

APPEAL NUMBER
2020-00114

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 23, 2020, which determined that the appellant was not eligible for backdated shelter allowance for May 2019 to December 2019, as per sections 10 of the *Employment and Assistance for Persons with Disabilities Act* and section 28 of the *Employment and Assistance for Persons with Disabilities Regulation*, because they failed to provide information regarding their shelter, as requested by the ministry on March 21, 2019.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 1, 3, 5 and 10
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 28

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show:

- The appellant is a sole recipient of disability assistance.
- On March 21, 2019 the appellant contacted the ministry by telephone and when asked about their address, they stated they were currently living at Residence A. This was not the address the ministry had on file for the appellant. The appellant advised the ministry they had moved five years ago, around March 2014, but still picked up their mail from the old address. The ministry requested the appellant to provide a residential tenancy agreement, a rental increase letter from this year and their first two month and two most recent rent receipts. The appellant advised they did not remember this request and did not submit a residential tenancy agreement or shelter information form to verify their address.
- The appellant was issued \$1400.42 for April 2019 (includes \$375.00 shelter allowance), and \$1025.42 for May 2019 (doesn't include shelter allowance) because the appellant had not submitted the requested shelter information.
- On January 17, 2020 the appellant provided a shelter information form indicating they had secured accommodation at Residence A effective January 1, 2020 along with a rent/utility receipt showing they had paid \$397 for January 1, 2020 rent at Residence A and a rent receipt dated June 1, 2014 for "#X" (no other address specified) for \$350 rent and cable.
- On February 7, 2020 the appellant provided rent receipts from May 2019 to December 2019 from Residence A.
- The ministry noted the appellant advised they were not aware that they were not receiving shelter funds, as they thought Canada Pension Plan Disability funds were being deducted from their cheques.

Reason for Request for Reconsideration (March 9, 2020)

In the reason for the request for reconsideration, the appellant submitted that the ministry requested the appellant to supply a new shelter document/intent to rent form, even though nothing in their shelter situation had changed, to once again prove they were still eligible. Considering the appellant was eligible before this document was produced and is eligible currently, the appellant found it perplexing that they were deemed not eligible for the period in question as none of their circumstances had changed in any way during that period.

Further, the appellant stated that they have submitted the shelter form that was requested and delivered the documents in person on or around February 7, 2020. The decision to deny the appellant their shelter allowance was based on them not providing documentation. However, that documentation has since been supplied and the appellant's request must be reconsidered.

Rent/Utility Receipts - May 2019 to January 2020

Shelter Information form for Residence A (dated 17 January 2020) – rental start date January 1, 2020

Additional Information

Notice of Appeal (April 9, 2020)

"I have obtained new information and a copy of my original tenancy agreement proving my shelter costs are needed from May 2019 to December 2019."

Appellant Submission (submitted by the appellant's advocate)

included with Notice of Appeal

- The appellant has severe physical impairments, which significantly limit their mobility.
- On June 1, 2014, the appellant was accepted to be a tenant at Residence A.
- The appellant had always paid their rent themselves and had made an agreement with their former landlord to keep their mail going to their address to avoid the cost of a change of address, so saw no reason to notify the ministry of the change in tenancy.
- On March 21, 2019, the appellant telephoned the ministry and in that conversation the ministry worker asked for their address. The ministry alleges the appellant was asked to provide documentation to confirm their current shelter information, but the appellant does not recall this.
- The appellant noted their PWD benefits were reduced but they were not sure why.
- On January 17, 2020, the appellant submitted a "Shelter Information" form to the ministry which indicated that their tenancy at Residence A had a start date of January 1, 2020, along with a rent receipt for January 2020 and a rent receipt dated June 1, 2014 for unit "#X".
- On February 7, 2020, the appellant provided rent receipts from May 2019 to December 2019. On that day the ministry reviewed their file and identified that the shelter information that had been allegedly requested on March 21, 2019, had not been received.
- The ministry is relying on the failure to submit a residential tenancy agreement or shelter information to verify their address as authority to deny shelter benefits for the months from May 2019 to December 2019.

Attachments to the Submission

Letter to the ministry from manager (Residence A) (April 23, 2020) - confirming the appellant's tenancy began on June 1, 2014 and the appellant has been a tenant since that date without interruption.

Application for Tenancy in Residence A (Interview April 17, 2014)

Notice of Rent Increases (January 19, 2016 – January 20, 2020)

Ministry Submission (May 6, 2020)

The ministry's submission in this matter was the reconsideration summary provided in the Record of Ministry Decision.

The panel determined that all the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is:

Whether the ministry's decision, which determined that the appellant was not eligible for backdated shelter allowance from May 2019 to December 2019, as per section 10 of the EAPWDA and section 28 of the EAPWDR, because they failed to provide information regarding their shelter costs, as requested by the ministry on March 21, 2019, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1) In this Act:

...

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];...

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

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.

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,

- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan, the minister may do one or more of the following:
 - (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

...

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

...

Employment and Assistance for Persons with Disabilities Regulation

Consequences of failing to provide information or verification when directed

28 (0.1) For the purposes of section 10 (4) (a) [*information and verification*] of the Act,

- (a) the amount by which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit is \$25 for each calendar month, and
- (b) the period for which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit lasts until the recipient complies with the direction.

(1) For the purposes of section 10 (4) (b) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

...

Appellant Argument (provided by the appellant's advocate)

Referring to section 10 of the EAPWDA, the appellant argues that the ability of the minister to declare a family unit ineligible is discretionary as is indicated in the wording of "may".

In order to qualify for status of PWD a recipient must demonstrate that they have a severe mental or physical impairment and as a result they require significant assistance or supervision to manage daily living. The appellant argues they met that standard in 2013 and six years later continue to suffer from a chronic, debilitating disability.

The appellant also argues that their chronic pain and limited mobility severely limit their ability to respond appropriately to verbal requests and that they have no recollection of being requested to supply rental information in March of 2019. Further, the appellant argues that the ministry failed to send a warning letter or other follow up to assure that the appellant complied with the request for verification in order to continue to receive their shelter entitlement.

Ministry Argument

The ministry argues that the appellant became ineligible for a shelter allowance beginning May 2019 because they failed to provide information regarding their shelter as requested by the ministry March 21, 2019 and continued to be ineligible for a shelter allowance until the information was provided to the ministry on January 17, 2020. Therefore, they were also not entitled to backdated shelter allowance from May to December 2019.

Analysis

Sections 1, 3 and 5 of the EAPWDA define disability assistance and eligibility and state that, "the minister may provide disability assistance...to or for a family unit that is eligible for it." Ministry records show the appellant is a sole recipient of disability assistance.

Section 10(2) and (4)(b) (EAPWDA) - verification of information

Section 10 states, "the "minister may direct a...recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance...and if an applicant or a recipient fails to comply with a direction under this section, the minister may... declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period."

The ministry argues that the appellant became ineligible for a shelter allowance beginning May 2019 because they failed to provide information regarding their shelter as requested by the ministry March 21, 2019 and continued to be ineligible for a shelter allowance until January 17, 2020.

Ministry records show that on March 21, 2019, the ministry requested the appellant to provide a residential tenancy agreement, a rental increase letter from this year and their first two months and two most recent rent receipts. The appellant advised they did not remember that and did not submit a residential tenancy agreement or shelter information form to verify their address.

The appellant argues that their chronic pain and limited mobility severely limits their ability to respond appropriately to verbal requests and they have no recollection of being requested to supply rental information in March of 2019. The appellant also argues that the ministry failed to send a warning letter or other follow up to assure that the appellant continued to receive their shelter entitlement.

Ministry records show that the appellant was issued \$1400.42 for April 2019 (includes \$375.00 shelter allowance), and \$1025.42 for May 2019 (doesn't include shelter allowance) because the appellant had not submitted the requested shelter information. The ministry noted the appellant advised they were not aware that they were not receiving shelter funds, as they thought Canada Pension Plan Disability funds were being deducted from their cheques.

Ministry records also show that on January 17, 2020 the appellant provided a shelter information form indicating they had secured accommodation at Residence A effective January 1, 2020 along with a rent/utility receipt showing they had paid \$397 for January 1, 2020 rent at Residence A and a rent receipt dated June 1, 2014 for "#X" (no other address specified) for \$350 rent and cable. On February 7, 2020 the appellant provided rent receipts from May 2019 to December 2019.

The appellant argues (referring to section 10 of the EAPWDA) that the ability of the minister to declare a family unit ineligible is discretionary as is indicated in the wording of "may". In order to qualify for PWD status a recipient must demonstrate that they have a severe mental or physical impairment and as a result they require significant assistance or supervision to manage daily living. The appellant met that standard in 2013 and six years later continues to suffer from a chronic, debilitating disability.

The panel notes that the wording of "may" in section 10 of the EAPWDA does provide the ministry with discretion in applying the legislation. However, the panel finds that on March 21, 2019, the ministry did request the appellant to provide a Residential Tenancy Agreement, a rental increase letter and rent receipts. There is insufficient evidence to support the appellant's argument that they did not remember this request as they did provide these documents on January 17, 2020 and February 7, 2020. There is also insufficient evidence to demonstrate that the appellant submitted these documents in January and February 2020 as a result of another reason. Even though the appellant's assistance was reduced from April to May 2019, ministry records show that the appellant advised they thought Canada Pension Plan Disability funds were being deducted from their cheques. Therefore, the panel finds that the reduction in assistance did not prompt the appellant to submit the requested information. As well, in response to the appellant's argument that the ministry did not issue a warning letter or other notification, there is insufficient evidence to demonstrate that this is a requirement of the ministry.

Therefore, the panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for a shelter allowance beginning May 2019 reasonable because they failed to provide information regarding their shelter as requested by the ministry in accordance with section 10 of the EAPWDA.

Section 28 (1) (EAPWDR) consequences of failing to provide information

Section 28 of the EAPWDR states, "the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction."

The ministry argues that the appellant became ineligible for a shelter allowance beginning May 2019 and continued to be ineligible for a shelter allowance until the information was provided to the ministry on January 17, 2020. Therefore, they were also not entitled to backdated shelter allowance from May to December 2019.

In their Request for Reconsideration the appellant states the ministry requested that the appellant supply a new shelter document/intent to rent form, even though nothing in their shelter situation had changed. Considering the appellant was eligible before this document was produced and is eligible currently, the appellant finds it perplexing that they were deemed not eligible for the period in question as none of their circumstances had changed in any way during that period. As well, as the documentation has since been

supplied the appellant's request must be reconsidered.

Even though the appellant did submit the required documents in January and February 2020, and none of their circumstances had changed, the panel finds the ministry's determination that the appellant was ineligible for a shelter allowance until the information was provided on January 17, 2020, reasonable. Section 28 of the EAPWDR refers to the consequences of failing to comply with ministry requests, not eligibility for shelter allowance.

As the panel found that the appellant did not comply with the ministry's request in March 2019, the panel also found that the ministry's determination that the appellant continued to be ineligible for shelter allowance until the information was provided on January 17, 2020, as per section 28 of the EAPWDR, reasonable.

Therefore, the panel also finds the ministry's determination that the appellant was ineligible for backdated shelter allowance from May 2019 to December 2019, as per section 28 of the EAPWDR, reasonable. Although the appellant argues that the documentation has since been supplied, section 28 of the EAPWDR states, "the minister may declare the family unit ineligible for assistance ...until the...recipient complies with the direction", which was on January 17, 2020.

Conclusion

The panel acknowledges that the appellant suffers from a chronic debilitating disability, which limits their mobility and may limit their ability to respond appropriately to verbal requests. However, the panel is bound by the legislation and finds the ministry's reconsideration decision, which determined that the appellant was not eligible for backdated shelter allowance, as per sections 10 of the EAPWDA and section 28 of the EAPWDR, reasonably supported by the evidence.

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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/05/25

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/25

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/25