

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 26, 2019 which held that, pursuant to Section 4(2) of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR), the appellant is not eligible to receive more than \$375 for shelter allowance. The ministry also determined that, pursuant to section 2(1) of Schedule A of the EAPWDR, the appellant is not eligible to receive more than \$808.42 for a support allowance.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – sections 5 and 11

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 29 and Schedule A sections 2 and 4.

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration consisted of:

Request for Reconsideration (RFR), signed and dated September 18, 2019, in which the appellant described their marital history and challenge with an inter-cultural marriage; described their spouse's health challenges; described the impact their spouse's death has had both emotionally and financially; described their own health challenges; and argued for additional funding to pay rent.

Evidence at Appeal

Notice of Appeal (NOA), signed and dated October 9, 2019, in which the appellant described the unexpected nature of their spouse's death; that they face a rent increase; described the ways in which they had made financial reductions; argued that they should be entitled to some of their spouse's income assistance benefits.

Evidence at the Hearing

At the hearing the appellant stated, in part, the following:

- Shares the rental home with their adult children, who are also on assistance and the living expenditures are divided equally.
- Does not have plans to move as they feel safe where they are however the landlord has increased the rent. They need help to meet the costs of the rent.
- Are grieving the loss of their spouse and dealing with financial and administrative issues relating to his passing and in due course they plan to look for a part time job.
- Did not expect their spouse's support allowance for August 2019 to be canceled and was not prepared for this financially or emotionally.
- Could not afford the funeral they wanted for their spouse and had no family to turn to for help.
- Out of principle, justice and compassion they think that they should receive the last support cheque.
- Was told by the MLA's office that the 'deceased spouse adjustment' payments would be renewed for another 3 months upon application but the ministry worker told them otherwise.

At the hearing the ministry relied on its reconsideration decision and added that the administration of the 'deceased spouse adjustment' payments is not governed by legislation but through policy. The policy allows the ministry to pay a widowed recipient up to 3 months of additional shelter costs and this case that would be \$195 per month. The 'deceased spouse adjustment' cannot be renewed or continued beyond 3 months.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision, which found that the appellant is ineligible to receive more than \$375 for shelter allowance and ineligible to receive more than \$808.42 for a support allowance, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation sets out the following:

EAPWDA**Disability assistance and supplements**

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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.

EAPWDR**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. 87/2018:

(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.

Schedule A

Monthly support allowance

- 2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of
- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
 - (a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
 - (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	808.42
3	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	1 027.56
4	Two applicants / recipients and no dependent children	Both applicants / recipients are persons with disabilities	1 503.06
5	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	1 276.06
6	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	1 121.56
7	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities	1 597.06
8	Two applicants / recipients and one or more dependent	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more	1 370.06

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	children	years of age	
9	Sole applicant / recipient and one or more dependent children	Applicant / recipient is a person with disabilities and a warrant has been issued for the applicant / recipient	849.08
10	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, and the other is under 65 years of age, and a warrant has been issued for one	858.42
11	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, and the other is 65 or more years of age and a warrant has been issued for that applicant / recipient	858.42
12	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities and a warrant has been issued for that applicant / recipient, and the other is 65 or more years of age	858.42
13	Two applicants / recipients and no dependent children	Both applicants / recipients are persons with disabilities and a warrant has been issued for one	1 085.42
14	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, and the other is under 65 years of age and a warrant has been issued for that applicant / recipient	1 021.56
15	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and a warrant has been issued for that applicant / recipient, and the other is under 65 years of age	1 021.56
16	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and the other is under 65 years of age, and a warrant has been issued for both	971.56
17	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, and the other is 65 or more years of age and a warrant has been issued for that applicant / recipient	1 270.06
18	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and a warrant has been issued for that applicant / recipient, and the other is 65 or more years of age	1 270.06
19	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and the other is 65 or more years of age, and a warrant has been issued for both	1 220.06
20	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities and a warrant has been issued for one	1 497.06
21	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities and a warrant has been issued for both	1 447.06

Monthly shelter allowance

4 (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
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

The Appellant's Position

The appellant argued that they need their spouse's support and shelter allowance amount to make ends meet and pay the rent until they are able to work part time and that they should receive the additional allowance amount on compassionate grounds.

The Ministry's Position

The ministry argued that since the appellant's spouse is deceased, the appellant is no longer eligible for a two-person shelter allowance or a two-person support allowance. The ministry argued that pursuant to Section 4(2) of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR), the appellant is not eligible to receive more than \$375 for shelter allowance and, pursuant to section 2(1) of Schedule A of the EAPWDR, the appellant is not eligible to receive more than \$808.42 for a support allowance. The ministry further argued that it does not have the authority to overturn legislation and there are no provisions in the legislation that allow for additional shelter or support allowance to be paid based on the appellant's circumstances.

The Panel's Decision

The panel notes that on August 1, 2019, the appellant requested ongoing support and shelter allowances in the amount set out for a two-person family unit. This is the only issue before the panel.

The panel notes that the appellant argued that they were told that the 'deceased spouse adjustment' payments could be renewed for an additional 3 months and that since the appellant needs time to grieve their loss, they need the extra funds. The panel notes that this issue is not before this panel and therefore it cannot make a finding on this point

In all appeals, the panel's jurisdiction is to review whether or not the ministry had applied the applicable legislation and whether the ministry's decision was supported by the evidence in the case. The panel cannot overturn a decision made by the ministry solely based on compassion, principle or a sense of justice.

Support

Schedule A, section 2(1) of the EAPWDR sets out that the support allowance for a sole recipient of disability assistance who does not have dependents is \$808.42. In this case the evidence indicates that with the passing of the appellant's spouse, the appellant is a sole recipient of disability assistance and therefore is entitled to \$808.42 per month for support. The evidence also indicates that there is no provision in the legislation that would allow the ministry to make an exception on compassionate grounds.

Allowance

Schedule A, section 4(2) of the EAPWDR sets out that shelter allowance for a sole recipient of disability assistance who does not have dependents is \$375. In this case the evidence indicates that with the passing of the appellant's spouse, the appellant is a sole recipient of disability assistance and therefore is entitled only to \$375 per month for shelter. The evidence also indicates that there is no provision in the legislation that would allow the ministry to make an exception on compassionate grounds.

Conclusion:

The panel finds that the ministry's reconsideration decision, which determined that the appellant was ineligible for additional support and shelter allowance, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/30

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/30

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/30