

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated April 21, 2022, which found that the Appellant was not entitled to backdated Disability Assistance (DA) for the period from June 1, 2021 through December 31, 2021 inclusive.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Sections 1, 3 and 5

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 23 and 24, and Schedule A, Sections 1, 2, 4 and 6

*Interpretation Act*, Sections 2(1) and 8

**The relevant legislation is provided in the Appendix**

**Part E – Summary of Facts**

The Appellant is a sole recipient of DA.

According to the information provided by the Ministry and included in the RD:

- On May 19, 2021, the Appellant was issued a support allowance of \$187, a shelter allowance of \$500 and a \$52 transportation supplement for the month of June 2021;
- On May 28, 2021, the Appellant submitted a shelter information form (the First Form) indicating that he would be paying “\$80 for room and board; \$80 rent”, effective June 1, 2021, for accommodations at a supportive housing facility (the Facility) in his community;
- On June 2, 2021, the Ministry spoke with the social services society (the Society) that maintains the Facility and confirmed that the Appellant would be paying \$80 for room and board, following which the Ministry arranged to provide the \$80 shelter allowance for room and board directly to the Society on the Appellant’s behalf, with the support and transportation allowances going directly to the Appellant, beginning July 2021;
- On September 28, 2021, the Ministry noted that a representative from the Society (the First Outreach Worker) contacted the Ministry on the Appellant’s behalf to ask why he was not receiving full DA. The Ministry said that the rate of shelter assistance provided to a DA recipient receiving room and board is reduced;
- On October 29, 2021 the First Outreach Worker, having again contacted the Ministry to ask about shelter allowance rates, was told by the Ministry that the \$80 per month room and board amount was based on the information provided in the First Form (see below) and that on that basis the Appellant was receiving the correct amount of assistance;
- On January 12, 2022, a different Society representative (the Second Outreach Worker) contacted the Ministry and said that the Appellant was not receiving room and board as he was not receiving meals;
- On January 19, 2022, the Appellant submitted a new shelter information form (the Second Form) indicating that, beginning on May 31, 2021, the Appellant was paying \$80 per month for rent at the Facility;
- On March 14, 2022, the Ministry provided the Appellant with a support allowance of \$983.50 support, an \$80 shelter allowance, and a \$52 transportation allowance “*minus what was issued to you previously for January, February and March*”. In addition, the Ministry indicated that it was denying the Appellant’s request for backdated DA for the period from June to December 2021 because a family unit is not eligible for DA before the calendar month in which it is requested; and,
- On April 5, 2022, the Appellant submitted a Request for Reconsideration (RFR).

The evidence before the Ministry at the time the RD was made also included:

- An RFR, signed by the Appellant on April 5, 2022 which states:  

*“I was underpaid due to housing staff filling out the First Form incorrectly .. (it) stated that I was living in a self-contained unit and ... a room and board situation. This information is*

*incorrect ... it should have been filled out as room only (common areas shared with landlord, meals are not included) ... (not) room and board. During the entire time I have lived (there) I have been living in a non-self-contained room where I access the kitchen and bathroom as shared spaces, and I have had to pay for some meals myself as only a Sunday brunch and Wednesday dinner are provided with a maximum cost of \$30 dollars each ... by (the Society). (The Society) would occasionally leave snacks out on random days depending on if the person working (at the Facility) wanted to bake or otherwise ... The underpayments of my PWD (have left me hungry and have not allowed) me (to buy) things I enjoy ... I have difficulties completing forms and other things myself and I had asked and trusted that the staff ... had completed the (First Form) correctly. I was fully unaware that the (First Form) was filled out incorrectly and was the reason for my especially low PWD. I am therefore asking the Ministry to reconsider the decision of denial as it was a staff member who made the mistakes ... and I don't think I should be financially punished for that."*

- The First Form, indicating that the “*Client’s portion of Rent or Room and Board*” is \$80, the total rent for the unit is \$80, including utilities, and that the Appellant shares a kitchen and bathroom with other tenants;
- The Second Form, indicating that the total rent for the unit is \$80, including utilities, and that the Appellant does not share a kitchen and bathroom with the owner; and
- A two-page letter dated March 29, 2022, signed by the Second Outreach Worker (the Letter). The Letter is addressed “*to whom it may concern*” and is in support of the Appellants RFR. The Letter explains that:
  - The Second Outreach Worker has been working with the Appellant since January 5, 2022 and before that First Outreach Worker had been working with the Appellant since June 6, 2021;
  - When she began working with the Appellant, the Second Outreach Worker immediately became aware that the Appellant “*was receiving a smaller amount (of DA) than he was entitled to*” and as a result she made several phone calls to the Ministry which “*revealed that (the Appellant’s First Form) ... (had been) filled out incorrectly by (the Society’s) housing staff (who had) completed the “Type of Rental Accommodation” section of (the First Form to indicate) that (the Appellant) was in a self-contained unit as well as receiving room and board, instead it should have been filled out as “B. Room Only” (because the Appellant’s) supportive accommodation does not have any self-contained units or rooms ... only a bedroom ... and access to (a) bathroom, living room and kitchen ... in shared common areas. Furthermore, this shared accommodation does not provide three meals and therefore “room and board” filled out on the (First Form) is incorrect*”; and,
  - Due to this error, the Appellant has been living under severe financial hardship (\$239 per month from June to December 2021) since he moved into Facility. The Second Outreach Worker assisted with the completion of the accurate Second Form, since which time the Appellant has been receiving the correct DA amount, but a retroactive adjustment for the period from June through December 2021 was “*declined due to the (incorrect information in the First Form)*”.

**Additional Information**

In the Notice of Appeal (NOA), dated April 28, 2022, the Appellant said that he disagreed with the Ministry's RD because "*a worker (with the Society) filled in (the First Form) incorrectly*".

**Evidence Presented at the Hearing**

The Appellant was represented at the hearing by the Second Outreach Worker, who provided some additional information at the hearing. For the most part, the Appellant spoke on his own behalf.

At the hearing, the Appellant said that the First Form had been completed by someone at the Society and the accommodation information in the First Form was wrong. As a result he was only paid \$239 per month for support instead of \$1,085 per month which he had been receiving before he moved to the Facility. The Appellant also said that he "*feels like he shouldn't be punished for someone else's mistake*".

In response to a question from the Panel, the Appellant confirmed that he had his own bedroom and the use of a kitchen and bathroom (that was shared with other residents at the Facility) for which he was required to pay \$80 per month. He also confirmed that meals were not included.

In response to another question from the Panel, the Appellant said that he was not present when the First Form had been completed for him by someone at the facility, and that he had provided his consent for the release of his personal information so that the First Form could be completed on his behalf.

At the hearing, the Ministry relied on its RD.

In response to a question from the Panel, the Ministry said that the First Form and the Second Form were different (i.e., asking for slightly different information about accommodation in a different format) because the form had been redesigned and the First Form was actually the newer of the two, but both were currently in use.

In response to another question from the Panel, the Ministry said that the amount of DA provided to the Appellant for June 2021 was based on his living arrangements at his previous place of accommodation, where his room and board was \$500 per month. The Ministry also said that the amount of DA he received starting in July 2021 when he moved to the Facility was based on the incorrect information contained in the First Form.

In response to questions from the Panel about why the Ministry is unable to provide backdated DA when an error is made, the Ministry said that it could not backdate to any point in time before an accurate and complete application for assistance form has been provided due to EAPWDR Section 23(5), which says that a family unit is not eligible for assistance before the calendar month in which it is requested. The Ministry also said that there were no other sections of the legislation that provide guidance or limitations on how far back it can go to correct errors. The Ministry said it does not consider a request to have been made until a correct and complete application form has been received, and it is unable to backdate to correct errors unless an error is made by the Ministry. In this case, because the First Form was wrong, the Ministry deems the request to have been made when the Second Form was received, in January 2022. In addition, the Ministry said that an error correction could sometimes be made by having the applicant correct, initial and resubmit the original form, but in this case the Appellant was asked to submit a new form. In any event, the Ministry said that it would consider the date that the new or revised form was submitted to be the date that the assistance was requested.

**Admissibility of New Evidence**

Section 22(4) of the Employment and Assistance Act (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

The Panel found no new evidence in the NOA or in any of the information provided by the Appellant or his Advocate or the Ministry at the hearing.

## Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD, which found that the Appellant was not entitled to backdated DA for the period from June 1, 2021 through December 31, 2021 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant was entitled to backdated DA based on the requirements set out in the legislation?

### Position of the Parties

The Appellant's position is that he has received significantly less DA than he is entitled to since an error was made by someone else when they completed the First Form on his behalf in June 2021, and that it is unfair that he doesn't receive backdated DA when the error was made by someone else.

The Ministry's position is that it is unable to provide backdated DA as a result of any error made by anyone other than the Ministry because the legislation only allows it to backdate assistance until the date that an application is received, and the Ministry does not consider an application to have been received until the information in an application is complete and correct.

### Panel Decision

The Ministry's RD is based on its interpretation of EAPWDR Section 23(5), which says a family unit is not eligible for any assistance *for a service provided before the calendar month that it is requested*. In this case, the assistance for which the Appellant is eligible is DA, comprising a combination of the shelter and support allowances as specified in EAPWDR, Schedule A Sections 2(1) and 4(2) respectively, and a transportation allowance of \$52 per month. Excluding the transportation allowance, in this case the monthly amount for which the Appellant is eligible is \$983.50 per month for support and \$80 per month for shelter (\$1,063.50 per month in total).

The total monthly amount of DA to which the Appellant is eligible is not in dispute; the Appellant feels he is entitled to backdated DA to adjust for an error made on the First Form, which was received by the Ministry in May 2021. That adjustment would provide the Appellant with the correct amount from the date that he moved to his new accommodation at the Facility in June 2021. The Ministry processed the adjustment in March 2022 and backdated the Appellant's increased DA amount to January 2022, having determined that it was unable to provide backdated DA for the amount to which he was entitled for the entire time he has resided at the Facility.

The Ministry's RD relies on its interpretation of when the assistance was "requested". The legislation doesn't provide any direction on what constitutes a request. As the Appellant had previously been designated as a person with disabilities and had been receiving DA for some time before he moved to the Facility, it is reasonable to assume that in the context of Section 23(5) assistance was requested when information about his living arrangements was submitted. But is this the calendar month in which the Ministry first applied for DA? Or the calendar month in which the Ministry receives the First Form, which seeks information about the cost of his new living arrangements? Or is it the calendar month in which the application for assistance is vetted by the Ministry and deemed to be complete? What if there is an error in the application? None of these questions can be answered by reading the legislation. The Panel notes that the Ministry has taken the narrowest possible interpretation of what "requested" means.

Section 8 of the *Interpretation Act* says that all provincial legislation must be considered to be remedial, and that it “*must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects*”.

The EAPWDA is social welfare legislation, the objectives of which are to provide disability assistance to persons with disabilities. Section 8 of the *Interpretation Act* requires that if, as is the case in this appeal, there is any ambiguity or uncertainty in the interpretation of the legislation, the ambiguity should be resolved in favour of the applicant seeking benefits under that legislation.

The Panel notes that the Ministry said at the hearing that it had different ways of requiring an error on an application for assistance form to be corrected - either by having the applicant make the change on the original application and initializing it, or as was the case in this instance, by having the applicant prepare and submit a new application. As the Appellant was otherwise entitled to the DA benefit, and had been receiving DA before his change in accommodation required that a new shelter information form be completed, the Second Form should reasonably have been treated as an amendment to the “request” for assistance made in the First Form. Accordingly the Panel finds that the ambiguity in the term “*month in which the assistance was requested*” in Section 23(5) should be resolved in favour of the applicant seeking benefits, and interpreted to be the month in which the Appellant’s original application (in this case, the First Form) is received by the Ministry.

### *Conclusion*

Having considered all the evidence, the Panel finds that the Ministry’s RD is not a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel rescinds the Ministry’s decision. Consequently, the Appellant is successful in his appeal.

## APPENDIX - LEGISLATION

### EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

#### Interpretation

1 (1) In this Act ...

"**disability assistance**" means an amount for shelter and support provided under section 5  
[*disability assistance and supplements*] ...

#### Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance ... if

- (a) each person in the family unit on whose account the disability assistance ... 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 ... under this Act.

#### Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance ... to or for a family unit that is eligible for it.

### EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

#### Effective date of eligibility

23 (1) ... the family unit of an applicant for ... 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 ...

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

- (a) a support allowance under section ... 2 ... of Schedule A on the disability assistance application date,



(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under section ... 6 ... of Schedule A on the disability assistance application date.

(2) ... a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01) ...

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible for disability assistance;

(b) 12 calendar months before the date of payment.

(5) ... a family unit is not eligible for any assistance in respect of a service provided ... before the calendar month in which the assistance is requested.

### **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** (*section 24 (a)*)

### **Maximum amount of disability assistance before deduction of net income**

**1** (1) Subject to this section and section ... 6 ... of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under section ... 4 ... of this Schedule.

### Monthly support allowance

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2 ...

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

### Monthly shelter allowance

4 (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 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

### People receiving room and board

6 (1) For a family unit receiving room and board ... the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the smaller of

- (a) the sum of
  - (i) the actual cost of the room and board, plus
  - (ii) \$60 for each calendar month for each applicant or recipient, plus
  - (iii) \$127 for each calendar month for each applicant or recipient who is a person with disabilities, and ...
- (b) the amount calculated under sections 1 to 5 of this Schedule for a family unit matching the applicant's or recipient's family unit.

## **INTERPRETATION ACT**

### **Application**

**2** (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act ...

### **Enactment remedial**

**8** Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

**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) ☒

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

**Part H – Signatures**

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/05/30

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2022/05/31

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2022/05/30