

APPEAL NUMBER
2020-00070

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated February 28, 2020 which held that the appellant is required to serve a sanction period where they will not receive disability assistance effective January 20, 2020 for failing to submit unaltered bank records as requested by the Ministry.

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PART D – RELEVANT LEGISLATION

- s. 22(3)(b), s.22(4) of the Employment and Assistance Act (“EAA”)
- s. 10 Employment and Assistance for Persons with Disabilities Act (“EAPWDA”)
- s.28 Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The evidence before the Ministry at reconsideration was:

- The appellant is a sole recipient of disability assistance and has been since October 2017.
- Effective January 2020 the Ministry discontinued the appellant's assistance because the appellant failed to provide unaltered bank statements that were requested by the Ministry.
- On September 11, 2019, the appellant was mailed a letter advising them that their file was being reviewed to ensure they were receiving the correct amount of assistance. The Ministry requested the following documents from the appellant to be delivered to the Ministry on or before October 9, 2019:
 - o Bank statements from all accounts from October 2017 – August 31, 2019;
 - o Information on the source of all deposits to the accounts; and
 - o A bank profile from the appellant's bank listing all their accounts and products.
- On October 10, 2019, the appellant submitted the following to the Ministry:
 - o A TD Canada Trust Bank profile as at October 2, 2019 showing an account balance in their TD chequing account of \$497.44, and a zero balance in their Mutual Fund RSP, and a zero balance in their TD Savings account; and
 - o TD bank statements from April 2018 to September 2019 which had most of the withdrawals redacted. None of the deposits were redacted. There were handwritten notes next to some of the deposits.
- On October 10, 2019 the Ministry sent a second request letter to the appellant which stated:
 - o The information the Ministry requested was not provided by the appellant.
 - o The Ministry restated that they require the same items that they requested in their September 11, 2019 letter.
 - o There is a note on the side of the Ministry letter that says "called October 10, 2019 4pm".
 - o The letter said that if the information is not provided by November 1, 2019 the Ministry could complete the review without the assistance of the appellant and the appellant's assistance may stop.
- On November 4, 2019 the Ministry wrote to the appellant and the letter stated:
 - o The appellant did not provide what the Ministry asked for and the appellant is no longer eligible for assistance commencing December 4, 2020.
 - o The letter attached a "file review checklist" listing the same items requested on September 11, 2019 and also listing the "phone number of the appellant's landlord" and also asking for "unaltered bank statements"
- On November 19, 2019 the appellant wrote the Ministry stating:
 - o The appellant requests reconsideration as to why their file is being closed.
 - o The appellant confirms they have provided all the information requested by the Ministry with the exception of a written explanation for each deposit.
 - o The appellant wanted their consumer records private, but the Ministry told the appellant that to determine eligibility they needed to ensure the appellant was spending their money properly.
 - o The appellant's position is that there should be no overpayment as the total deposits should not surpass PWD maximum income levels.
 - o The appellant argues that the Ministry already knows where their income is spent because the Ministry has the appellant's rent receipts and tenancy agreement as well as BC Hydro bills.
 - o When the appellant asked to the Ministry to put the request in writing so that the appellant could get professional advice, the appellant states that the Ministry threatened to cut off their assistance.
- The appellant marked up the November 4, 2019 letter with the following notes
 - o They provided the information on the source deposits and explained to the Ministry over the telephone on November 4, 2019.
 - o They held their consumer records private because they wanted to learn their rights and responsibilities surrounding if they were required to submit their consumer records.
 - o They provided an unaltered bank profile to the Ministry on October 10, 2019.

- They provided their landlord information in September and the appellant explained this in their phone call to the Ministry on November 4, 2019.
- The appellant provided confirmations of deposits on a written piece of paper and where those deposits came from.

The appellant's request for reconsideration states:

- On November 20, 2019, the Ministry rescanned the appellant's bank accounts so that both sides were available. Previously the Ministry had erroneously only scanned one side.
- A written breakdown of deposits was provided on November 19, 2019 and on November 22, 2019
- The appellant provided all documents apart from consumer records and the appellant wants a reconsideration on the need for her to provide consumer records.
- In a letter dated December 6, 2019
 - The appellant requested a reconsideration package on November 19, 2019 on the decision that the Ministry requested the appellant's consumer records.
 - They got a reconsideration package on November 19, 2019 on the decision that the Ministry closed the appellant's file.
 - The appellant did not get a response to their inquiry and the appellant requests that they be provided with 2 reconsideration packages. The appellant still does not have their reconsideration package for a reconsideration about if their consumer records needed to be submitted.
- The appellant cites the legislation arguing that if they purchase coffee, the Ministry doesn't need to be aware of that.
- The appellant confirms that they were only able to get 18 months of bank statements

The appellant's notice of appeal states

- The \$25 per month deduction penalty would have made more sense instead of cutting off the appellant's assistance.
- The appellant requested time to bring their case to an advocate so they could understand what was happening.
- The appellant received a letter dated November 4 and received November 19 stating that they had until Dec 5 to submit documents or their file would be closed.
- They were told by someone at the counter that the \$25 per month deduction would have been more reasonable than removing their assistance.
- The appellant spent 6 months homeless and is now at risk of being homeless again.
- The appellant was not aware that they could obtain 24 months of bank statements from the branch. At the time of writing they made the request to the bank
- The counter staff had only sent half of the appellant's documents to the Ministry
- The appellant supplied these to the Ministry early October or late September
- The counter worker only scanned half and they did not scan the double-sided documents
- The error was corrected on or around November 21 or November 22
- The Ministry would no longer respond to the appellant and they closed the appellant's file on November 20, 2019 despite that the appellant received a letter stating they had until December 5, 2019 to supply the requested documents.
- The appellant states they received the letter in late afternoon of November 19, 2019 and their file was closed the following day on November 20, 2019.
- The appellant argues it is unfair and they have a right to understand what is requested of them and why.
- The appellant is sick, poor and has no money or income
- Bank statements from the TD chequing account from March 2019 – March 2020 with a handwritten note stating "31 pages I got from TD on March 25, 2020. They only gave me a year and said no activity in savings so they wouldn't print anything" and additional statements from May 2018 to October 2018 with a hand-written note of the appellant stating "15 pages I got in April form from TD for the year previous to what I requested on the 25th"

The appellant provided a late submission dated April 7, 2020

- The appellant references that being in debt to the Ministry of \$6000 - \$12000 would be very difficult on them financially

- The appellant provided bank statements in January that were unaltered and the appellant has provided 2 years of unaltered bank records that were attached to the late submission.
- The appellant thinks the \$25 per month penalty would have been more reasonable than taking away their income assistance.

The panel determined the additional documentary evidence that was not part of the record before the Ministry was admissible pursuant s.22(4) of the EAA as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry did not object to the evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to cause the appellant to serve a sanction period where they will not receive disability assistance effective January 20, 2020 for failing to submit unaltered bank records as requested by the Ministry is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

Information and verification EAPWDA

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.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(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.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Consequences of failing to provide information or verification when directed - EAPWDR

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.

(1.1) Section 10 (4) (b) of the Act does not apply if the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

(2) For the purposes of section 10 (5) [information and verification] of the Act,

(a) the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth'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 dependent youth's family unit lasts until the dependent youth complies with the direction.

[am. B.C. Reg. 270/2019, App. 2, s. 4.]

The panel finds:

The appellant states in their request for reconsideration and notice of appeal that they wished to dispute two decisions of the Ministry: the first being that the Ministry should not be permitted to ask for the appellant's consumer records (ie – the amounts spent out of the appellant's bank account), and the second that the Ministry should not have suspended the appellant's income assistance effective January 20, 2020 by reason that the appellant did not provide the records that the Ministry requested.

The panel confirms that this appeal is not about the reasonableness of the Ministry requesting the appellant to submit their bank records. This appeal is only on the issue as to whether it was reasonable for the Ministry to require the appellant to serve a sanction period where they will not receive disability assistance effective January 20, 2020 for failing to submit unaltered bank records as requested by the Ministry.

The panel feels the need to clarify this because the Ministry decision does not cite any legislation to support their decision. It was therefore confusing as to what parts of the EAPWDA and EAPWDR the Ministry was relying on in making their decision. On a review of the legislation, it appears that the Ministry decision relies on s.10(2) EAPWDA where "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." for the authority that they could request the information from the appellant that they requested.

When the information wasn't provided to the Ministry to their satisfaction it appears the Ministry then relied on s.10(4)(b) EAPWDA for the authority that they could declare the appellant null and void for assistance.

The Ministry sites s.28(0.1)(a) EAPWDR in their decision, but does not actually rely on that section in their decision. That section is the regulation that specifies the amount and length of the time the Ministry can reduce assistance should they rely on s.10(4)(a) EAPWDA. Given that the Ministry completely stopped the appellant's assistance instead of just reducing it, s.28(0.1)(a) EAPWDR is not relevant in this case.

The appellant asserts that they complied with the Ministry direction and the Ministry says the appellant did not. In the end, the appellant submitted a late submission with bank records that were not redacted. The Ministry did not object to the late submission. On review of the appellant's late submission, the Ministry indicates that had they had

that information, they would have made a different decision. It is unclear what “different decision” the Ministry would have made.

Once the panel accepts new evidence they must assess the reasonableness of the Ministry decision as if the new evidence was available to the Ministry at the time of reconsideration. The panel finds that had the Ministry had all of the unredacted bank records of the appellant at the time of reconsideration it would not have been reasonable to cancel the appellant’s assistance commencing January 20, 2020. Pursuant to s.10(4)(b) EAPWDA.

On a review of the file, and even with the unredacted bank records, it appears that the appellant was seeking a response to why they were required to submit bank records showing their consumer spending. The appellant got some response to this from the Ministry, being that the Ministry needed to ensure that the appellant was spending their assistance funds on things that were necessary. However, to the appellant, that was not satisfactory. As such, the appellant attempted to find out if the Ministry was permitted to ask for this information. In attempting to find this answer, time passed, and eventually the Ministry relied on s.10(4)(b) EAPWDA to stop the appellant’s assistance.

The appellant indicates in their notice of appeal that they are at risk of homeless. The Ministry determined that s.28(1.1) doesn’t apply because the appellant is not at a risk of homelessness is reasonable. The panel finds that given that the appellant has roommates that help with their rent and that there was no information about a timeline or how the homelessness to the appellant would come about, the panel finds that it was reasonable for the Ministry to determine that the appellant was not at a risk of homelessness.

The panel finds that the Ministry provided no reasons to the appellant as to why they choose the stricter option of sanctioning assistance pursuant to s.10(4)(b) EAPWDA and not the less punitive option set out in s.28 EAPWDR. There is no legislated requirements that require the Ministry to choose one over the other. However, the panel finds that the Ministry failed to provide reasons for why the more punitive option was chosen, and without any explanation it appears to the panel to likely be unnecessarily punitive.

In any event, given that the panel has accepted the new evidence, the panel finds that had the Ministry had that evidence at the time of reconsideration it would not have been reasonable for the Ministry to sanction the appellant’s assistance pursuant to s.10(4)(b) EAPWDA or to reduction the appellant’s assistance pursuant to s.28 EAPWDR.

For these reasons, the panel finds the Ministry’s decision was not reasonably supported by the evidence and rescinds the decision. The appellant is successful on their appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input checked="" type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) May 25, 2020

PRINT NAME Linda Smerychynski	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) May 25, 2020
PRINT NAME Kevin Ash	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) May 25, 2020