

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of November 5, 2018 in which the ministry denied backdated shelter allowance (SA) for the period January – April 2018 because:

1. she failed to report a change in shelter circumstances as required by Section 11 of Employment and Assistance for Persons with Disabilities Act (EAPWDA); and
2. she requested payment for shelter costs incurred before the calendar month in which her request was made, contrary to Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 23 (5).

### **PART D – RELEVANT LEGISLATION**

EAPWDA: Section 11

EAPWDR: Section 23 (5)

## **PART E – SUMMARY OF FACTS**

The appellant is a sole recipient of Person with Disabilities (PWD) benefits.

Information before the ministry at reconsideration included:

- Shelter Information Form (SIF) dated May 27, 2018 indicating that effective November 17, 2017 the appellant had entered into a tenancy arrangement with landlord P at a monthly rent of \$400 including utilities (Tenancy B);
- copies of 5 rent receipts for the months of January – May, signed by P;
- appellant's request for reconsideration submitted to the ministry on October 26, 2018 which included the following information from the appellant:
  - she was not told that payment of her SA had been stopped until she called the ministry and was informed that according to ministry records she had no fixed address;
  - she had to borrow funds in order to survive during the period January – April 2018 when she did not receive SA;
  - she has been living at Tenancy B since November 17, 2017;
  - a ministry worker told her that the ministry had received an anonymous phone call saying that she was living in a common-law relationship with someone, which was not correct;
  - it took from January 2017 – June 2017 [*sic*] before her SA was re-established as a direct deposit.

In her Notice of Appeal dated November 14, 2018 the appellant noted that she thought that the lesser amount in her bank account was due to an ongoing review of her file by the ministry.

### **Oral Evidence at Hearing**

Further to her comments in her Notice of Appeal the appellant explained that she didn't call the ministry in January 2018 because the ministry had reviewed her file in 2016 and 2017 and she assumed that the recent stoppage of her SA was due to a new review in 2018. She added that on November 17, 2017 she completed the required SIF, which provided address and rent details pertaining to Tenancy B, and handed it to a ministry worker at the nearest ministry office on the same day. The ministry worker took the SIF from the appellant and said "Okay". The appellant did not receive a copy of the SIF from the ministry worker.

The appellant also stated that on May 27, 2018 she submitted two SIFs to the ministry. The first was a duplicate of the one she submitted to the ministry on November 17, 2017 (also dated November 17, 2017) and the second was a new SIF dated May 27, 2018. The appellant added that she was surprised that the duplicate SIF was not included in the information before the ministry at reconsideration.

### **Evidence of Witness P**

P reported that:

- the appellant has been a tenant at his home from November 17, 2017;
- on November 17, 2017 he accompanied the appellant to the ministry office and watched her submit her SIF to a ministry worker;
- on May 27, 2018 he also witnessed the appellant delivering the duplicate SIF dated November 17, 2017 and the May 27, 2018 SIF to a ministry worker;
- in November or December 2017 he was called by a ministry worker asking for confirmation that two other ministry clients (M and G) were tenants in his home. He told the worker that neither M nor G was residing at his home, and that the appellant was his only tenant. [*NOTE: in subsequent testimony P altered this statement by saying that the ministry had called him and asked him if the appellant was a tenant. He replied: "Yes, but not M and G".*]

### **Evidence of Ministry Representative**

The ministry representative reported that in preparation for the appeal hearing that she examined all entries and attachments in the appellant's ministry file. The file indicates that appellant did not make contact with the ministry until May 24, 2018 and there was no record of the appellant having submitted an updated SIF until May 29, 2018. She added that ministry workers are required to make notes of all communications and keep a record of all

documentation submitted by clients.

**Admissibility of Oral Evidence at the Hearing**

The panel considered the evidence of the appellant and of Witness P and admitted all of it under EAA Section 22 (4) as evidence in support of the information that was before the ministry at reconsideration.

The panel also admitted the oral evidence of the ministry representative under Section 22 (4) because it provided clarification of the content of the appellant's ministry file.

The ministry relied on the reconsideration decision.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal the reasonableness of the ministry's decision to deny backdated SA to the appellant for the period January – April 2018 because:

1. she failed to report a change in shelter circumstances as required by Section 11 of Employment and Assistance for Persons with Disabilities Act (EAPWDA); and
2. she requested payment for shelter costs incurred before the calendar month in which her request was made, contrary to Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 23 (5).

Relevant legislation:

### **EAPWDA:**

#### **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:**

#### **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.

The appellant argues that on November 17, 2017 she submitted notice of her change of address and new tenancy details to the ministry in the required SIF form and is therefore eligible for her SA for the period January – April 2018.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- on December 12, 2017 a bylaw officer informed the ministry that the building listed as the appellant's home address (Tenancy A) had been boarded up, and that all tenants had been evicted at the beginning of November 2017;
- on December 12, 2017 a ministry worker reviewed the appellant's file and did not find notification of her move to Tenancy B or an updated SIF relating to Tenancy B. The appellant's SA was cancelled and her address updated to No Fixed Address;
- on May 24, 2018 the appellant confirmed that she had been evicted from Tenancy A and since her eviction has resided at Tenancy B at a monthly rental of \$400;
- on May 29, 2018 the appellant submitted a SIF confirming residency at Tenancy B since November 2017. Based on this information the ministry provided May SA to the appellant.

### **PANEL DECISION**

EAPWDA Section 11 clearly states that in order for a family unit to be eligible for assistance the recipient must notify the ministry of any change in circumstances, in the form prescribed by the ministry. The appellant asserts that she provided an updated SIF on November 17, 2017. Her witness and current landlord P corroborates this information. The ministry has no record of the appellant having submitted information of a change of address or

an updated SIF.

In assessing the inconsistency between the appellant's evidence and the information relied upon by the ministry the panel must subject the appellant's evidence to an examination of its credibility within the probabilities that surround the currently existing conditions. In other words, is the appellant's evidence in harmony with what a practical and informed person would readily recognize as reasonable? Four factors argue against the credibility of the appellant's evidence:

1. the appellant acknowledges that she made no effort to contact the ministry regarding her missing SA between January and April 2018;
2. the appellant made no reference to having previously submitted a SIF in her request for reconsideration;
3. the appellant did not refer to the November 17, 2017 SIF in her Notice of Appeal;
4. at the hearing witness P stated that in December 2017 a ministry worker had called him to confirm the tenancies of two other ministry clients. P told the ministry that these two clients were no longer his tenants and that the appellant was renting from him. He then altered his testimony by saying that the ministry had called him and asked him if the appellant was a tenant, and when questioned about the prior inconsistent statement denied that he had made it.

When these factors are compared to the ministry's evidence that it received no communication or documentation from the appellant until May 24, 2018, and taking into account that the ministry adheres to a strict practice of noting all communications and forms submitted by a client, the panel finds the evidence of the ministry to be more credible than the oral evidence tendered by the appellant at the hearing.

Having found that the appellant did not inform the ministry of her change in circumstances prior to May 24, 2018 the panel finds that the ministry reasonably determined that pursuant to EAPWDA Section 11 the appellant became ineligible for SA effective December 12, 2017.

The panel also finds that the ministry reasonably determined that the appellant is not eligible for backdated SA for the months of January – April 2018 because, pursuant to EAPWDR 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 she requested it, which in this case is May 2018.

In conclusion, the panel finds that the reconsideration decision of November 5, 2018 which denied backdated SA to the appellant for the months of January – April 2018 was reasonably supported by the evidence, and confirms the decision. The appellant is not successful in her appeal.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME Joan Bubbs	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/Dec/05

PRINT NAME Patrick Cooper	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/Dec/05

PRINT NAME Marilyn Mellis	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/Dec/05