

Appeal Number 2021-0222

### **Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 5, 2021 to apply a sanction which reduces the appellant's disability assistance by \$25 for 3 calendar months because of his incomplete reporting which led to a significant overpayment of assistance.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities (EAPWD) Act sections 11 and 14.1

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation sections 28.1 and 29

**Part E – Summary of Facts**

From ministry files:

- The appellant is a recipient of disability assistance.
- The appellant's current assistance file opened in 2010 and he received PWD designation in 2014.
- On June 9, 2021 the ministry spoke with the appellant about evidence of him being out of the province from November 2019 to October 2020 and advised and discussed with him the amount of a possible overpayment and how overpayment debt and sanctions are applied. The appellant stated that he understood.
- On September 7, 2021, after receiving no response or new evidence, the ministry finalized the overpayment, applied the sanction to the appellant's file, and mailed the decision to the appellant.
- On October 7, 2021 the appellant submitted a Request for Reconsideration, requesting an extension.
- On November 4, 2021 the appellant's advocate provided additional information.

Summary of the Overpayment Chart:

- Total overpayment: \$9,278.78
- Assistance months of the overpayment: December 2019 – August 2020
- Breakdown of the months of the overpayment:
  - December 2019 to March 2020: full support and shelter provided
  - April 2020: support allowance provided, no shelter allowance provided
  - May to August 2020: support allowance provided, no shelter allowance provided. \$300 emergency disaster supplement provided but not included in overpayment.
  - September 2020: no assistance provided
  - October 2020: no overpayment as pro-rated assistance provided after return to BC.
- Reason for overpayment: absent from BC for over 30 days without advising the ministry (no prior approval received)
- Period of time out of province: left BC on November 2, 2019, returned to BC on October 19, 2020

Summary of the Overpayment Reconsideration Decision:

- Reasons for overpayment confirmed
- Overpayment amount reduced to \$8,383.36
- Reduction due to an adjustment made to December 2019 eligibility
- The ministry determined the appellant ceased to be eligible for assistance on December 3, 2019 due to being out of province over 30 days without prior approval from the ministry, therefore was eligible for assistance for the month of December 2019, but not for shelter allowance.

A Monthly Report form was filled out by the appellant and received by the ministry on October 19, 2020.

- He answered the question "Have you moved or entered a facility" by checking the NO box.
- He answered the question "Any changes to your shelter cost?" by checking the YES box.

At his Request for Reconsideration dated October 7, 2021 the appellant reported that

- he left BC on November 2nd because his mother had suffered a severe medical condition and needed 24-hour assistance and because he was no longer welcome to live at his residence, so leaving as soon as possible was a dire necessity.
- He was unable to return to BC because of border closures and his car failure, and he returned as soon as possible.
- He is appealing the overpayment as he feels section 15(c) applies in his case.
- He was in contact with the ministry on August 26th, answered honestly where he was, stated his reasons and intentions to return to BC asap and asked specifically if it was a problem being out of BC to which the representative's reply was "No, we are just updating our files".

On November 4, 2021 the appellant's advocate submitted a letter from the appellant who added more information and argument. The appellant wrote that

- He left BC because of 2 crises as mentioned above.
- As the severity of his mother's illness lessened, his step-father asked him to leave and he made his way to his brother's place in Ontario for Christmas.
- Shortly after the borders were closed due to covid-19.
- He thought covid would pass quickly, had no intentions to stay that long, and was in fact terrified of being there because one member of the household was immune-compromised.
- When the weather was warmer he limited his interaction at the residence, spent time in remote areas and slept in his car.
- By March he noticed that his cheque did not include the shelter portion, assumed the ministry had been informed that he was no longer living at his former residence, and thought he was in compliance with the ministry.
- Once the borders opened up again, the appellant was set to making the trip back but his vehicle began having mechanical problems with overheating.
- On August 26, 2020 he contacted the ministry for help setting up his MySelfServe and to ask about the delay in his assistance; he was told there appeared to be no problem but then the representative called him back a few minutes later asking questions.
- The appellant answered honestly that he was living out of his car in Ontario and was repairing his car to return to BC asap. On the next day he was told that his assistance had been cut off and he was ineligible for assistance.
- He spent every day trying to get his car operable for the journey back, left Ontario sometime mid-October, making his way to Victoria by October 19th.
- In a discussion with a ministry representative she yelled at him which made him doubtful he would get a fair decision.
- When he first got his PWD designation he was unable to concentrate, read or retain information, and not very capable of managing his affairs back then. He still has bouts of similar severity.
- At no point was it made clear to him on where to find information on the relevant legislation including that a 30-day absence leads to ineligibility.
- He left BC due to extreme circumstances that were beyond his control (health, pandemic and mechanical failure), and remedying the situation was impossible. The ministry makes allowances due to similar circumstances.

The advocate wrote that

- "[the appellant] submits that he should not be liable to repay the PWD funds that he was ineligible for between December 2019 and August 2020 as he did not inaccurately report deliberately.
- [The appellant] submits that at the time of his PWD designation, his symptoms were severely cognitively debilitating causing an inability for him to learn and comprehend the reporting obligations that accompany PWD."

Additional Information from the ministry file:

- On March 10, 2016 the appellant submitted an updated shelter form reporting a change of address within BC and that he had moved to the new address on January 1, 2016. The note indicated he had not realized that he needed to fill out a shelter form as he thought PWD's were exempt. The file was updated with the new address. This was the same address the appellant had on file when he left BC in November 2019.
- Prior to leaving BC, the appellant's last contact with the ministry was October 30, 2019 [he left on November 2, 2019] when he submitted some paperwork about possibly applying for CPP disability. He did not report that he was moving, nor about his plans to be away from BC for any reason.
- The appellant had no contact with the ministry between November 1, 2019 and August 26, 2020.

- On August 26, 2020 the appellant contacted the ministry inquiring about his assistance, advised the ministry that he was currently in Ontario visiting his brother, had been there since March 2020, and noted that he planned to return to BC "sometime this year".
- On August 27, 2020 the appellant was advised that he was ineligible for assistance due to being out of province for over 30 days without prior approval and could be reassessed for assistance upon his return to BC.
- On October 19, 2020 the appellant contacted the ministry reporting he had returned to BC and requested assistance.
- On October 21, 2020 he was determined eligible for October assistance.

In his Notice of Appeal dated November 18, 2021 the appellant wrote: "I was working with an advocate who I felt didn't give her best efforts or complete my request. I disagree with the ministry's decision because I do think that the ministry makes allowances for extreme circumstances and that mine would fall into this category if I were allowed to clearly explain myself."

On December 3, 2021 and on December 21, 2021 the appellant requested extensions from the Employment and Assistance Appeal Tribunal which were approved. The appellant stated he had limited internet access, needed more time and had to recover from injuries.

In his December 31, 2021 submission the appellant repeated previous information and elaborates:

- In July 2020 the Ministry had called the residence and it was confirmed he left to take care of his mother. To be prevented from doing so and to stay in a hostile environment would have kept him in undue hardship.
- Having his assistance discontinued increased his hardship.
- It forced him to return early; it placed him in great danger: his radiator could have blown up at any point on his journey back.
- Once back in BC he was homeless until March 10th 2021.
- All funds saved were spent on quarantining in a hotel.
- Prior notification of the ministry was not possible.
- The appellant was complying with the ministry to the best of his ability. He did not seek to re-establish the shelter portion of his assistance once he noticed it had been taken off his assistance cheque. He believed everything was accurate and thought he was in compliance and did not need to contact the ministry until late August 2020. The Ministry did not contact him either, although they had his unclaimed mail returned to them since February 2020. The owner of the residence he left had the appellant's phone number. The ministry had verbal confirmation from her that he had left to take care of his mother.
- The nature of his disability severely reduces his memory, concentration, and energy to incapability for long periods of time, and this reoccurs. Even, if understood and reminded previously, his disability can wipe information from memory. Executive function can be severely compromised. Being told once, or even reminded frequently on a monthly deposit slip cannot ensure retention. Directions to a link are not sufficient to expect retention and/or compliance.
- A psychiatrist reconfirmed his diagnosis while he was in quarantine in BC in October/November 2020. He forgot her name.
- At no time was the appellant given helpful assistance to understand the reporting requirements and obligations.
- Contact with the ministry proved difficult. He was provided with inaccurate information: first he was told that it wasn't a problem being out of BC. Also, the call ended while he was asking for help.
- When asked by the ministry when he intended to return, his response was 'as soon as possible'; instead, the ministry misquoted him as saying 'sometime this year'.

- An exception could have been made in his case had he reached someone other than those he contacted.
- The appellant's advocate included information which was supposed to be left out or edited - this may have had an impact on the reconsideration decision.

In its January 5, 2022 appeal submission the ministry referred to its reconsideration decision summary.

#### Admissibility of New Information

The panel finds that the information provided by the appellant and the ministry in the Notice of Appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's absence from BC. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

## **Part F – Reasons for Panel Decision**

The issue in this appeal is whether the ministry decision to apply a sanction which reduces the appellant's disability assistance by \$25 for 3 calendar months is reasonably supported by the evidence or a reasonable application of the relevant legislation.

### **Panel Decision**

Section 11(1) of the EAPWDA requires the appellant to notify the ministry of any changes in circumstances or information that may affect his eligibility and was previously provided to the ministry.

Section 14.1(1) of the EAPWDA sets out that the ministry may take action if it determines that assistance was provided to a recipient who was not eligible for it, that the assistance was provided on the basis of inaccurate or incomplete information or because the recipient failed to report as required under section 11(1), and, in the ministry's opinion, the recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the ministry. Under these circumstances the ministry may reduce the disability assistance by the prescribed amount for the prescribed period.

Section 28.1 of the EAPWDR sets out that for a first determination, the prescribed sanction and period is a \$25/month rate reduction of assistance for the next 3 calendar months.

### **Appellant's Position**

The appellant argues that he should not be sanctioned or required to repay assistance funds for the following reasons:

He thought he was in compliance with his obligations to the ministry to the best of his ability and was not aware he had to inform the ministry of changes of his situation; when the shelter portion of his assistance was cut off he thought this was accurate and he did not need to contact the ministry; the ministry did not contact him either.

He was in a crisis situation, experienced undue hardship, and prior notification of the Ministry was not possible. An exception should be made considering the extreme circumstances of his case: he had to care for his sick mother, had to leave a hostile home environment, and was unable to return to BC sooner because of the pandemic, border closures, and mechanical failure of his car. All these circumstances created undue hardship which was exacerbated by the discontinuation of his assistance. All his savings were spent on quarantining in a hotel, and once back in BC he was homeless for several months.

In addition, the ministry never helped him to understand his obligations but instead gave him inaccurate information. His advocate was inefficient and unsupportive. His medical condition severely reduces his capacity to remember.

### **Ministry Position**

As a condition of eligibility from 2010 to 2014 the appellant was required under section 11(1) to submit a monthly report every month and notify the ministry of any changes in circumstances that may affect his eligibility and was previously provided to the ministry. After receiving the PWD designation in 2014 the appellant was still required to notify the ministry of any changes in circumstances. The monthly report the

appellant received each month with his notification of the deposit of assistance also asks the questions if the appellant has moved and if there has been a change in shelter costs. The copy of his October 2020 monthly report confirms that the appellant is required to answer if he has moved or if there has been a change in shelter costs.

Section 11(1)(b) requires the appellant to notify the ministry of any changes in circumstances or information that may affect eligibility and was previously provided to the ministry. This notification can be done by noting the change in the monthly report, submission of a letter, or simply notifying the ministry by phone or through MySelfServe (the ministry's online portal).

The ministry is satisfied that the appellant was made aware of his reporting obligations. Although it appears from the file that the appellant had very little contact with the ministry after receiving PWD designation - he did not submit a monthly report on a regular basis and did not report income. He was made aware in March 2016 when he moved, at minimum, that he needed to report moves to the ministry, and these questions were included on each monthly report he would have received. As such, the ministry is satisfied he was notified and was aware of his reporting obligation. Vacating his residence in BC to travel to the US and then to Ontario was a significant change in circumstance that was required to be reported and affected his eligibility, not just in respect to shelter allowance, as he was no longer a resident of BC.

The appellant failed to report the change in circumstance and had ample opportunity to update the ministry over the 9 months in question. As a result of the incomplete reporting, the appellant incurred a significant overpayment of assistance, and therefore, is subject to the sanction imposed by the ministry.

The ministry recommends that the appellant reviews the reporting obligations and reporting requirements sections on Appendix B to ensure he is fully aware of his obligations moving forward and contact the ministry if he has any questions. More information about ministry programs and services is also available online at [www.gov.bc.ca/sdpr](http://www.gov.bc.ca/sdpr)

### **Panel Analysis**

The panel finds the ministry decision to impose a sanction to be a reasonable application of the relevant legislation.

The appellant left BC on November 2, 2019 and returned on October 19, 2020. He did not notify the ministry of his change of circumstances until August 26, 2020 and as a result became ineligible for disability assistance.

The panel finds that the ministry reasonably determined that vacating his residence in BC and leaving BC for an extended period of time was a significant change in circumstances that affected the appellant's eligibility and that he was required to report. The appellant failed to report the change in circumstances even though he had ample opportunity to update the ministry over the 9 months in question.

The panel finds further that the ministry reasonably determined that the appellant had received a significant overpayment of assistance as a result of providing incomplete information. Under these circumstances the panel finds the ministry was reasonable when it imposed the sanction.

While the appellant argues that he was not aware of the reporting requirements because either the ministry did not inform him or because his medical condition impacted his memory the panel finds that there is sufficient evidence that the appellant was aware of his obligations:

- From 2010 to 2014, as a condition of eligibility, the appellant was required to submit a monthly report every month and notify the ministry of any changes in circumstances.
- Each month the appellant received a monthly report form together with his notification of the deposit of assistance. The monthly report form asks 2 questions - has the appellant moved, and has there been a change in shelter costs.
- After the appellant had moved to a new address on January 1, 2016 the appellant was made aware in March 2016 that he needed to report moves to the ministry, and that these questions were included on each monthly report he would have received with his notification of the deposit of assistance.

While the appellant argues that his medical condition impacted his memory the panel finds that there is insufficient evidence to support this claim. While he reports that at the time of his PWD designation his symptoms were severely cognitively debilitating making him incapable of learning and comprehending the reporting obligations, and that a psychiatrist whose name he forgot reconfirmed his diagnosis in October/November 2020, the appellant did not provide any supporting evidence from a medical professional. The panel finds that without evidence from a medical professional the appellant's statements about his medical condition carry insufficient weight.

The panel finds further that the appellant's arguments that the ministry did not wish to help him and that prior notification of the ministry was not possible are not sufficiently supported by the evidence.

The panel noted that not addressing the appellant's statements about his medical information does not render the ministry decision unreasonable. The onus is on the appellant to argue his case and to provide evidence he considers relevant. Without the appellant providing supporting evidence from a medical professional the appellant's statements about his medical condition carry insufficient weight to demonstrate the ministry's decision was unreasonable. The panel notes that the appellant was granted 3 extensions to give him ample time to provide information, and he enlisted the help of an advocate who can be expected to be aware of the weight of evidence from a medical professional.

As the appellant had requested a written hearing there was no opportunity for the panel to question either the appellant or the ministry.

### **Conclusion**

The panel acknowledges that the adverse circumstances outlined by the appellant can create hardships. However, the panel finds that the ministry was reasonable when it imposed a sanction because the appellant received an overpayment of assistance for the period of December 2019 to August 2020 as a result of his incomplete reporting. The sanction consists of a reduction of the appellant's disability assistance by \$25 for 3 calendar months. The appellant is not successful on appeal.



**Applicable Legislation**

**EAPWDA**

**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.

**Consequences for providing inaccurate or incomplete information**

- 14.1** (1) The minister may take action under subsection (2) if the minister determines that
- (a) disability assistance, hardship assistance or a supplement was provided to or for a family unit that was not eligible for it,
  - (b) the disability assistance, hardship assistance or supplement was provided to or for the family unit either
    - (i) on the basis of inaccurate or incomplete information provided by the applicant or recipient
      - (A) under section 10 (1) (e) [*information and verification*], or
      - (B) in a report under section 11 (1) [*reporting obligations*], or
    - (ii) because the recipient failed to report as required under section 11 (1), and
  - (c) in the minister's opinion, the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister.

(2) In the circumstances described in subsection (1), the minister may reduce the disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

(3) The periods prescribed for the purposes of subsection (2) may vary with the number of determinations made under subsection (1) in relation to a family unit.

(4) If a family unit that is subject to a reduction under section 15.1 of the *Employment and Assistance Act* qualifies for disability assistance or hardship assistance under this Act before the period prescribed for the purposes of section 15.1 (2) of that Act expires, the reduction is deemed to have been imposed under subsection (2) of this section.

**EAPWDR**

**Consequences for providing inaccurate or incomplete information**

**28.1** If the minister determines under section 14.1 (1) of the Act that the minister may take action under section 14.1 (2) of the Act in relation to a family unit, the disability assistance or hardship assistance provided to or for the family unit may be reduced by \$25 for

- (a) a first determination, for the next 3 calendar months for which disability assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month

- (i) following the calendar month in which the minister made the determination, and
  - (ii) for which disability assistance or hardship assistance is provided to or for the family unit,
- (b) a second determination, for the next 6 calendar months for which disability assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month
- (i) following the calendar month in which the minister made the determination, and
  - (ii) for which disability assistance or hardship assistance is provided to or for the family unit, and
- (c) a third or subsequent determination, for the next 12 calendar months for which disability assistance or hardship assistance is provided to or for the family unit, starting with the first calendar month
- (i) following the calendar month in which the minister made the determination, and
  - (ii) for which disability assistance or hardship assistance is provided to or for the family unit.

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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)  and Section 24(1)(b)

Section 24(2)(a)  or Section 24(2)(b)

**Part H – Signatures**

Print Name  
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)  
2022/01/14

Print Name  
Jan Broocke

Signature of Member

Date (Year/Month/Day)  
2022/01/19

Print Name  
Dawn Martin

Signature of Member

Date (Year/Month/Day)  
2022/01/19