

APPEAL NUMBER
2020-00050

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated February 2, 2020 which found the appellant ineligible for a monthly shelter supplement for the period of January, 2018 to April, 2019. The ministry found that the appellant did not provide requested documents to allow it to determine eligibility for the period and the appellant was therefore ineligible for disability assistance under section 10(4) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA). Further, the ministry found that the appellant did not submit the requested shelter information form verifying shelter costs and was not eligible for the shelter allowance until that form was submitted. Finally, the ministry determined that the appellant was not eligible for assistance under section 23(5) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for a cost incurred before the calendar month in which assistance is requested.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 5 and 10.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 8, 23(5), 28; Schedule A, sections 4 and 5.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated December 13, 2019 notifying the appellant of ineligibility for disability assistance for the period of January, 2018 to April, 2019.
- The appellant's Request for Reconsideration, signed January 21, 2020.

The appellant submitted a statement with the Notice of Appeal to the Tribunal and three additional submissions by facsimile. The ministry had no objection to the admission of these documents. The Panel reviewed the submitted material and accepted it as part of the appellant's argument.

At the hearing, the appellant stated that there were several communications with the ministry during the period of January 2018 to April, 2019, but none of the material received as a response to a Freedom of Information request included the records of the telephone calls made by the appellant. The appellant stated that the information given by the ministry over that period was contradictory and unclear.

The appellant stated that things to be provided by the appellant were not done on a timely basis and the ministry's timeline as stated in the Reconsideration is probably accurate. The appellant stated that as a caregiver for a parent and the stress of dealing with complex health issues such as head injuries as a result of a car accident and an ICBC settlement, a parent's eviction and dealing with a trust attorney made it difficult to keep things up to date with the ministry. The appellant stated that the ministry was kept informed.

The appellant stated that there is a big difference between income and assets, and the ministry seemed to assume they weren't getting full disclosure. The appellant stated that, due to disability, there were lapses in time when a week might seem like a month due to anxiety and poor functioning, so there may have been a 10 month delay that became 14 months, but the ministry said things would be OK as long as the information was forthright. The appellant stated that the letters from the ministry were clear, but health issues were impacting concentration and focus. Some mail was not opened, but there is a track record of contacting the ministry to keep them informed.

The ministry responded that the appellant was ineligible for the period of January, 2018 to April, 2019 for reasons that are stated in legislation. The appellant was ineligible until all documents required to establish eligibility were provided, and they were not provided until April, 2019. The ministry stated that there is no provision for retroactive payments under section 23, EAPWDR.

In the Reconsideration Decision, the ministry listed an insurance settlement received by the appellant and that a Canada Pension Plan (CPP) Disability Benefits application had been made. The ministry requested confirmation of the amount of the insurance settlement and documents related to the CPP benefits and deductions.

In response to questions from the appellant, the ministry stated that they did not have the ability to take the appellant's disability into consideration because they did not receive the required documents.

In response to questions from the Panel, the ministry stated that the appellant applied for a shelter allowance in May, 2018 and the documents were received the following year. A Statement of Contributions for Canada Pension and consent to deduct form were needed as well as shelter documentation. The appellant was informed by telephone in May and November, 2018. Letters were sent indicating clearly what was required.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision to find the appellant ineligible for a monthly shelter supplement for the period of January, 2018 to April, 2019. The ministry found that the appellant was not eligible for disability assistance for the period because the documents required to determine eligibility were not submitted; therefore the appellant was not eligible for the monthly shelter allowance for that period. Further, when the required documents were submitted, there is no authority to provide back-dated assistance.

Legislation

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.

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.
- (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.

EAPWDR

Requirement to apply for CPP benefits

8 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada*

Pension Plan (Canada) directing that

- (a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and
- (b) the amount deducted be paid to the minister.

Effective date of eligibility

23 (5) Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

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.
- (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.

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 relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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 include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) rental of one basic residential single-line telephone.

(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;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged over the periods

- (a) beginning on October 1 and ending on March 31, and
- (b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by
 - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
 - (ii) multiplying the result by the number of persons in that one family unit, and
- (b) the amount declared by the family unit as the shelter costs for that family unit.

The appellant's position is that the ministry's timeline may be correct, but they failed to take into account that being under disability affected the appellant's ability to do things in a timely manner and the ministry was kept informed. In addition, the ministry may have confused income and assets.

The ministry position is that they were unable to act without the documents requested from the appellant. The shelter form was not received until May, 2019, when the appellant's eligibility was determined and disability assistance was issued, but there is no provision for payment before the date that a request for assistance is made.

The Panel is aware of the appellant's disability and its effects as they were described.

Two issues delayed the ministry's ability to determine the appellant's eligibility for disability assistance and the shelter allowance: the forms related to the appellant's CPP payments and verification of shelter costs. From statements by the appellant at the hearing it appears the appellant may have confused the ministry's request for these documents with information about the appellant's trust funds. The

Reconsideration Decision states the reasons for the decision to deny the appellant the monthly shelter allowance clearly as awaiting the receipt of the documents listed.

With respect to the appellant's eligibility for the shelter allowance for the period of January, 2018 to April, 2019, the Panel notes that section 10(4) EAPWD Act provides that if an applicant fails to comply with a direction under that section, in this instance information for the purpose of determining or auditing eligibility [section 10(1)(b)], they may be declared ineligible for disability assistance. The record provided by the ministry indicates that the appellant's cheque production was stopped in February, 2019. In addition, section 23(5) of the EAPWD Regulation, "Effective date of eligibility", provides that a family unit is not eligible for any assistance...before the calendar month in which the assistance is requested. In other words, a family unit is not eligible to receive assistance until they have requested it. In the present circumstance, the appellant did not make application for a shelter allowance until May, 2019, at which time an eligibility determination was made and disability assistance was issued. There is no provision for retroactive payment.

The Panel finds that the ministry reasonably determined that the appellant was not eligible for the shelter allowance for the period of January, 2018 to April, 2019. The ministry decision is confirmed.

The appeal is not successful.

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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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 July 27

PRINT NAME

Shirley Heafy

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 July 27

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 July 27