no dispute that the appellant is designated as a PWD or that he had been in receipt of disability assistance for many years, since approximately September of 2002. The advocate stated at the hearing that there has also never been any dispute or doubt that the appellant qualified for disability designation or that the caregivers qualified to act as caregivers for the appellant since the appellant is non-verbal, deaf and functionally illiterate, and nothing of substance changed with the appellant's health circumstances over the years. The caregivers formalized their legal responsibility for the appellant by obtaining an Order dated March 14, 2018 appointing them jointly and severally as the Committee of the estate and person of the appellant.

The first disruption in the appellant's eligibility for, and receipt of, his disability assistance occurred in December 2010 when there was a change in the appellant's circumstances. Section 11(1)(b)(ii) of the EAPWDA stipulates that for a family unit to be eligible for disability assistance, a recipient, must submit to the minister a report that is in the form prescribed by the minister, and contains the prescribed information, and notify the minister of any change in circumstances or information that may affect the eligibility of the family unit and that was previously provided to the ministry. At this time, CLBC was in contact with the ministry, as evidenced by the email interactions between them in October 2010, and the ministry had been advised that the appellant's brother and sister-in-law would be taking over the appellant's care and would be bringing the appellant into the ministry office to formalize the new arrangement where they would act as his caregivers. CLBC also provided the ministry with the mailing address of the appellant's brother and sister-in-law.

The appellant's brother and sister-in-law provided some documents to the ministry to indicate this change, including the shelter information dated October 20, 2010 for the appellant, indicating that he has chosen to reside with his brother as of September 10, 2010 as well as the Consent to Disclosure of Information by the ministry to the appellant's current caregivers, his brother and sister-in-law, dated October 12, 2010 and signed by the appellant. However, the appellant's brother and sister-in-law did not provide the application for direct deposit of disability benefits in the form prescribed by the minister but, instead, tendered a letter from a financial institution. While the advocate argued that the ministry ought to have provided notice to the caregivers of the steps and the particular ministry application form that was required to establish direct deposit, Section 11 of the EAPWDA places a positive reporting obligation on the recipient of disability assistance, or those acting on his behalf, to provide the required information in order to be eligible for disability assistance, where there has been a change in circumstances.

The appellant's brother and sister-in-law did not bring the appellant into the ministry office, as the CLBC had advised they would, and did not follow up with the ministry to ensure that all the necessary information had been provided. They advised the ministry that they had difficulty finding time given their busy schedules, and the advocate stated at the hearing that both the appellant's brother and his sister-in-law are working full-time as well as managing 24-hour care for the appellant. When asked at the hearing, the appellant's sister-in-law could not recall how she made contact with the ministry in March of 2011, whether by attending at the office or by telephone. In any event, the caregiver realized that payment of the appellant's disability assistance had ceased and she provided the ministry with sufficient information at that time to reinstate the appellant's disability assistance, and his disability cheques were forwarded by mail for March and April 2011.

The second disruption in the appellant's eligibility for, and receipt of, his disability assistance occurred in September 2011 when there had been no change in the appellant's circumstances. The ministry confirmed at the hearing that, unlike a recipient of regular income assistance, there is no monthly reporting requirement for a PWD unless there has been a change in the circumstances of the family unit. The advocate argued that the ministry improperly discontinued the appellant's disability assistance in September 2011. Section 71 (1) of the EAPWDR stipulates that if a person wishes the ministry to reconsider a ministry decision that results in a discontinuance of disability assistance, they must deliver a request for reconsideration to the ministry within 20 business days after the date the person is notified of the decision and, as the ministry pointed out at the hearing, a full 6 years has passed since that decision by the ministry in this case. In the appellant's circumstances, however, the panel finds that there was no evidence provided to show that the appellant was "notified" of the ministry's decision prior to October 2017 and, therefore, the ministry's decision to discontinue disability assistance was disputed by the appellant at reconsideration and is properly included as part of this appeal.

Regarding the communications at this time between the ministry and the appellant, the ministry stated at the hearing that prior to the postal strike occurring in June of 2011, the ministry's standard practice is to conduct a mail-out to all clients in receipt of assistance in a "cheque stuffer" mass communication advising that the cheques will be held for pick-up at the local offices. The ministry stated that there is no copy of the letter sent to the appellant in the ministry file and the ministry cannot say for sure that a letter was sent to him. The ministry also stated that if the caregivers did not receive a letter at this time on behalf of the appellant, it is possible that there was an error in the address on file for the appellant. The caregivers stated at the hearing that the reconsideration package was sent to an incorrect address and they received the documents the day after the time for responding had expired. The panel finds that it is more likely than not that the appellant did not receive the letter sent out by the ministry in its mass mailing in advance of the postal strike in June 2011. As a result of the appellant not being aware of the requirement to pick up his cheques at the ministry office, the ministry computer software system, which is part of the ministry's case management system, discontinued his disability assistance in September 2011 after two months of unclaimed cheques. The ministry

was unable to provide a definitive reason why the cheques for May and June 2011 were not mailed to the appellant.

Section 3 of the EAPWDA stipulates that a person is eligible for disability assistance if that person satisfies the initial and continuing conditions of eligibility established under this Act, and the family unit has not been declared ineligible for the disability assistance under this Act. In the appellant's circumstances, there was no evidence before the ministry that the appellant no longer satisfied the initial or continuing conditions of eligibility under the Act. The ministry was informed that the appellant is a CLBC client and, as a result of the recent re-establishment of disability assistance in March of 2011 by his sister-in-law, that he was represented by caregivers because of his inability to care for himself.

While a person may be "declared" ineligible for disability assistance under the Act for failing to attend in person at the ministry office when required to do so by the ministry [Section 30 (4)(a) of the EAPWDR], the person must be notified of the requirement to attend and the declaration of ineligibility requires even a higher degree of formal notice, as the ordinary dictionary meaning of "declare" is "...to make known formally, officially, or explicitly." The advocate relied on the Supreme Court of Canada decision in *Baker* and argued that the decision by the ministry to discontinue the appellant's disability assistance was administrative, materially affecting the appellant's "rights, privileges or interests," and there was a concomitant duty of procedural fairness.

The advocate argued that there are no documents by way of letters, emails or faxes, to show communication by the ministry with the appellant or his caregivers to inform them that the appellant's disability assistance had been discontinued due to his failure to attend at the ministry office to pick up his cheques. At the hearing, the ministry acknowledged that if the ministry is aware that the client is incapable of going into the office on their own, the ministry will often look into the situation and, if it is clearly not practical for the client to attend at the office, the ministry will take the initiative to follow up. Given the extent of the appellant's disability in this case, that warranted a court order that requires a Committee of his person and estate, the panel finds that the ministry decision to discontinue the appellant's disability assistance in September 2011, without notice of the requirement for him to attend at the ministry office and without a formal notice that he was ineligible for disability assistance under the Act, was not a reasonable application of the applicable legislation in the appellant's circumstances.

Section 23 of the EAPWDR stipulates that a family unit of an applicant for disability assistance who has been designated as a PWD becomes eligible 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. There was no dispute that the appellant is designated as a PWD and the panel finds that the date of the appellant's re-application for disability assistance was in March 2011. Therefore, the panel finds that the ministry was not reasonable in concluding that the appellant's eligibility for disability assistance did not commence until October 2017 according to Section 23(1.2) of the EAPWDR.

Conclusion

The panel finds that the ministry reconsideration decision was not a reasonable application of the applicable enactment in the appellant's circumstances and rescinds the ministry's decision pursuant to Section 24(1)(b) and 24(2)(b) of the *Employment and Assistance Act.* Therefore, the appellant's appeal is successful and this decision is referred back to the ministry for a decision as to amount.