

APPEAL NUMBER
2020-00287

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry)'s decision dated December 14, 2020 which held that a reconsideration decision cannot be provided because the appellant's request for reconsideration of the decision denying the Emergency/Disaster Supplement is not a reconsideration or appeal that is allowed under section 16 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

PART D – RELEVANT LEGISLATION

EAPWDA, sections 1, 5, and 16

PART E – SUMMARY OF FACTS

On November 19, 2020 the ministry denied the appellant's request for the Emergency/Disaster Supplement of \$300 (the "Supplement").

On November 29, 2020 the appellant submitted a Request for Reconsideration (the "RFR") dated November 29, 2020 stating that the ministry's decision to deny the Supplement because the appellant receives Employment Insurance (EI) is unfair. The RFR states:

- that the appellant has serious underlying health conditions making the appellant susceptible to become really ill and dying;
- that the appellant is not receiving the same amount of funds as with the Canada Emergency Response Benefit (Cerb); and
- that the appellant still has current extra expenses as before because of Covid 19 and if the appellant was able to work, the appellant could take on more hours of work to meet those expenses.

The appellant included a letter from a physician with the RFR dated November 17, 2020. The physician letter indicated that the appellant has multiple chronic medical conditions which predispose the appellant for serious complications if the appellant is exposed to Covid 19.

On December 14, 2020 the ministry completed its review of the appellant's RFR and concluded that no reconsideration would be conducted.

Additional information provided

In the Notice of Appeal dated December 28, 2020 (the "NOA") the appellant states that the ministry is unable to reconsider the denial as it is not under EAPWDA appeal sections but under the Supply Act. The appellant states that it is not under section 17 of the EAPWDA.

At the hearing, the appellant stated that the ministry's decision is not fair and that receipt of EI income should not disqualify the appellant from receiving the Supplement. The appellant states that all recipients of disability assistance should be eligible for the Supplement.

Admissibility of New Information

The panel has admitted the oral testimony of the appellant as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's financial circumstances and request for the Supplement.

The panel has accepted the information in the NOA as argument.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision that a reconsideration could not be conducted as the reconsideration and appeal provisions of EAPWDA section 16 did not apply was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the ministry reasonable when concluding that the denial of the Supplement was not a decision subject to reconsideration in that it was not a decision that resulted in a denial, discontinuance, or reduction of income assistance, hardship assistance or a supplement provided under the EAPWDA and *Employment and Assistance for Persons with Disabilities* Regulation (EAPWDR)?

Relevant 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.

Part 3 — Appeals

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.

Panel Decision

The appellant's position is that the ministry's decision to deny the Supplement and to deny a reconsideration is unfair. The appellant argues that the ministry's decision indicating that no reconsideration was conducted and that a reconsideration was not available is not reasonable as the purpose of the EAPWDA is to alleviate effects of disabilities and provide assistance as necessary.

The appellant argues that receipt of EI should not disqualify the appellant from receiving the Supplement as the appellant still has ongoing expenses due to Covid 19. The appellant argues that absent Covid 19 the appellant would work extra hours to meet the expenses but is unable to do so. The appellant argues that serious underlying health conditions make the appellant susceptible to become really ill and dying if exposed to Covid 19.

The ministry's position is that the decision to deny the appellant the Supplement is not appealable so it is unable to conduct a reconsideration. The ministry's decision states that the Supplement is provided under the Supply Act and is not available to anyone receiving EI benefits. The ministry's position is that section 16(1) of the EAPWDA allows a reconsideration of a decision that results in a denial, discontinuance, or reduction of income assistance, hardship assistance or a supplement provided under the EAPWDA and EAPWDR. However, as the Supplement is provided under the Supply Act and not under the authority of the EAPWDA

or EAPWDR, the reconsideration and appeal provisions of section 16 of the EAPWDA do not apply.

Section 19(1) of the *Employment and Assistance Act* (EAA) states that the Employment and Assistance Appeal Tribunal is established to determine appeals of decisions that are appealable under section 17(3) of the EAA, section 16(3) of the EAPWDA and section 6(3) of the *Child Care Subsidy Act*. Accordingly, the panel is limited to determining appeals under the specified legislation and not an appeal of denial of a benefit provided under the Supply Act.

The panel's jurisdiction in this appeal is limited to determining whether the appellant is entitled to a reconsideration decision from the ministry. The panel does not have the jurisdiction to consider whether the denial of the Supplement was reasonable or not.

The panel accepts that the appellant has serious underlying health conditions that make the appellant more vulnerable to Covid 19 as reported by the appellant and as confirmed by the appellant's physician. The panel also accepts that the appellant has additional expenses that the appellant has difficulty meeting due to receipt of EI rather than ability to work and earn more income. However, as noted above, the panel is limited to determining the reasonableness of the ministry's decision not to provide the appellant with a reconsideration decision. Factors relating to the appellant's health conditions and financial circumstances are not criteria to be considered when determining whether the denial of the Supplement is a decision that is available for reconsideration.

The panel finds that as the Supplement is provided under the Supply Act and not under the EAPWDA or EAPWDR, the ministry's determination that section 16 of the EAPWDA does not apply and that no reconsideration can be conducted was reasonable. In particular, the decision denying the Supplement is not a decision that results in a denial, discontinuance, or reduction of income assistance, hardship assistance or a supplement provided under the EAPWDA or EAPWDR, so the ministry does not have the jurisdiction to conduct a reconsideration in these circumstances.

Conclusion

The panel finds that the ministry's decision, which determined that no reconsideration was available to the appellant, was a reasonable application of the applicable enactment in the appellant's circumstances. The appellant is not successful on appeal.

APPEAL NUMBER
2020-00287

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/01/25

PRINT NAME

Chris McEwan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/25

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/25