

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, which held that the appellant received an overpayment for the period of December 2019 to August 2020 that he is required to repay.

The ministry noted that a review resulted in a reduction of the total overpayment amount to \$8383.36.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Act sections 11, 18, 19

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation section 15

Part E – Summary of Facts

From ministry files:

The appellant is a sole recipient of disability assistance and received PWD designation August 2014.

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 which was reduced by \$1270.42 at reconsideration.
 - 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 over 30 days without advising the ministry (no prior approval received)
- Period of time out of province: left BC November 2, 2019, returned to BC October 19, 2020

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 (health issue in the family, pandemic and car failure) that were beyond his control 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:

- Prior to leaving BC, the appellant's last contact with the ministry was October 30, 2019 when he submitted some paperwork. He did not report any changes nor 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.
- In late February 2020 the ministry received undelivered mail that had been sent to the appellant for the benefit month of February 2020 but returned as undeliverable “unclaimed/return to sender”.
 - o The ministry was unable to contact the appellant and ended his shelter allowance as the ministry required confirmation of current address and shelter costs.
- In late July 2020 the ministry received more undelivered mail returned for benefit month of May 2020, was still unable to reach the appellant and stopped cheque production.
 - o The ministry contacted the appellant's landlord on July 27, 2020 who informed the ministry that he moved out of the residence November 2019 and had gone to the US to look after his sick mother.
- 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 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.
- On December 16, 2020 the ministry started the review of past eligibility.

In his Notice of Appeal dated November 18, 2021 the appellant wrote: "I disagree with the ministry decision because I feel that my case falls under extreme circumstances which the ministry makes allowances for, and would like to be able to clearly explain my case."

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 and 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, his 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 on appeal 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 that the appellant received an overpayment of \$8,383.36 for the period of December 2019 to August 2020 that he is required to repay is reasonably supported by the evidence or a reasonable application of the relevant legislation.

Panel Decision

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

Section 15 of the EAPWDR sets out that if a recipient is outside of BC for more than a total of 30 days in a year, this person ceases to be eligible for disability assistance, unless prior authorization from the ministry was received for the following reasons: to participate in a formal education program; to obtain medical therapy prescribed by a medical practitioner; or to avoid undue hardship.

Section 18 of the EAPWDA sets out that if disability assistance is provided to a family unit that is not eligible, they are liable to repay the overpayment received for that period.

Appellant's Position

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

He thought he was in compliance with his obligations toward 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 the appellant was required to notify the ministry of any change in circumstance that may affect his eligibility for assistance. Leaving his residence in BC for the US and then Ontario was a significant change in circumstance that was required to be reported to the Ministry as he was no longer residing in BC and did not report the change to the ministry. As a result, he also did not receive prior approval from the ministry to be absent from BC over 30 days. As such, was not eligible for disability assistance.

As the appellant left BC on November 2, 2019, the ministry determines the appellant ceased to be eligible for disability assistance after being out of province more than 30 days; therefore, ceased to be eligible for disability assistance effective December 3, 2019.

In respect to the overpayment calculated for December 2019, the ministry finds that the appellant was eligible for December assistance but was not eligible for the shelter allowance. As such, the ministry is reducing the December 2019 overpayment amount to include only the \$375 shelter allowance. As the December assistance was issued on November 20, 2019, and he had not been out of province over 30 days until December 3rd, the ministry is satisfied that the appellant met the eligibility requirements for the full support allowance, transportation supplement, and Christmas benefits he received for the month of December. As he reported he left BC on November 2nd and the landlord reported he vacated the residence also in November, the ministry determined he was not eligible for the shelter allowance for December. There is no evidence to support that the appellant incurred any actual shelter costs for December 2019, nor that he was a resident of BC in December. As such, the appellant was not eligible for the \$375 shelter allowance he received for December. In respect to January – August 2020, the ministry confirmed the original overpayment amount. The total overpayment he is required to repay to the ministry has therefore been reduced from \$9,278.78 to \$8,383.36.

Panel Analysis

The panel finds that the ministry reasonably determined that the appellant received an overpayment of \$8,383.36 for the period of December 2019 to August 2020 that he is required to repay because he was out of BC for over 30 days without prior authorization of the ministry and therefore became ineligible for disability assistance.

The panel bases their finding on the following facts:

- The appellant left BC on November 2, 2019 and returned on October 19, 2020.
- There is no evidence that he asked for or received prior authorization from the ministry.
- On August 26, 2020 the appellant informed the ministry of this change of his circumstances.

While the appellant argues that he was not aware of the reporting and approval requirements because either the ministry did not inform him or because his medical condition impacted his memory, the panel notes that legislation requires a recipient to inform the ministry of changes in their circumstances and to receive ministry approval - the ministry has no discretion in the matter.

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

Conclusion

The panel acknowledges that family illness, lack of funds, covid restrictions, car failure and a hostile home environment can create undue hardship. However, the panel finds that the ministry was reasonable when it established that the appellant was not eligible for disability assistance as he had been out of the province for over 30 days in a year without prior authorization of the ministry and as a result received an overpayment of \$8,383.36 that he is liable to repay.

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.

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Liability for and recovery of debts under Act

19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

- (a) recovered in a court that has jurisdiction, or
- (b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

EAPWDR

Effect of recipient being absent from BC for more than 30 days

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

APPEAL NUMBER 2021-0224

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)
2022/01/18

Print Name
Dawn Martin

Signature of Member

Date (Year/Month/Day)
2022/01/17