

APPEAL NUMBER  
2021-00011

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 5, 2021, which denied the appellant’s request for backdated shelter allowance. The ministry found that the appellant did not notify them of the change in living arrangements as required under section 11 of the Employment and Assistance for Persons with Disabilities Act and was not eligible for a shelter allowance until the information was provided three months later.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 10, 11

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 23, 24; Schedule A

**PART E – SUMMARY OF FACTS**

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Information before the minister at reconsideration included:

- The appellant's Request for Reconsideration, signed December 16, 2020, with a note stating that the appellant received a telephone call while in the Lower Mainland and knew that the paperwork was filled out there would be no problem and back payment would be made for the missing months. The ministry said there was no hurry.

At the hearing, the ministry stated it spoke with the appellant on August 6, 2020 and advised that the shelter allowance was denied until the information about the new shelter was provided. There was no contact with the appellant in the months of September or October, 2020. When the shelter information was received in November, 2020, the shelter allowance was started. The ministry stated that the denial of the appellant's request was based on the applicable legislation. Section 11 of the EAPWDA states that the appellant must notify the ministry of any changes that may affect eligibility and Section 23(5) of the EAPWDR states that the appellant is not eligible for shelter payments until the calendar month in which the assistance is requested.

In response to questions from the Panel, the ministry stated that there is a record of the August, 2020 telephone call with the appellant. The ministry had mail to the appellant returned undelivered. There is a record of another call in November, 2020, when an internal service request was sent by the ministry worker for consideration of an underpayment. The ministry explained that if the ministry makes an error, the underpayment service request is used to determine whether a payment should be made. The ministry stated that this is not usually discussed with the client (the appellant), and in this case a determination was made that there was no underpayment and therefore no back payment would be made. The appellant was advised on August 6 that the paperwork was required, but it was not received until November 9.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is the reasonableness of the ministry's reconsideration decision dated January 5, 2021, which denied the appellant's request for backdated shelter allowance. The ministry found that the appellant did not notify them of the change in living arrangements as required under section 11 of the Employment and Assistance for Persons with Disabilities Act and was not eligible for a shelter allowance until the information was provided three months later.

### **Legislation**

*EAPWDA*

### **Information and verification**

#### **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.

(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.

### **Reporting obligations**

**11** (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form specified by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

*EAPWDR*

**Effective date of eligibility**

**23** (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(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.

(6) Subsection (5) does not apply to assistance in respect of moving costs as defined in section 55.

**Amount of disability assistance**

**24** Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

*Schedule A*

**Disability Assistance Rates**

**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	Column 2
	<b>Family Unit Size</b>	<b>Maximum Monthly Shelter</b>
1	1 person	\$375

The appellant's position is that they were aware of the need to provide shelter information to the ministry, but the ministry said there was "no rush" and that when the documents were provided the ministry would pay the full amount.

The ministry's position is that the appellant was not eligible for shelter allowance until the documents were provided to them. The appellant was aware of the need to provide the documents in August but did not provide them until November. The ministry stated that the information given to the appellant about underpayment was in error and should not have been mentioned.

### **Panel Decision**

The requirement in section 11, EAPWDA, that any change in circumstances that may affect eligibility for disability assistance must be reported to the ministry is clear. The appellant did not dispute this. The misleading information that was given the appellant was unfortunate, but the ministry stated that the determination made on the underpayment service request was that the appellant is not eligible for shelter allowance for that period. The error appears to be that the appellant was made aware of the service request and may have assumed that the outcome would be positive.

The Panel notes that the facts are not in dispute: the appellant was aware in August, 2020 that shelter information had to be provided to the ministry and did not provide the information until November, 2020. The Panel also notes the requirements of the applicable legislation that the information be provided and that the appellant was not eligible for shelter allowance until that requirement was met. It appears that the ministry therefore reasonably determined under EAPWDA section 10(4), which was not referenced in the Reconsideration Decision, that because the appellant did not comply with the ministry's direction to supply information related to verification of eligibility, they were ineligible for a shelter allowance until the information was provided.

The Panel finds that the ministry reasonably determined that the appellant was not eligible for shelter allowance for September and October, 2020 and reasonably denied the appellant's request for back payment.

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)

2021 Jan 29

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 Jan 29

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 Jan 29