

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated December 2, 2020, in which the ministry determined it was unable to conduct a reconsideration of the appellant’s *Persons with Disabilities* (“PWD”) application pursuant to section 16(1) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) because a decision that results in denial, discontinuance, or reduction of disability assistance (“DA”) had not been made.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 16

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 9, and Schedule A

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that:

- the appellant submitted a PWD application on June 1, 2020.
- On October 7, 2020, the ministry determined the appellant was not financially eligible to apply for DA.
- On November 26, 2020, the appellant submitted a Request for Reconsideration ("RFR").
- On December 1, 2020, the ministry adjudicated the PWD application.
- On December 2, 2020, the ministry completed the review of the RFR.

Under section 2 of the RFR, *Decision to be reconsidered*, the ministry states the appellant has requested reconsideration of the minister's decision to not adjudicate the PWD application as the ministry found the appellant did not meet the income and asset requirements. The ministry states that the family unit's monthly employment income exceeded the provincial DA rate.

2. The PWD application received by the ministry on June 1, 2020.

3. A letter from the ministry dated October 7, 2020, stating that the ministry is unable to proceed with adjudication of the application of the PWD application at this time and the appellant may reapply if his financial circumstances change in the future. The letter states that the appellant's family income is in excess of the monthly DA benefit and does not meet the asset and income test under the EAPWDA; therefore, the application cannot be adjudicated. The letter explains that the appellant can request reconsideration of this decision.

4. The RFR signed by the appellant on November 26, 2020, with a hand-written submission (3 pages). The appellant outlines his financial situation. His spouse makes \$15 per hour, just above minimum wage. The cost of shelter takes up more than half of the family's income before utility costs; expenses for the appellant's child; and a tax debt the family is liable for. The appellant explains that the family has expenses for a vehicle that they use for work and appointments; to transport fuel for heating the home; and because the appellant has limited mobility that is due to a physical disability. In addition, the appellant has expenses for a service animal required for the appellant's disability.

5. A letter from the ministry dated December 2, 2020, stating that the ministry is unable to conduct a reconsideration of the decision to deny adjudication of the PWD application as the application was adjudicated by the *Health Assistance Branch* on December 1, 2020.

Additional information

Neither party provided additional documents or oral evidence that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*. Subsequent to the reconsideration decision, the appellant filed the *Notice of Appeal* dated December 23, 2020, with a hand-written statement that the panel accepts as argument.

The appellant attended the hearing with his spouse who spoke on his behalf as the appellant's disability made it hard for him to understand the hearing. At the hearing both parties provided argument. The ministry relied on the reconsideration decision and elaborated on some of the information but did not provide new evidence. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that determined it was unable to conduct a reconsideration of the appellant's Persons with Disabilities ("PWD") application was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable to find that a decision that results in denial, discontinuance, or reduction of DA had not been made pursuant to section 16(1) of the EAPWDA?

The ministry based the reconsideration decision on the following legislation:

EAPWDA**Reconsideration and appeal rights**

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the [Employment and Assistance Act](#) and the regulations under that Act.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

No appeal from decision based on same circumstances

17 If a person reapplies for disability assistance, hardship assistance or a supplement after

- (a) the eligibility of the person's family unit for the disability assistance, hardship assistance or supplement has been determined under this Act,
- (b) a right of appeal under section 16 (3) has been exercised in respect of the determination referred to in paragraph (a), and
- (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

The following sections of the EAPWDR are also relevant to the issue under appeal:

EAPWDR

Limits on income

9 (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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,

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
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

(2.1) The monthly shelter allowance for a family unit to which section 14.2 of the Act applies 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 unit composition:

Item	Column 1 Family Unit Composition	Column 2 Maximum Monthly Shelter
3	Family with dependent children, family unit size = 3 persons	\$660

Analysis*Appellant's arguments*

In the written submissions, the appellant argued he should not be found ineligible for DA based on his spouse's income because that income is not enough to support the family. The appellant said the family does not have enough money for food once bills are paid and they are at risk of losing their home if essential bills don't get paid. The appellant states that he is not eligible for *Canada Pension Plan* disability and he is unable to work due to an injury on top of his disability.

At the hearing, the appellant elaborated on his family's financial situation. The appellant argued he should not be found ineligible for DA based on his spouse's employment income because the family is still living below the poverty line. The appellant submits that his mobility has gotten worse due to a recent injury and because of allergies he is unable to work in the only job that would accommodate his disability.

The appellant stated his spouse's employer is looking at large scale layoffs due to the COVID-19 situation and his spouse's health concerns also make her employment situation unstable. The appellant argued the ministry's decision was unfair because he knows another family that was found eligible for DA even though their employment income is higher than his spouse's wages.

In response to questions, the appellant explained that he was instructed to fill out the RFR when his spouse called the ministry. The appellant said the ministry told him to submit the forms right away.

Ministry's arguments

The ministry's position is that it was unable to conduct a reconsideration because the PWD application had not been adjudicated at the time the appellant submitted the RFR. The ministry argued that the appellant requested a reconsideration prior to a formal decision being made on the application. The ministry said that when the RFR was received on November 26, 2020, they had to make a decision on it even though the PWD application had not yet been decided.

The ministry stated that the PWD application was subsequently adjudicated, on December 1, 2020. The panel notes that the ministry did not provide a copy of the December 1st decision or say what decision was made on that date. When asked at the hearing what decision was made on December 1, 2020, the ministry said that the appellant was denied DA for the reason that his spouse's income was above the DA rate for his family unit (as set out in the rate tables in the EAPWDR).

At the hearing, the ministry instructed the appellant to request a reconsideration of the December 1, 2020 denial and to engage an advocate to help ensure that all relevant financial information is submitted. The ministry explained that when the PWD application was received on June 1, 2020, the ministry based the appellant's financial eligibility on his spouse's October 2020 employment income for which there were three pay stubs. The ministry acknowledged that the appellant's spouse is normally paid bi-weekly and may have a lower monthly income if pay stubs for other months were submitted.

In response to questions, the ministry explained that they realize that an applicant's income may fluctuate after the PWD application is submitted. The ministry said that they allow an application for DA to be processed if the income will decrease within a 6-month period. The ministry explained that if an applicant's income appears high at the time the application is received, the ministry "will hold onto the application" to wait and see if the income decreases in later months. The ministry said that they may have looked at [spouse's] income but did not want to make a decision on the application at that point as her income could change.

Panel's decision

Section 16(1) of the EAPWDA says that a person may request a reconsideration of certain types of decisions made

by the minister under the Act. The person can submit an RFR when the minister makes one of the decisions set out in EAPWDA subsections 16(1)(a) to (e).

For example, under subsections 16(1)(a) to (c), a PWD applicant can request a reconsideration when the minister refuses to provide DA to the family unit, discontinues DA, or reduces the amount of DA that was provided. The ministry argued that the appellant could not request a reconsideration because the ministry had not made any of these decisions at the time the RFR was received on November 26, 2020. The ministry stated in *Decision to be reconsidered* that the appellant was requesting reconsideration of the decision “to not adjudicate your PWD application as you do not meet the income and asset requirements.”

The panel finds that the reconsideration decision is not reasonably supported by the evidence and is not a reasonable application of the legislation in the circumstances of the appellant. The ministry states that it is “unable to complete a reconsideration regarding your request, as the ministry decision has not resulted in the denial, discontinuance, or reduction of disability/hardship assistance or a supplement under the EAPWD Act and Regulation.” However, the ministry’s record indicates the ministry refused to provide DA because the appellant did not meet the income/asset requirements under the EAPWDR.

In particular, the letter the ministry sent the appellant on October 7, 2020 says “your family unit’s monthly income is in excess of the monthly provincial Persons with Disabilities benefit. Because your income does not meet the criteria for the asset and income test under the EAPWDA, your disability application cannot be adjudicated at this time.” The letter invites the appellant to reapply for PWD designation, stating “if your financial circumstances change in the future, you may reapply.”

The letter clearly indicates the ministry found the appellant is not eligible for DA based on family income “in excess of...the PWD benefit.” Otherwise, why would the appellant need to reapply for PWD designation based on a change in his financial circumstances if a decision had not been made on the application? In the panel’s view, the finding that the appellant was not eligible for DA based on his family income is a decision that “results in a refusal to provide disability assistance” under subsection 16(1)(a) of the EAPWDA.

The panel’s view that a decision was made is further supported by other documents in the record as well as the submissions at the hearing. In the reconsideration decision, the ministry states that “on October 7, 2020, the ministry determined you were not financially eligible to apply for disability assistance.” This statement indicates the ministry made a decision regarding the appellant’s eligibility for assistance.

The ministry suggested the appellant had submitted the RFR before the decision to refuse DA was made but the appellant’s submissions indicate he clearly understood that the ministry had refused his PWD application and he was requesting a reconsideration of that decision. In the RFR and oral submissions, the appellant’s entire focus was on his family’s financial situation, arguing why his spouse’s income from employment should not be viewed as being above the DA rates. The submissions indicate the appellant was asking the ministry to reconsider the decision to deny DA on the basis of family income.

At the hearing, the ministry suggested they were “holding onto the application”, delaying the decision in case the family’s income would decrease but there is no indication in the record that a delay was communicated to the appellant. The ministry’s letter of October 7, 2020 outlines the process for requesting a reconsideration and the appellant confirmed that when his spouse called the ministry, they told her to submit the RFR forms right away.

In addition, the record indicates the ministry twice refused the PWD application prior to the reconsideration decision on the basis of the income test set out in section 9 and Schedule A of the EAPWDR. As noted, the ministry’s October 7, 2020 letter indicates the ministry found the appellant ineligible for DA based on his spouse’s employment income being in excess of the DA rate for the family. Then in the reconsideration decision of December 2, 2020, the ministry states it adjudicated the PWD application on December 1, 2020.

The ministry confirmed at the hearing that the application was refused on December 1 because the family’s income was above the DA rate (\$1,121.56 per month for the appellant’s family unit versus employment income of \$1,500 per month). The ministry said that it also takes any earnings exemption/other allowable deductions into account when determining the family’s income.

The panel notes that the DA rate also includes the shelter allowance under subsection 2(2.1) of Schedule A (\$660 per month for the appellant's family size). The ministry did not indicate whether the appellant's income would be above the DA rate if the shelter allowance was included in the calculation.

The panel finds that it was unreasonable for the ministry to find it could not complete a reconsideration because a decision on the PWD application had not been made. The application was actually decided twice; the ministry refused to provide DA for the same reason each time but the appellant was offered a reconsideration of the decision to not adjudicate the PWD application, rather than the decision that was actually made; i.e., refusing to provide DA on the basis of family income.

The ministry cited section 17 of the EAPWDA as applicable to the decision being reconsidered. Section 17 effectively bars a subsequent reconsideration on the same facts, but the ministry would need to provide evidence that a reconsideration decision had already been made on a particular set of facts. As noted, the ministry did not include a copy of the December 1, 2020 decision in the record.

In any event section 17 applies when "a person reapplies for disability assistance" after the ministry had made a determination of eligibility on their application. The ministry's record mentions only one PWD application from the appellant, submitted on June 1, 2020. Based on the evidence before the panel, the appellant had not reapplied for DA as of the date of the reconsideration decision.

In light of the evidence as a whole, the panel considers the ministry's refusal to provide DA based on the income of the appellant's spouse to be a decision in accordance with subsection 16(1)(a) of the EAPWDA. Under this subsection, the minister is authorized to reconsider "a decision that results in a refusal to provide disability assistance, hardship assistance, or a supplement to or for someone in the person's family unit." The panel finds that the ministry's refusal to complete a reconsideration was an unreasonable application of the legislation in the circumstances of the appellant.

Conclusion

The panel considered the information in its entirety and finds that the ministry's reconsideration decision is unreasonable because the evidence is that the ministry made a decision under section 16(1) of the EAPWDA, refusing to provide DA to the appellant's family. At the hearing, the ministry advised the appellant to request a reconsideration of the December 1, 2020 denial of DA but the minister had already denied DA in October 2020 and the appellant submitted an RFR on November 26, 2020.

The panel finds that the ministry was unreasonable in saying they were "unable to complete a reconsideration" because the ministry had not made a decision that resulted in denial of DA. As the panel rescinds the reconsideration decision as an unreasonable application of the legislation, the appellant is successful on appeal. The appellant's eligibility for DA will need to be determined separately.

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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-01-21

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-01-21

PRINT NAME

Connie Simonsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-01-21