

Part C – Decision Under Appeal

The decision under appeal is a decision expressed in the Ministry of Social Development and Poverty Reduction's (the Ministry's) Requestor Information (RI) form dated July 5, 2022, which denied the Appellant's request to reconsider a Ministry decision not to pay the Appellant an additional \$184 in Disability Assistance (DA).

The Ministry had determined that it was unable to reconsider the decision because it was not a decision that resulted in a refusal, a discontinuance, or a reduction of DA, hardship assistance or a supplement provided under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Part D – Relevant Legislation

Employment and Assistance Act (EAA), Section 24

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1(1), 5, 16 and 26

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 24, and Schedule A, Sections 1, 4 and 5

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

The Appellant is a sole recipient of DA.

Based in the information provided in the RI:

- On May 6, 2022, the Appellant requested an additional \$184.00 in Disability Assistance to cover deductions made by the Ministry to the shelter allowance portion of her DA benefits for the months of September 2021 to December 2021. This request represented the total amount of deductions of \$46 per month in BC Hydro utility costs that the Ministry said had been paid directly by the Ministry to BC Hydro;
- On June 3, 2022, the Appellant requested a 20 day extension of the Request a Reconsideration (RFR) deadline, which the Ministry approved on June 4, 2022. A new deadline was set for July 4, 2022; and,
- On July 5, 2022, the Ministry made the decision to deny the Appellant's RFR.

In the "Decision to be Reconsidered" section of the RFR, completed by the Ministry on June 2, 2022, the Ministry provided a record of events relating to the deductions of \$46 per month in BC Hydro utility costs covering the period from September through December 2021 that the Ministry said had been paid directly by the Ministry to BC Hydro. This record states that:

- On September 29, 2021, the Ministry updated the Appellant's file back to assistance as she was no longer in a facility, adding "*Your BC Hydro payment was reinstated as there (were) no notes or information from (the Appellant) stating that (she) no longer had a BC Hydro account*";
- On November 26, 2021, BC Hydro told the Ministry that "*the payment (for December 2021) sent (to BC Hydro by the Ministry) could not be posted as the account number was invalid*";
- On December 1, 2021, the Appellant's ongoing direct payment to BC Hydro was canceled by the Ministry. A note on the Appellant's file says that she "*was to contact BC Hydro regarding any credit*";
- On December 21, 2021, the Appellant told the Ministry that she had closed her BC Hydro account in August 2020 and was unaware that \$46 every month had been sent directly to BC Hydro on her behalf;
- On March 9, 2022, the Appellant contacted the Ministry and asked for reimbursement of "*\$46 per month*";
- On March 15, 2022, the Ministry told the Appellant that no underpayment of her DA had occurred between September and December 2021 as she was "*issued the assistance that she was eligible to receive*", and that her "*request for an underpayment was denied as the information provided does not meet all regulatory criteria*". The Ministry also suggested that the Appellant contact BC Hydro directly to try to resolve the problem and

the Ministry provided the Appellant with *“the account number that payments were made to”*;

- On March 16, 2022, the Appellant told the Ministry that BC Hydro had told her that it hadn't received any payments on the Appellant's account from the Ministry since Aug 2020. The Ministry provided the Appellant with the following payment information:
 - September 2021 - \$46.00 (cheque number provided)
 - October 2021 - \$46.00 (cheque number provided)
 - November 2021 - \$46.00 (cheque number provided)
 - December 2021 - \$46.00 (cheque number provided)

The Ministry also confirmed with BC Hydro that *“payments made in 2021 were not showing on (the Appellant's) account”*.

In the RFR, completed by the Appellant's advocate (the Advocate) on June 30, 2022, the Advocate wrote *“The (Appellant) approached the Ministry in March 2020 because of debt to BC Hydro, and deductions were made off the family benefits to pay to BC Hydro, and those payments in 2020 are not in dispute. In 2021 the Ministry, without any communication with the (Appellant), arbitrarily made four deductions of \$46 each and put the funds to BC Hydro, and the (Appellant) wants the \$184 returned to her.”*

In the RFR, the Advocate also wrote that the Ministry had no authority *“to deduct \$184 and redirect it to BC Hydro in 2021”*, and that:

- The Appellant has continued to receive DA benefits from 2020 to the present and continued to submit reports to the Ministry over that time period, including whether she paid BC Hydro directly in each of her many residences during that time period, or whether the cost of utilities was included in her rent, adding that *“(The Appellant) was in a facility from August 17, 2021 to September 22, 2021, a short term stay that would normally interrupt benefits, and continued to receive benefits during that time”*;
- In November 2021, the Appellant noticed that her “Confirmation of Assistance” form on the Ministry's MySelfServe website showed an incorrect last name on her Ministry account and a \$46 deduction in November 2021, and that she contacted the Ministry to correct her name and to enquire about the deduction. She was told by the Ministry to contact BC Hydro. The Appellant called BC Hydro and was told that the \$46 payments made by the Ministry for the four month period from September through December 2021 *“were not showing on her account and could not be traced”*.

Additional Information Provided after the Ministry Decision

In the Notice of Appeal (NOA) dated July 19, 2022, which was completed by the Employment and Assistance Appeal Tribunal (the Tribunal) over the phone, the Appellant did not provide the reasons for her appeal.

The Advocate, on behalf of the Appellant, provided a submission to the Tribunal on July 29, 2022 (the Submission). The Submission included:

- A chronological record of the events relating to her attempt to determine what had happened to the \$184 deduction made by the Ministry from her monthly DA benefits totalling \$184 between September and December 2021, as follows:
 - On December 1, 2021, the Appellant visited a Ministry office in her community about the wrong name on her file and the Ministry “*changed it back to what it was supposed to be*”. She also enquired about the \$46 payments to BC Hydro, and was told that the Ministry “*would place a hold on any future payments to Hydro*” and that the Appellant would have to contact BC Hydro for any reimbursement of payments already made by Ministry on her behalf;
 - On an unspecified date in December 2021, the Appellant contacted BC Hydro and was told that no payment had been made to her account since Aug. 2020. The Appellant then contacted the Ministry to let them know that BC Hydro had no record of any 2021 payments made by the Ministry on her behalf;
 - On Mar 16, 2022, the Ministry contacted the Appellant and gave her a BC Hydro “*account number*” to which the 2021 payments were going. The Appellant contacted BC Hydro and was told that no payment had been made to that account number since Aug 2020. The Appellant then contacted the Ministry, which suggested that she give BC Hydro permission for the Ministry to talk to BC Hydro about the status of her account, which she did;
 - On May 6, 2022, the Appellant contacted the Ministry to ask why she hadn’t yet received the request for reconsideration package. Over the course of that discussion between the Appellant and the Ministry, the Ministry also said that it “*was surprised that no account number was affixed to those payments.*” The following payment details, including a “*payment number*”, for the four payments in question were:
 - A payment totalling \$46.00 on August 25, 2021,
 - A payment totalling \$46.00 on September 22, 2021,
 - A payment totalling \$46.00 on October 20, 2021, and
 - A payment totalling \$46.00 on November 17, 2021

The Appellant then contacted BC Hydro and provided the information that the Ministry had given her. BC Hydro was “*unable to find the payments anywhere with the information (she) provided them*”. She also asked BC Hydro about any notes on her file regarding the Ministry contacting BC Hydro about the payments to her account, and was told that “*there was nothing noted on (her) file and that if the Ministry had contacted them it would have been noted*”;

- On May 10, 2022, the Appellant visited the local Ministry office and picked up her RFR package. On reviewing the documents in the package she “*noticed some inconsistencies ... (and) some additional information that (she) was not privy to*”;

- On May 11, 2022, the Appellant contacted BC Hydro with the new information from the RFR package (the cheque numbers of the 2021 payments). She also told BC Hydro that the wrong name was on her Ministry file at the time of the payments and BC Hydro said that it still could not locate the payments;
- Six pages of dated documents titled “Contents of Note” (the Notes to File) with one note on each page. The information on each Note to File was as follows:
 - December 21, 2021 - “*(The Appellant) inquired about deductions from (the Ministry) cheques payable to BC Hydro*”. After conferring with someone else (presumably someone within the note-takers organization), the note-taker indicates “*we need account number information to look into (it)*”;
 - March 15, 2022 - “*(Appellant) inquiry: The Ministry advised (the Appellant) that (the Ministry is sending \$46 ‘FTO’ this account for ‘them’. Advised (the Appellant) that no payment since August 2020. Advised of the ‘REF’ balance;*”
 - March 16, 2022 – “*(The Appellant) authorized OK to speak to (the Ministry)*”;
 - May 6, 2022 – “*(The Appellant contacted the note-taker) regarding missing payments from (the Ministry). (the note-taker) advised (the Appellant that) payment details are required to attempt to locate misapplied payments*”;
 - May 11, 2022 – “*(The Appellant contacted the note-taker regarding the) missing payment. Unable to locate via ‘FPAY’. After conferring with someone else, the note-taker writes “Submit payment tracing form*”;
 - May 24, 2022 - “*(The Appellant contacted the note-taker regarding) her account information and missing payments. Advised (the Appellant) to fill out (a Freedom of Information [FOI] request online*”; and
- A one-page, undated document titled “Trace Payment Request” for a \$46 payment bearing the date that the Ministry has indicated that it provided the first payment to BC Hydro on behalf of the Appellant, and the same “cheque number” and “payment number” provided by the Appellant and the Ministry in the appeal documents and the Submission.

Evidence Presented at the Hearing

At the hearing, the Appellant said she realized in November 2021 that the Ministry had “\$46 taken off her DA benefit” for four months. She said that BC Hydro had no record of the payment being made to her account with them and that the payments had been “sent out into the ether” and “no one knows where the money went”.

The Appellant wanted to know why the Ministry made the deduction in the first place as she had not asked the Ministry to make the deduction, and why the Ministry won’t give it back to her. She said she hadn’t done anything wrong.

Speaking for the Appellant, the Advocate said that the Ministry has not contacted BC Hydro to try fix the situation, and that there has clearly been a reduction in the amount of DA to which the

Appellant is entitled, adding that the Ministry is “*The only party that has any information about the reduction and hasn’t done anything about it*”. The Advocate argued that the Ministry also made an error in not allowing the Appellant to seek a reconsideration of its original decision.

In response to a question from the Panel, the Appellant confirmed that there was a total of four \$46 deductions made, not five as indicated in parts of the appeal record. The Ministry confirmed that the payments made at the end of each month (August 25, September 22, October 20 and November 17) related to the Appellant’s DA benefit entitlement for the months of September, October, November and December respectively.

In response to another question from the Panel regarding the Appellant’s living arrangements on the months immediately preceding September 2021, the Appellant confirmed that she had entered a facility in August 2021, that she didn’t have a BC Hydro account when she went into the facility and that she told the Ministry this and has also told the Ministry that she has had no BC Hydro accounts since then. She said she doesn’t understand why the Ministry said in the RFR that her BC Hydro payment had been reinstated. The Appellant also confirmed that she did continue to receive DA benefits while she was in the facility, and that she has been receiving benefits continuously over the past few years, so the Ministry’s statement about her benefits being restored after her time in the facility is not true.

In response to a question from the Panel, the Appellant also confirmed that she has no idea who the person whose name erroneously appeared on her Ministry file was. She said that she didn’t notice the wrong name on her file at first because her DA benefits are sent directly to her bank account by direct deposit.

In response to another question from the Panel, the Appellant confirmed that the Notes to File contained in the Submission were provided by BC Hydro as a result of an FOI request that she had initiated. In response to a related question by the Panel directed to the Ministry, the Ministry said that it could not explain the difference between a “*cheque number*” and a “*payment number*”, or why there were unique but different cheques and payment numbers for each of the four payments in question.

At the hearing, the Ministry apologized to the Appellant for the situation, acknowledging that she had been “*stuck between the Ministry and BC Hydro*” which “*just wasn’t right*”. The Ministry also acknowledged that reinstating payments to BC Hydro on the Appellant’s behalf in August 2021 was an error, and that it had received a “*communication*” from BC Hydro in November 2021 indicating that BC Hydro didn’t have a customer account that they were able to apply the \$46 payments to. The Ministry explained that it was not able to reconsider its original decision because that the combined value of the payments to the Appellant and BC Hydro equaled the total benefit amount that the Appellant was entitled to under the legislation, so the Ministry accounting system would not allow for the \$184 adjustment.

The Ministry said that it was its responsibility to try to fix the error, and that it “*has to work with BC Hydro to have the funds returned*”. To this end, the Ministry indicated that a process had been started to recover the money earlier on the day of the hearing, that the Ministry was going

to conduct “a full administrative review”, and that this was “clearly a situation that has to be rectified”.

In response to a question from the Advocate, the Ministry said that the legislative authority for deductions made from client’s benefits and directed to third parties like BC Hydro was Ministry policy, and that the legislation allows the Ministry to administer programs through policy where administrative processes aren’t specified in the legislation.

In response to another question from the Advocate, the Ministry said that there were no circumstances under which a redirection of benefits was considered a reduction in benefits because the amount of the redirected benefits, even when redirected in error, combined with the residual amount that the client received would total the benefit amount allowed under the legislation.

In response to a question from the Panel, the Ministry said that a large number of clients have authorized the Ministry to redirect their benefits to third parties for expenses such as utilities, so a large number of these redirected payments are made every month. The redirected payments are made in batch payments to the third party electronically, but the Ministry did not have available information about how many monthly payments to BC Hydro, for example, could not be applied due to incorrect information in the electronic payment instructions. In addition, the Ministry could not provide information about how errors were resolved (either by having the correct information provided by the Ministry so that the BC Hydro customer accounts could be identified, or by having the funds returned to the Ministry for resolution).

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.

There is no new evidence in the NOA.

New evidence in the Submission comprises the chronological record of the events relating to the Appellant’s attempt to determine what had happened to the \$184 deduction and the Notes to File resulting from the Appellant’s FOI request.

The Panel finds that the chronological record of the events contains details of the Appellant’s experience in trying to resolve the problem that the Ministry did not have when it made the original decision and that might reasonably be required for a full and fair disclosure of matters relating to the appeal. The Panel notes that this information is both credible and potentially important because it largely corroborates the evidence provided by the Ministry and because it

provides details of the Appellant's experience in trying to resolve the problem. Because this evidence is credible and potentially important, the Panel assigns it significant weight.

The Panel finds that the Notes to File resulting from the Appellant's FOI request that might reasonably be required for a full and fair disclosure of all matters relating to the appeal. The Panel notes that this information is important as it is the only evidence available from BC Hydro, and because it further corroborates the evidence provided by the parties to the appeal. The Panel also notes that this evidence is highly credible as it is evidence provided by a third party as the result of an FOI request. Because this evidence is both important and from a credible source, the Panel assigns it full weight.

The Ministry did not object to the Panel considering any of the new evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's determination that it was unable to reconsider its original decision not to pay the Appellant an additional \$184 in DA was reasonably supported by the evidence or was a reasonable application of the legislation in the Appellant's circumstances. In other words, under the circumstances, was it reasonable for the Ministry to decide that it could not reconsider its original decision that the \$184 deducted from the amount it paid directly to the Appellant because it was not appealable as it was not a decision that resulted in a reduction of DA?

Position of the Parties

The Appellant's position is that the Ministry should have reconsidered its original decision in favour of the Appellant because the Appellant had a reduction in the amount of DA to which she was entitled as a result of the deductions the Ministry made to her DA benefits in September through December 2021 - deductions that the Appellant did not authorize and which were not required because she didn't owe BC Hydro any money.

The Ministry's position is that, while it acknowledges and apologizes for the errors it made, it cannot reimburse the Appellant for the amount it deducted for her BC Hydro bills because that deduction does not represent a reduction in her DA benefits and any reimbursement would result in payments to the Appellant that exceed the maximum benefits to which she was entitled.

Panel Decision***As to Whether the Ministry's Decision was Reasonable***

The Ministry said it could not reconsider its original decision to deny the Appellant's request for \$184 because it did not represent a reduction in her DA benefit. EAPWDA Section 16(1) says that a person may ask the Ministry to reconsider a decision that results in a reduction of disability assistance provided to or for someone in the person's family unit. Therefore, the Appellant's ability to seek a reconsideration of the Ministry's original decision depends on whether the \$46 per month over the four months which was deducted from the Appellant's DA was a "reduction of DA".

The Panel notes that the parties agree on the key facts as they relate to the decision in question. These facts are substantially supported by BC Hydro in the information contained in the Notes to File. The Ministry deducted \$46 per month for four months in late 2021 without the consent of the Appellant. The Ministry paid \$46 per month directly to BC Hydro and provided BC Hydro with the wrong customer name in the information it sent BC Hydro with the payments. BC Hydro was unable to process the payments because it couldn't identify the client for whom the payment was intended. BC Hydro notified the Ministry that it was unable to process the payment in last of the four payments over eight months ago (in late November 2021). The Ministry does not appear to have taken steps to try to fix the error over the eight months that

have passed since the error was recognized by the Ministry, requiring the Appellant, who no longer has an account with BC Hydro, to resolve the error.

As of the date of the hearing, no one knows what happened to the \$184. It appears that BC Hydro cannot identify where the payments are in their accounting system. In any event, the Appellant no longer has an account with BC Hydro, and hasn't had an account with BC Hydro in over a year.

In the Panel's view, where a portion of a client's monthly allowance is provided directly to a third party with the balance going to the client, for a client's DA benefits *not* to have been reduced, any portion of a client's total allowance under the legislation would have to have been applied to the client's account(s) with the third party or parties. If a third party does not know which of its customers the money is directed to, or, as is the case here, if the client is no longer the third party's customer, the money should be returned to the Ministry within a reasonable time so that it can be redirected to the correct third party, sent back to the original third party with the correct payment information, or returned to the client. Until such time that a payment problem is satisfactorily resolved, that portion of the allowance directed to a third party has not been received by anyone, and the only reasonable determination is that the client's allowance for the month or months in question has been reduced.

Having considered all of the available evidence, the Panel finds that the Ministry's decision, which was that it could not reconsider its decision because the Appellant's DA had not been reduced, was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the Appellant.

As to Whether the Tribunal has the Authority to Confirm or Rescind the Ministry's Decision

EAPWDA Section 16(3) says that a person who is dissatisfied with the outcome of a request for a reconsideration under Section 16(1) may appeal the decision that is the outcome of the request to the Tribunal. The decision that is the outcome of the Appellant's request for reconsideration in this case is the Ministry's denial of the Appellant's request for reconsideration, and that as a result the Ministry's original decision would stand, i.e. the Appellant was not entitled to the \$184 reimbursement.

EAA Section 24 says that, after holding a hearing, a panel must determine whether the decision being appealed is either reasonably supported by the evidence, or a reasonable application of the legislation in the circumstances of the person appealing the decision. As mentioned above, the Panel has determined that the decision being appealed is not reasonably supported by the evidence, or a reasonable application of the legislation in the circumstances of the Appellant.

EAA Section 24 also says that the panel must either confirm the Ministry's decision (if it finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision), and otherwise, rescind the decision.

Conclusion

Having considered all the evidence, the Panel finds that the Ministry's RD is not reasonably supported by the evidence and is not a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel rescinds the Ministry's decision and the Appellant is successful in her appeal.

APPENDIX - LEGISLATION

EMPLOYMENT AND ASSISTANCE ACT

Decision of panel

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

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*] ...

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.

Reconsideration and appeal rights

16 (1) ... a person may request the minister to reconsider any of the following decisions made under this Act:

... (c) a decision that results in a reduction of disability assistance ... provided to or for someone in the person's family unit ...

(3) ... a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

Power to make regulations

26 (1) The Lieutenant Governor in Council may make regulations ...

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

... (b) prescribing categories of disability assistance ... which, without limitation, may relate to the purpose, duration or frequency of the disability assistance ...

(h) prescribing rules for determining the rate or amount of disability assistance ...

(3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

... (c) prescribing additional circumstances in which the minister may ... reduce ... disability assistance ...

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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**

Maximum amount of disability assistance before deduction of net income

1 (1) ... 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 sections 4 and 5 of this Schedule.

Monthly shelter allowance

4 ... (2) The monthly shelter allowance for a family unit ... is the greater of

- (a) the minimum set out in the following table for the family unit, and
- (b) the lesser of
 - (i) the family unit's actual shelter costs, and
 - (ii) the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include ... :

... (d) hydro ...

(2) When calculating the actual monthly shelter costs of a family unit, ... the following items are included:

... (e) utility costs ...

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)

2022/08/06

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2022/08/07

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2022/08/07