

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of June 25, 2019 (the “Reconsideration Decision”), which denied the Appellant a shelter allowance from August 2018 until May 2019 because the Appellant had failed to advise the Ministry of a change in her living circumstances, as required by section 11(1)(b) of the *Employment and Assistance For Persons With Disabilities Act* (“EAPWDA”) and as a result, the Ministry was unable to determine that the Appellant was eligible for a shelter allowance pursuant to section 23 of the *Employment and Assistance For Persons With Disabilities Regulation* (“EAPWDR”), or to provide a shelter allowance in any month prior to the Appellant’s subsequent request for a shelter allowance, pursuant to section 23(5) of the EAPWDR.

**PART D – RELEVANT LEGISLATION**

EAPWDA, section 11  
EAPWDR, Schedule A, section 4  
EAPWDR, section 23

**PART E – SUMMARY OF FACTS**

The Appellant is a sole recipient of disability assistance whose assistance file was opened in 1999 and who was designated as a person with disabilities (“PWD”) in 2002. The Appellant has a developmental disability and does not manage her finances herself.

Prior to having her shelter allowance discontinued, the Appellant had been receiving a shelter allowance of \$350.92 per month, which was the actual cost of her shelter.

In July, 2018, the Appellant’s Notice of Deposit was returned as undelivered from the address which the Ministry had on file for the Appellant. The Ministry received no response when it attempted to contact the Appellant and her landlord about her living arrangements. The Appellant contacted the Ministry on May 2, 2019.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- the Appellant’s Request for Reconsideration (“RFR”), in which the Appellant stated that:
  - she is a person living with a developmental disability;
  - she is living in a shared living/home share, funded by a non-profit society;
  - English is the Appellant’s second language;
  - the Appellant cannot read, write, or understand English and that English is also the second language of the Appellant’s caregiver;
  - the Appellant was unable to respond to requests for information from the Ministry due to her developmental disability.

In her Notice of Appeal, the Appellant repeated the information that was in the RFR and added the following:

- the Appellant is entitled to monies as a PWD;
- the Appellant is required to pay a \$716.00 user fee to her caregiver, which is mandated by the society which arranged for the caregiver;
- the Appellant’s mother has been managing the Appellant’s finances but is suffering from dementia and was unaware that the Appellant was no longer receiving her full disability assistance, including the shelter allowance.
- during the period in which the Appellant did not receive her shelter allowance, she was nevertheless supported by her home share caregiver.

At the hearing of the appeal, the Appellant’s advocate submitted the following documents:

- an information sheet setting out what portion of a recipient’s monthly assistance (\$716.13) is used to pay a community service provider (the “Service Provider”) if a recipient is residing at a facility run by the Service Provider;
- a contract between another non-profit society (the “Society”) which assists recipients with disabilities and the Appellant’s caregiver, her sister, dated March 7, 2017;
- an undated contract between the Society and the Appellant’s sister, covering the period to February 28, 2019; and
- a contract between the Society and the Appellant’s sister, covering the period between February 28, 2019 and February 28, 2020.

The panel admits the above-described documents pursuant to section 22(4)(b) of the Employment and Assistance Act (“EAA”) as written testimony in support of the information and records that were before

the Ministry at the time of the Reconsideration Decision.

At the hearing of the appeal, the Appellant's evidence was that her sister is a paid caregiver and that the Service Provider is mandated to pay monies towards the Appellant's shelter and groceries. The Appellant had lived with her mother up to the early part of 2017 when her sister entered into a contract with the Society to provide care. The Appellant's mother, who suffers from dementia, moved in to the sister's residence in early 2018. The Appellant's mother had looked after the Appellant's finances prior to and after her own move into the residence of the Appellant's sister.

After the Appellant's mother moved in with the sister, she had arranged to have mail forwarded to the Appellant's sister's residence.

Although the Society has an oversight function with respect to the Appellant and will sometimes notify the Ministry of changes in a recipient's circumstances, the evidence is that no such notice of the Appellant's move to her sister's residence was provided to the Ministry.

The evidence of the Appellant's sister was that she was not instructed to advise the Ministry of the changes to the Appellant's living circumstances and that she was not aware that she needed to let the Ministry know that the Appellant was now living with her.

When the Ministry had a mailed out Notice of an Electronic Funds Transfer into the Appellant's account returned to it, the Ministry attempted to contact the Appellant but received no responses. The Ministry representative stated that in circumstances such as these, where they are unable to ascertain ongoing eligibility, they will discontinue the assistance on the expectation that the recipient will contact the Ministry once he or she realizes that the assistance has been discontinued. In this case, that did not occur until the Society was able to review the Appellant's banking records.

The evidence given at the hearing of the appeal was that the Society was also unable to exercise its oversight function with respect to the Appellant's finances for some time, due to the fact that they could not get access to the Appellant's banking records from the Appellant's mother. They were finally able to gain access to those records some time in the spring of 2019, whereupon it was observed that the Appellant had not received a shelter allowance after July 2018.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was ineligible for a shelter allowance from August 2018 until May 2019 because the Appellant had failed to advise the Ministry of a change in her living circumstances, as required by section 11(1)(b) of the EAPWDA and that, as a result, the Ministry was unable to determine that the Appellant was eligible for a shelter allowance, pursuant to section 23(1.2) of the EAPWDR.

*Relevant Legislation*

Section 23(1) sets out when a recipient is eligible for assistance and a shelter allowance

**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 disability assistance application date,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, 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 disability assistance application date.

(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) Subject to subsection (6), 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.

(6) Subsection (5) does not apply to assistance in respect of moving costs as defined in section 55.

Section 4 of Schedule A to the EAPWDR sets out how a recipient's monthly shelter allowance is calculated:

#### **Monthly shelter allowance**

4 (1) For the purposes of this section:

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

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

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

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

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Section 11 of the EAPWDA imposes reporting obligations on recipients of disability assistance:

#### 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 confirmed by a signed statement of each recipient.

#### *Appellant Position*

The Appellant's position is that the Appellant was incurring shelter costs from the time that she moved in to her sister's residence and was, accordingly, eligible for a shelter allowance. The Appellant's position is that it was only through inadvertence that the reporting requirement was not met and that the reason it took as long as it did for her to request a shelter allowance in respect of her sister's residence is that her mother was overseeing her finances and suffered from dementia, resulting in no one becoming aware that the Appellant's shelter allowance had been discontinued after July 2018.

#### *Ministry Position*

The Ministry's position is that the Appellant failed to meet the reporting requirement set out in section 11 of the EAPWDA and did not notify the Ministry of the change in her residence, which change did impact her eligibility for a shelter allowance. As a result of this and the Appellant's failure to respond to inquiries about her living arrangements, the Ministry argues that it was unable to confirm the Appellant's eligibility for the shelter allowance after July 2018 (when mail to the Appellant was returned). The Ministry argues

that it was finally able to confirm that the Appellant was living with her sister in May 2019 and provided her with a top up in her shelter allowance for that month but that it is precluded by operation of section 23(5) of the EAPWDR from providing assistance for a month prior to the month in which such assistance was requested.

*Panel Decision*

Section 11 of the EAPWDA requires a recipient to report any change that “may affect the eligibility of the family unit” in order to be eligible for assistance. A recipient’s shelter allowance forms part of the assistance to which a recipient may or may not be eligible, pursuant to section 23(1.2) of the EAPWDR. Because section 4 of Schedule A to the EAPWDR sets out that a shelter allowance is calculated as the lesser of a family unit’s actual living shelter costs and the amount set out in the tables in section 4(2), a change in a recipient’s living circumstances can affect the eligibility of a family unit. In the case of this Appellant, the change of her residence from living with her mother to living with her sister resulted in an increase to her actual shelter costs from \$350.92 to \$375.00.

When the Ministry determined that Appellant was no longer living with her mother, it was likewise unable to confirm that she had any ongoing shelter costs or that she was eligible for a shelter allowance at all, despite having seemingly made some effort to contact the Appellant.

In the result, the panel finds that the Ministry’s determination that the Appellant was not entitled to receive a shelter allowance after July 2018 was a reasonable application of section 11 of the EAPWDA and section 23(1.2) of the EAPWDR. In effect, the panel finds that it was not unreasonable for the Ministry to have discontinued the Appellant’s shelter allowance after July 2018.

Although the Appellant was once again able to satisfy the Ministry that she was eligible for a shelter allowance in May of 2019 and the evidence indicates that she would have been eligible from August 2018 through April 2019, the Ministry also determined that it was nevertheless unable to restore the Appellant’s shelter allowance for those months. On this issue, the panel also finds that the Ministry reasonably applied section 23(5) of the EAPWDR, which sets out that “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.” Having determined that the Appellant was not entitled to a shelter allowance after July 2018, the Ministry next found that the Appellant was again eligible for a shelter allowance in May 2019. In the result, the Ministry determined that a shelter allowance for any month prior to May 2019 would be assistance “in respect of a service provided or a cost incurred before the calendar month in which the assistance was requested” and that any such assistance would run afoul of section 23(5) of the EAPWDR. The panel finds that this was reasonable application of section 23(5) of the EAPWDR.

Based on all of the foregoing, the panel finds that the Reconsideration Decision was a reasonable application of section 11 of the EAPWDA and section 23 of the EAPWDR and the Appellant is not successful in this appeal.

APPEAL NUMBER

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       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?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/30

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/30

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/30