

APPEAL NUMBER  
2021-00025

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (ministry) reconsideration decision dated January 19, 2021, in which the ministry found the appellant was not eligible for backdated disability assistance (DA) from January 2016 to January 2020 because:

- 1) the appellant failed to provide information in December 2015 to determine eligibility for DA, as requested pursuant to section 10(1)(b) and (g) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA); and
- 2) the appellant applied for DA on February 4, 2020 so was provided support and shelter from that date, in accordance with section 23(1.2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act sections 3 and 10  
Employment and Assistance for Persons with Disabilities Regulation section 23

## **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 Employment and Assistance Act.

### **Background Information**

- The appellant is a sole recipient of DA.
- In December 2015 the appellant submitted a monthly report on which was written:
  - they had received an inheritance payment that was more than \$200,000 and to see attached letter;
  - in response to the question whether assistance was still required they indicated “see letter”;
  - in response to the questions regarding various income sources a line was drawn through all spaces.
- On the attached letter to the December 2015 monthly report the appellant wrote:
  - They had received an inheritance payment of over \$200,000;
  - They have been told by people associated with the ministry that the amount of the inheritance is more than the allowable asset amount, however they have also been told that it isn’t income so it should all be exempt;
  - They have been told they must first transfer the funds to a Registered Disability Savings Plan (RDSP) Account or a Trust Fund for the money to be exempt;
  - They would like to know the correct answer and what the exact regulations are regarding the inheritance payment;
  - They were told they have several months to decide where to invest the money or to decide to put it into an RDSP or a Trust fund and that it wouldn’t affect the DA payments providing they submit confirmation within five to six months.
- Throughout December 2015 and January to February 2016 the ministry and the appellant’s third-party administrator communicated in regards to the December 2015 monthly report. In summary:
  - The ministry requested the appellant amend the monthly report to declare actual amounts received for each of the listed sources, in particular the specific amount of inheritance that the appellant received;
  - The ministry requested the appellant submit a copy of the Will, information on the Trust, the amount received and when, and bank statements confirming the deposit for monies received and disbursement of funds;
  - The third party administrator indicated they had informed the appellant what the ministry was requesting;
  - The appellant asked the ministry for more information in regards to how the inheritance money could be invested as they had been informed that anything over \$100,000 was exempt and anything over that amount could be put into a trust and could he continue to receive DA from the ministry while they research where and how to put the money into a trust;
- On February 19, 2016 the ministry replied to the third-party administrator in response to the appellant’s questions as follows:
  - That verification of the inheritance, the amount and date received from lawyer, an amended monthly report declaring inheritance funds were all still required to assess eligibility;
  - The ministry cannot give advice on what to do with money or what to spend it on to remain eligible for DA, they can only share legislation on income and assets and suggested the appellant may want to connect with an advocacy agency to help him;
  - If the appellant is intending to put funds into a trust, they have four months from the date the money is received and must provide the ministry confirmation of that intent by providing information regarding appointments, etc.
  - The ministry sent out the brochure titled Trusts and RDSP’s to the appellant.
- On February 24, 2016 the ministry confirmed with the third-party administrator the appellant had been advised to seek assistance of an advocate and that the appellant was aware that if they wished to receive medical services only the appellant must provide all the information that was previously requested as soon as possible.
- The ministry received no further correspondence from the appellant or the third-party administrator until an application for DA was received on February 4, 2020.
- On February 10, 2020 the appellant informed the ministry:
  - they were applying for reinstatement of DA because they had nearly exhausted the inheritance that they had received;

- they had been advised back in 2016 that the total amount of the inheritance had to be put into a trust in order to continue to receive DA, not just an amount over \$100,000;
- they decided to take themselves off of assistance rather than put the money into a trust;
- they had since reviewed legislation and understand that inheritance assets are exempt for persons with disabilities;
- they question whether there is any discretion to have back-dated assistance paid for the time they were off of assistance, given they were provided with incorrect information.
- On February 27, 2020 the ministry determined the appellant was eligible for DA from February 4, 2020.
- On March 26, 2020 the appellant contacted the ministry to request a review of their file because they believe the ministry owes them over \$60,000 due to the way their file, and the advice given about the inheritance, was handled in the past. They felt there were many Charter of Rights violations because they did not have access to the information or financial advice and felt very strongly that it was a ministry error.
- On November 25, 2020 the ministry denied the appellant's request for backdated DA for the period January 2016 to January 2020.
- On December 14, 2020 the appellant requested a reconsideration of the decision and wrote sixteen pages as the reasons. In summary:
  - They had been provided with misinformation from the ministry and the third-party administrator in regards to whether the inheritance money had to go into a trust in order to continue receiving DA;
  - They did not respond to the simple request from the ministry because they had been misguided by the third-party administration. They could have easily responded with confirmation from either the executor of the estate or the lawyers that were handling the estate;
  - They were required to go through a third-party administrator because they were no longer permitted to speak directly to the ministry and this is a violation of their Charter Rights and Freedoms. If they had been able to communicate directly with the ministry regarding the inheritance this underpayment would have never happened;
  - They requested a letter in writing explaining their options and were never provided with any written communication from the ministry or the third-party administrator. Nor did they receive a written letter informing them the DA payments were being delayed or held back and stating the reasons for that, and how it can be resolved. If they had received a letter they could have brought it to their lawyer or advocate to get the issue properly resolved;
  - They should have the right to communicate directly with the ministry and it is the ministry's duty and responsibility to treat them fairly and properly and be sure they receive the proper and correct information based on their entitlement for DA;
- On January 19, 2021 the ministry completed a Reconsideration Decision acknowledging the points the appellant raised as the reasons for requesting a reconsideration and determined, in summary:
  - In 2016 the appellant did not provide verification of the inheritance in accordance with section 10(1)(b) and (g) of the EAPWDA and was informed that DA would be held until verification was provided, in accordance with section 10(4) of the EAPWDA.
  - To date there is still no evidence of what the appellant actually received, the amount received and when it was received. The ministry is unable to determine eligibility for DA for the period January 2016 to January 2020 because the appellant was found ineligible for failing to provide information in December 2015 and continued to be ineligible until reapplication on February 4, 2020;
  - The appellant applied for DA on February 4, 2020 and was provided with support and shelter from that date, in accordance with section 23(1.2) of the EAPWDR.

On the Notice of Appeal form dated January 27, 2021 the appellant wrote that an incorrect decision had been made and to consider the previously submitted sixteen-page letter as the reasons why they disagree with the ministry's decision.

For the written submission the appellant submitted twenty-five pages that included all the points raised in their sixteen-page letter (summarized above) as well as written comments in response to the reconsideration decision. In summary:

- They request that the points raised in the sixteen-page letter be considered;
- That all the violations of their rights regarding this matter and the ministry's violation to follow proper procedures be considered;
- The ministry never properly addressed or responded to the points raised in the sixteen-page letter;

- The communications between the ministry and the third-party administrator were never put into written correspondence to them directly which resulted in misinformation being given;
- That it was incorrect for the ministry to write they were unsure if the appellant had received the inheritance, or not because they had written on their monthly report they had received an inheritance. (Attached was a copy of the December 2015 monthly report with the “see attached letter” references circled as well as a copy of the letter of confirmation the appellant had the third-party administrator sign to confirm they received the report and inheritance declaration of more than \$200,000.)

For the written submission the ministry wrote that their submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

**Admissibility of Additional Information**

The panel admitted the appellant’s written submission, in accordance with section 22(4) of the Employment and Assistance Act because the information was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The ministry provided no response to the appellant’s submission.

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

The issue on appeal is whether the ministry's reconsideration decision dated January 19, 2021, which denied the appellant's request for backdated DA from January 2016 to January 2020 because:

- 1) the appellant failed to provide information in December 2015 to determine eligibility for DA, as requested pursuant to section 10(1)(b) and (g) of the EAPWDA; and
- 2) the appellant applied for DA on February 4, 2020 so was provided support and shelter from that date, in accordance with section 23(1.2) of the EAPWDR

was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

### **Panel Decision**

#### **Requirement to Provide Information and Verification**

Section 10(1)(b) and (g) of the EAPWDA says for the purposes of determining eligibility for DA the minister may direct a person on DA to supply verification of any information they supply to the minister.

Section 10(4) of the EAPWDA says if a recipient fails to comply with a direction under this section, the minister may declare the family ineligible for DA.

The appellant notified the ministry in December 2015 they had received an inheritance of over \$200,000. The appellant signed a monthly report but did not answer the question whether DA was still required, but wrote in, "see letter. The appellant did not complete all the required fields on the monthly report by indicating with a "0" or indicate the specific amount of the inheritance that was received, instead drew a line through everything and wrote "received inheritance over \$200,000", and "see letter". The ministry requested, through the third party administrator, that the appellant amend the report and provide verification of the exact amount received.

The appellant wrote that it was against the Charter of Rights that they must communicate with the ministry via a third party administrator and to not receive written communication directly from the ministry. Pursuant to section 19.1(f) of the Employment and Assistance Act (EAA), which references section 44 of the Administrative Tribunals Act (ATA), the panel does not have jurisdiction over constitutional questions, so it is not permitted to conduct a review of any challenge under the Charter of Rights and Freedoms.

The panel notes there were a number of communications between the appellant's third party administrator and the ministry between December 2015 and February 2016, in response to the appellant's questions about what options were available to them after receiving an inheritance. The ministry decision cites email communications between the third party administrator and the ministry that indicate the administrator had informed the appellant they should seek assistance from an advocate about their options, because the ministry could only inform the appellant what the legislation allowed, not how to invest money and that a brochure regarding trusts had been provided. The emails quoted also indicate the administrator did pass along the ministry's request that verification of the inheritance was required to determine eligibility for ongoing DA or if the appellant required medical services only. The appeal record did not contain any physical copies of the email communications, however the panel considers, although not ideal, the ministry's decision, wherein they quote the relevant contents of the email, to be part of the record of communication. The panel notes the appellant acknowledges receiving information because in their written submission they allude to how they found the information to be overwhelming and conflicting, and so they made the decision to just live off the inheritance money rather than putting it into a trust.

The panel considers the appellant was notified, by way of the third party administrator, that verification of the appellant's inheritance was required before ongoing DA eligibility could be determined in December 2015. The appellant did not provide any documentation to the ministry when requested. Therefore, the panel finds the ministry was reasonable in their decision that the appellant was not eligible for DA until verification to determine eligibility was received.

### **Effective Date of Eligibility**

Section 23 (1.2) of the EAPWDR sets out that a person is not eligible for DA until they have been determined eligible and the date is set as the DA application date. The appellant re-applied for DA on February 4, 2021 and the ministry determined them eligible to receive DA effective from that date.

Section 23(5) of the EAPWDR sets out that a person is not eligible for DA in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

The appellant is requesting backdated DA for a period of time when eligibility for DA had not been determined. The appellant did not provide verification of the inheritance they received in November 2015 and did not communicate again with the ministry until reapplication on February 4, 2021. The panel notes the appellant never did provide any verification of the amount of inheritance they received, although the ministry determined the appellant is now eligible for DA based on their current circumstance. The panel finds the ministry was reasonable to determine the appellant was not eligible for assistance during the period of time from January 2016 until reapplication in February 4, 2021 because they did not provide the necessary information and verification to determine eligibility until that time.

### **Conclusion**

For the reasons noted above, the panel finds the ministry's reconsideration decision, that the appellant had not provided verification in December 2015 to determine eligibility and because they did not reapply until February 4, 2021 they are therefore not eligible for backdated DA from January 2016 to January 2020, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

### **Relevant Legislation**

#### **Employment and Assistance for Persons with Disabilities Act**

##### **Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

##### **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.

### **Employment and Assistance for Persons with Disabilities Regulation**

#### **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.

### **Employment and Assistance Act**

#### **EAA**

**19.1** The following provisions of the Administrative Tribunals Act apply to the tribunal:

- (f) section 46.3 [tribunal without jurisdiction to apply the Human Rights Code];

### **Administrative Tribunals Act**

**44 (1)** The tribunal does not have jurisdiction over constitutional questions.

**46.3 (1)** The tribunal does not have jurisdiction to apply the Human Rights Code.

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 February 24

PRINT NAME

Reece Wrightman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 February 24

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 February 24