

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 19, 2019, which determined that the appellant is required to repay the Province of British Columbia \$1500, in accordance with sections 11 and 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

The ministry determined this overpayment was established as a result of the appellant receiving \$1500 disability assistance for shelter allowance for the period April to July 2016, for which the appellant was ineligible, under Schedule A, sections 4 and 5, of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 11 and 18

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule A, sections 4 and 5

PART E – SUMMARY OF FACTS**Relevant Evidence Before the Minister at Reconsideration**July 26, 2019 - Request for Reconsideration

The appellant states, “the Act contradicts itself in the definition of PWD, exempts them from filing paper reports, and then requires them to notify the ministry when their circumstances change.”

The appellant is under a lot of stress with mental and physical health issues, so a resolution to debt repayment would be a relief. The appellant also states, filing paper reports when circumstances change is not asking very much under normal circumstances. It was what the appellant intended when the appellant moved, but then lost complete control of life. The appellant collapsed and “couldn’t carry on, and did not want to carry on.”

October 18, 2018 – Letter from the ministry to appellant

“The ministry conducts reviews of recipients’ eligibility for assistance under the BC Employment and Assistance Program.” Based upon this review, the ministry believed that an overpayment may have occurred, and the appellant may have received assistance, but was not eligible. The potential overpayment may have occurred due to receiving shelter benefit of \$375 for April, May, June & July 2016; however, the appellant did not have shelter expenses. The amount of the potential overpayment was calculated at \$1,500.

October 18, 2018 – Overpayment Chart (attached to above letter)

“receiving shelter benefit of \$375 for Apr 2016; however, did not have shelter expense”
“receiving shelter benefit of \$375 for May2016; however, did not have shelter expense”
“receiving shelter benefit of \$375 for Jun 2016; however, did not have shelter expense”
“receiving shelter benefit of \$375 for Jul 2016; however, did not have shelter expense”

The chart shows an overpayment amount of \$375 for each month, April, May, June and July 2016 – Total over payment - \$1,500.

November 2, 2018 (received) – Letter from appellant to ministry

This letter is in response to the letter received from the ministry dated October 18, 2018.

For April, May, June and July 2016, the appellant was a patient and in treatment at a hospital and a facility for major depressive disorder. The appellant was very sick, had made two suicide attempts during this time and could not manage personal affairs. Since September 2016, the appellant has continued to receive treatment from a Mental Health Team and sees a psychiatrist once a month, a counsellor once or twice a month and a peer support worker once a week.

December 18, 2018 – Letter, To Whom It May Concern, from appellant’s case manager

The appellant is a client of a Mental Health Team, who has been diagnosed with major depressive disorder with anxious features. The appellant was admitted to hospital on April 5, 2016 for three days due to suicidal ideation and attempt, and was readmitted on April 8, 2016 for the same reason - then stayed in hospital until May 3, 2016. Then the appellant was admitted to another facility to help step down from hospital to community, stayed at this facility from May 3, 2016 to the week of July 18, 2016 and was then moved to another facility, and subsequently to another facility. The appellant was very unwell during this period.

In its reconsideration decision, the ministry states the appellant received a shelter allowance of \$375 for the months of April 2016 to July 2016 when there were no actual monthly shelter costs. As a result the appellant received shelter allowance, which the appellant was not eligible for, totalling \$1500.

As well, the ministry states in its reconsideration decision that, “there is no discretion under section 18 of the EAPWD Act that permits the ministry to waive the repayment of an overpayment.” and accordingly, the appellant is required to repay \$1500.

Additional Information

Ministry

The ministry’s submission is the reconsideration summary provided.

Appellant

August 29, 2019 – Notice of Appeal (received)

The appellant states that it is incomprehensible that the ministry expects even very sick people to remember to update the ministry on their circumstances. “Is there any discretion anywhere in the EAPWD Act?” The appellant would appreciate a thorough review including the application of other relevant and favourable legislation.

September 14, 2019 – Appellant Submission

The appellant states the ministry advised that there is no discretion under section 18 of the EAPWD Act that permits the ministry to waive the repayment of an overpayment, despite the appellant’s dire circumstances at the time. This debt was acquired because the appellant forgot to notify the ministry of the hospitalization. The months in question date back to April to June 2016. It was an honest mistake while the appellant was recovering from two suicide attempts and receiving treatment for major depressive disorder and anxiety. It will be a hardship for the appellant to pay the money back.

The panel determined the information in the Notice of Appeal and subsequent submission to be argument.

PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's reconsideration decision which determined that the appellant is required to repay the Province of British Columbia \$1500, in accordance with sections 11 and 18 of the *Employment and Assistance for Persons with Disabilities Act* was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances?

Did the ministry reasonably determine that the appellant was ineligible for disability assistance for shelter allowance, for the months of April, May, June and July 2016, under Schedule A, sections 4 and 5, of the *Employment and Assistance for Persons with Disabilities Regulation* – which created the \$1500 overpayment?

The legislation provides:

Employment and Assistance for Persons with Disability 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 confirmed by a signed statement of each recipient.

Overpayments**18**

(1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Employment and Assistance for Persons with Disabilities Regulation

Schedule A

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;

...

(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

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence

...

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

(a) rent for the family unit's place of residence;

...

Panel Decision

Section 11, EAPWDA - Reporting Obligations

Section 11 sets out the reporting obligations required to be eligible for disability assistance. It states that the 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... was previously provided to the minister."

The letter, from the appellant's case manager (December 18, 2018) states the appellant is a client of a Mental Health Team and has been diagnosed with major depressive disorder with anxious features. The appellant was admitted to hospital on April 5, 2016 for three days due to suicidal ideation and attempt, was readmitted on April 8, 2016 for the same reason, and stayed in hospital until May 3, 2016. Then the appellant was admitted to another facility, stayed at this facility from May 3, 2016 to the week of July 18, 2016 and was then moved to another facility, and subsequently to another facility. The appellant was very unwell during this period.

The appellant argues that, it is incomprehensible that the ministry expects even very sick people to remember to update the ministry on their circumstances. It was an honest mistake while recovering from two suicide attempts and receiving treatment for major depressive disorder and anxiety. As well, "the Act contradicts itself in the definition of PWD, exempts them from filing paper reports, and then requires them to notify the ministry when their circumstances change."

The panel finds there is no evidence to demonstrate that the appellant notified the ministry of the changes to the appellant's circumstances as required under section 11 of the EAPWDA (i.e., moved from place of residence and in hospital and treatment centres for the months of April, May, June and July, 2016). The panel also finds that while the EAPWDR does include exemptions, none of the exemptions pertain to reporting obligations.

Therefore, the panel finds the ministry reasonably determined that section 11 of the EAPWDA was not met.

Section 18, EAPWDA – Overpayments

Section 18 states that, "If disability assistance... is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period."

The ministry argues that the appellant received shelter allowance of \$375 for the months of April 2016 to July 2016 when no actual monthly shelter costs were incurred. This resulted in an overpayment of \$1500 (\$375 x 4). The ministry also argues that there is no discretion under section 18 of the EAPWDA that permits the ministry to waive the repayment of an overpayment and therefore the appellant is required to repay \$1500.

The appellant argues that mental and physical health issues are causing a lot of stress, so a resolution to debt repayment would be a relief, as it will be a hardship to pay the money back.

The panel finds that evidence in the chart (October 18, 2018), shows that \$1500, as assistance for shelter costs was paid to the appellant at a rate of \$375 per month for four months (April, May, June and July 2016), when the appellant did not incur shelter costs.

The panel also finds there is no discretion to waive the overpayment, under section 18 of the EAPWDA or under other legislation.

The panel finds the ministry reasonably determined that an overpayment of shelter support was established and the appellant is liable to repay this overpayment, as per section 18 of the EAPWDA.

Schedule A, EAPWDR – Monthly Shelter Allowance

Schedule A, sections 4 and 5 determine how shelter costs are calculated; however the actual amount a person is liable to repay is not appealable under section 18(2) of the EAPWDA, and therefore not within the panel's jurisdiction.

Conclusion

In conclusion, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.

The appellant is not successful on 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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/10

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/10

PRINT NAME

Bill Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/10