

APPEAL NUMBER
2020-00022

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated January 8, 2020 (the Reconsideration Decision). In the Reconsideration Decision the Ministry stated that the Appellant was not eligible for a security deposit or pet deposit supplement. The reason given for this decision was that although the Appellant had a Persons With Disabilities designation the appellant was designated Medical Services Only and was only entitled to receive health supplements. The Appellant was not entitled to disability or hardship assistance and other supplements.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 56, 56.2, 61.1 and 62 (see schedule attached)

Employment and Assistance for Persons with Disabilities Act, sections 22(4), and 24(2) (see schedule attached)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was as follows:

- On December 6, 2019 the Appellant submitted a shelter form to the ministry for a new residence, effective November 29, 2019, requesting assistance with a security deposit of \$425 and a pet deposit of \$425.
- On the December 6, 2019 form, the Appellant stated the need to move quickly due to leaving an abusive situation, and that to get a new residence the Appellant borrowed the security and pet deposit funds from a parent and requested reimbursement to repay the loan.
- The Appellant had not had to pay a security deposit at the last residence and would not be receiving anything back from the residence being vacated.
- The Appellant stated that the Appellant recently gave notice to end a full-time employment position as of January 2, 2020 due to health reasons and will be going back to disability assistance full-time.
- The Appellant recognized that the Act did not provide for a pet deposit.

In the Reconsideration Decision the Ministry held that the Appellant was ineligible for the security and pet deposit. The reason for this decision given by the Ministry was that the Appellant was designated as Medical Services Only and was only eligible for health supplements. The Ministry noted that the legislation was amended on January 1, 2020 to include access to pet deposits, but that this too was not a benefit that could be received if designated Medical Services Only.

At an oral hearing, on February 13, 2020, the Appellant, supported by an advocate, provided oral submissions in support of the application to receive the security deposit. The Appellant acknowledged that the legislation at the time of the initial application did not permit pet deposits. In support of the application to receive the security deposit supplement, the Appellant stated that:

- The Appellant had borrowed the funds needed for the security deposit and had to repay the loan;
- There was no security deposit paid or refunded at the previous residence;
- The Appellant left the previous residence quickly in order to escape sexual and verbal harassment;
- The Appellant gave up the full-time employment position as the Appellant's doctor advised the Appellant not to work fulltime for health reasons and hopefully would soon be eligible for disability benefits;
- The security deposit of \$425 was necessary to secure permanent housing; and
- The Appellant used any savings had for the move and does not have funds available to pay the security deposit.

These submissions summarized the arguments set out in the written submissions filed on reconsideration.

At the hearing, the Ministry provided oral submissions in support of the Reconsideration Decision. These submissions echoed the Ministry's position as set out in the Reconsideration Decision. The Ministry also provided new evidence that as of the evening before the hearing that the Appellant was no longer designated as Medical Services Only, was now eligible for disability benefits once again, and could reapply for the requested supplements. Unsurprisingly, the Appellant did not object to the admission of this new evidence. The Ministry provided further information that the Appellant had been designated Medical Services Only because the Appellant had consistently reported earnings higher than the allowable earnings exemption for persons with disabilities. The Appellant had been reinstated as an eligible assistance recipient when reports began to show a reduced income.

The panel determined that the new evidence from the Ministry was admissible pursuant to section 22(4) of the *Employment and Assistance Act* as it was relevant to the issue at hand, particularly the Appellant's eligibility to receive disability benefits and receive the security and pet deposit supplements applied for.

The panel finds as fact the following:

- the Appellant was required to pay a security deposit in the amount of \$425 to secure housing;
- the Appellant was required to pay a pet deposit in the amount of \$425 to secure housing;
- the Appellant borrowed the funds needed for a security deposit and must repay this loan;

APPEAL NUMBER
2020-00022

- the Appellant does not have other resources available;
 - on December 6, 2019 the Appellant was designated Medical Services Only; and
 - the Appellant is no longer designated Medical Services Only and is now eligible for benefits.
-

PART F – REASONS FOR PANEL DECISION

The panel must determine whether, based on all the admissible evidence before it, the Ministry's decision to deny the Appellant's application for the security deposit and pet deposit supplement provided under section 56.2 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Security Deposit Supplement

There is no disagreement that at the time of the Appellant's application for the security and pet deposit supplements that the Appellant was designated as Medical Services Only pursuant to section 61.1 of the EAPWDR and was not otherwise eligible for disability benefits. Section 56 of the EAPWDR, which provides for the security deposit supplement, specifically states that it is available to those individuals eligible for disability assistance. The Appellant was not eligible for disability benefits having been moved to Medical Services Only status. As the Appellant was designated Medical Services Only and was not eligible for disability benefits, the panel finds that the Ministry reasonably held that at the time of writing the reconsideration decision that the Appellant was not entitled to receive the security deposit supplement.

However, in light of the new evidence provided by the Ministry, namely that as of the evening before the hearing in this appeal that the Appellant is now eligible to receive benefits, the panel finds that the reconsideration decision is no longer reasonable in the circumstances of the Appellant. The Appellant is now eligible for the supplement and still requires funds to pay the security deposit as the Appellant only borrowed the funds and must repay that loan. Accordingly, the panel rescinds the reconsideration decision as it pertains to the security deposit supplement.

Pet Deposit Supplement

At the time of the Appellant's application for the pet deposit, the EAPWDR did not provide for a pet deposit supplement. This supplement became available as of January 1, 2020 when legislative amendments were made to the EAPWDR. The Appellant may well qualify for this supplement if she were to apply for it now. However, like the Ministry, the Tribunal considers the legislation as it was at the time of the application, not subsequent amendment. Accordingly, the panel finds the Ministry's decision to deny the Appellant's application for the pet deposit supplement reasonable in the circumstances of the Appellant. The panel confirms the reconsideration decision as it pertains to the pet deposit supplement. As stated by the Ministry both in the reconsideration decision and at the hearing, the Appellant may be able to reapply for the pet deposit supplement provided by section 56.2 of the EAPWDR.

Conclusion

The panel rescinds the Ministry's decision regarding the Appellant's ineligibility for the security deposit supplement provided by section 56 of the EAPWDR. The panel confirms the Ministry's decision regarding the Appellant's ineligibility for the pet deposit supplement provided by section 56.2 of the EAPWDR. The Appellant is partially successful in the Appeal.

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

Emily C. Drown

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

March 6, 2020

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

March 6, 2020

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

March 6, 2020

Schedule of Legislation

Employment and Assistance Act, SBC 2002, c.40

22 (1) If a person commences an appeal in accordance with section 21 (1), the chair must appoint a panel consisting of up to 3 members of the tribunal to hear and determine the appeal.

(2) If a panel consists of more than one member, the chair must designate a chair of the panel from among the members of the panel, and if a panel consists of one member, that member is the chair of the panel.

(3) A panel must conduct a hearing into the decision being appealed within the prescribed period either

(a) orally, or

(b) with the consent of the parties, in writing.

(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

(5) [Repealed 2019-36-95.]

(6) The panel chair is responsible for deciding any question of practice or procedure that arises during a hearing and is not provided for in the regulations or in the practices and procedures of the chair under section 20 (2) (a) [*powers and duties of the chair*].

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

(3) The panel must provide written reasons for its decision under subsection (2).

(4) Notice of the decision and reasons of the panel must be given in accordance with the regulations.

(5) The decision of a majority of the members of a panel is the decision of the tribunal, but the decision of the chair of the panel governs in the case of a tie.

(6) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 19 and to make any order permitted to be made.

(7) A decision or order of the tribunal under this Act on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

Supplement to pay a security deposit

56 (1) In this section, "security deposit" means a security deposit as defined in the *Residential Tenancy Act*, or an amount required by a cooperative association to be paid by a recipient to the cooperative association for the same or a similar purpose as a security deposit under the *Residential Tenancy Act*.

(2) The minister may provide a security deposit to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the security deposit is necessary to enable the family unit to rent residential accommodation,
- (b) a recipient in the family unit agrees in writing to repay the amount paid under this section, and
- (c) the security deposit does not exceed 50% of one month's rent for the residential accommodation.

(3) The minister may recover the amount of a security deposit provided under subsection (2) in accordance with section 74 (2.1).

(4) Repealed. [B.C. Reg. 270/2019, App. 2, s. 11 (d).]

(5) For the purposes of subsection (3), "security deposit" includes a security deposit provided on or after April 1, 2002 under the

- (a) Disability Benefits Program Regulation, B.C. Reg. 79/97,
 - (b) Income Assistance Regulation, B.C. Reg. 75/97,
 - (c) Youth Works Regulation, B.C. Reg. 77/97, or
 - (d) Repealed. [B.C. Reg. 270/2019, App. 2, s. 11 (d).]
-

(6) Repealed. [B.C. Reg. 193/2017, s. 5.]

Supplement to pay a pet damage deposit

56.2 (1) In this section, "pet damage deposit" means a pet damage deposit as defined in the *Residential Tenancy Act*, or an amount required by a cooperative association to be paid by a recipient to the cooperative association for the same or a similar purpose as a pet damage deposit under the *Residential Tenancy Act*.

(2) The minister may provide a pet damage deposit to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the pet damage deposit is necessary to enable the family unit to rent residential accommodation,
- (b) a recipient in the family unit agrees in writing to repay the amount paid under this section, and
- (c) the pet damage deposit does not exceed 50% of one month's rent for the residential accommodation.

(3) The minister may recover the amount of a pet damage deposit provided under subsection (2) in accordance with section 74 (2.1).

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan (Canada)*,

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the adjusted net income of the main continued person does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the *Canada Pension Plan* (Canada).

(7.1) For the purposes of subsection (7) (a) (ii),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to the main continued person.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
 - (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
 - (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.
-