

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision (the decision) dated 7 September 2022, which determined that the appellant does not qualify for disability assistance for the months of July, August or September 2022 as the appellant’s income was more than the family unit was eligible for.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 1 and 11

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 1, 9 and 23

Schedule A, sections 1, 2 and 4

Schedule B, sections 1, 2 and 3

Employment and Assistance Act, Section 19.1

Administrative Tribunals Act, Section 46.3

**Part E – Summary of Facts****Evidence at the time of reconsideration**

As part of the application for reconsideration, the appellant submitted:

- 1) a 7 page letter regarding “Financial Eligibility and Policy Violation” and 11 pages of attachments, which outlined the appellant’s position relating to her financial eligibility, the policies she submits were violated, and her concerns about administrative fairness, specifically related to transparency and bias;
- 2) a “Personal Journal” of 8 pages which included the sequence of events experienced by the appellant and 19 pages of attachments consisting of screenshots of her application with handwritten notes and screenshots of phone calls made regarding her PWD application, records of her applications for food and shelter crisis supplements, which were denied as the appellant was not “in pay”;
- 3) screenshots of her paystubs for May 2022; and
- 4) an extension approval.

According to the Ministry’s decision, the following is a chronology of events:

The appellant submitted an application to the ministry for a Persons with Disabilities (PWD) designation on May 24, 2022.

The ministry replied on May 27, 2022 that the PWD designation could not be adjudicated, as the appellant did not have “an open file with the ministry”.

The appellant contacted the ministry on June 10, 2022 concerning the PWD application. The ministry reopened the PWD application.

The appellant was designated a PWD by the ministry on June 15, and she was advised that benefits would commence on June 21, 2022.

The ministry advised the appellant on June 21, 2022 that a financial assessment must be completed in order to “assess... eligibility for disability assistance”. The ministry requested information regarding the appellant’s June salary and employment status.

The appellant, a family unit of one person, is eligible for monthly disability assistance of \$1,358.50, comprised of a support of \$983.50 and housing of \$375.00. In addition, PWD are also eligible for a dietary allowance of \$40.00 and a transportation supplement of \$52.00.

The appellant submitted pay stubs for June of \$1,424.86.

The ministry advised the appellant on June 23, 2022 that the appellant’s income was in excess of that permitted and therefore the appellant was ineligible for assistance for the month of July 2022. The ministry also noted that the Annual Earning Exemption (AEE) would not be applied to the first month of PWD approval “as per policy”.

On July 8, 2022 the ministry advised the appellant that “based on the previous review, there was insufficient documents to see if you are eligible for disability assistance. And based on the previous review, there was insufficient documents to verify your employment income to assess your eligibility for assistance until now. When you applied you declared \$1300 for employment income which is under the disability rate of 1358.50 ... Once your actual income was known by the submission of your pay stubs you were found income in excess as your income of \$1424.86 exceeds ministry rates. You were advised of your request for disability assistance with denied as you are income in excess”.

On August 2, 2022, the appellant submitted pay stubs indicating a monthly salary of \$1,366.64 in July 2022. The appellant noted that her salary will be decreasing in the future as a result of her health.

The appellant submitted a Request for Reconsideration to the ministry on August 16, 2022, after having an extension approved on July 22, 2022. The appellant requested reconsideration of benefits for July, August and September 2022. The appellant stated that their income in May should determine the July benefit amount, since salary amounts in May impact benefit payments in July.

In the Reconsideration decision, the ministry stated:

- 1) the appellant was denied disability for June 2022 because the appellant was “designated... a person with disabilities designation on June 15th 2022. In accordance with section 23 one of the EAPWD regulation disability assistance cannot be provided for a period prior to July 1, 2022”.
- 2) Once the appellant’s PWD designation was approved, the ministry needed to determine if the appellant’s current net income was below the rate of disability assistance for [the appellant’s] family unit size. As this assessment occurred at the beginning of July, the ministry requested confirmation of the appellant’s June pay stubs to calculate the appellant’s income.
- 3) The appellant’s income was determined by the ministry to be \$1,424.86 for June and \$1,366.64 for July, both of which were higher than the \$1,358.50 rate of disability assistance, and therefore the appellant was not eligible for disability assistance for those months.

The appellant applied for a Notice of Appeal to the EAAT on September 13, 2022, stating that she was appealing the “decision for benefit months of July, August, September 2022. I have 6 months to be under PWD limit.”

In the Notice of Appeal, the appellant also wanted to draw attention to discrimination she had suffered, as well as human rights violations, administrative fairness and incorrect information provided by senior staff on PWD income limits resulting in undue hardship. The panel accepts these statements as part of the appellant’s argument.

**Additional information**

The appellant provided a submission to the panel on October 3, 2022. It included:

- 1) "Confirmation of Assistance" which stated that the appellant had received payment from the ministry for disability assistance of \$949.86 for September and \$1,410.50 for October 2022.
- 2) The confirmation also indicated that the appellant would receive an estimated \$1,450.50 on October 26, 2022 for the month of November 2022;
- 3) A page from the ministry's decision with the appellant's handwritten comments;
- 4) An e-mail from the appellant to her employer requesting reduced work hours;
- 5) Two pay statements indicating the amount the appellant has been paid for the two week periods ending July 30, 2022 and August 13, 2022.

The appellant expressed concern that this tribunal decision would not "shut down" her entire application for assistance. The appellant also confirmed that she had reduced their work hours due to her health.

The panel determined that the additional information provided by the appellant supported her argument and found that this submission would be admitted.

#### **Testimony at the hearing**

The appellant's advocate was not available to attend the hearing, however the appellant confirmed her willingness to proceed with the hearing.

The appellant outlined the issues she had undergone in obtaining disability assistance. She noted that she was exhausted by the process, and had concerns with transparency and conflicting information about her application being provided to her.

## Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that the appellant is not eligible for disability assistance for the months of July, August and September 2022.

The ministry designated the appellant as a PWD on June 15, 2022. Under Section 23(1) of the EAPWD regulations, an applicant for PWD designation is not eligible for disability assistance until the month after the month in which the person is designated a PWD.

The panel finds that the start of assistance to the appellant on July 1, 2022 is reasonable under the existing regulations.

The appellant has provided paystubs to indicate that her net income in June was \$1,424.86 and in July \$1,366.64. These amounts are not in dispute by either party.

Section 9(2) of the EAPWD regulation states that an applicant is not eligible for disability assistance if the net income of an applicant exceeds the amount of income assistance. In this case, under Section 2 and 4 of Schedule A the appellant, a family unit of one, would be entitled to a monthly amount of \$1,358.50.

The ministry determined that the appellant's net income in June was higher than the allowable amount for payment in July and the amount of net income in July was higher than the allowable amount in August, and that, for these two months, the appellant was ineligible for disability assistance. The appellant stated that her income in May, rather than June, should have been considered for the level of assistance received in July. During the hearing, the ministry representative noted that since the appellant received PWD designation on June 15, 2022, it is ministry policy that the most current pay period prior to assistance payment was considered, and that disability assistance differed from income assistance in this method of assistance eligibility calculation. It appears that, in determining the appellant's initial eligibility, the ministry used the month of the appellant's PWD designation (in this case it was June). There does not appear to be a specific piece of legislation directing which month's income must be used for such assessments.

In determining that appellant had excess income and was ineligible for assistance in July and August, the panel finds that the ministry applied the appropriate regulations reasonably. The income amounts for the months preceding the payment months were in excess of the amount listed in the Schedule.

The panel notes that the appellant is in receipt of disability assistance for September and October 2022.

The panel notes the concerns raised by the appellant regarding human rights violations and discriminatory conduct. Section 19.1 (f) of the *Employment and Assistance Act* applies section 46.3 of the *Administrative Tribunals Act* (ATA) to the Tribunal. Section 46.3 of the ATA states that the Tribunal does not have jurisdiction to apply the *Human Rights Code*.

This tribunal's jurisdiction is on the reasonableness of the decisions taken by the ministry as outlined by the EAPWD Act and regulations. The appellant is advised to approach the appropriate authorities in regard to concerns about human rights and discrimination.

In determining the reasonableness the decision, this panel also assesses whether the Ministry complied with the common law of procedural fairness. In her appeal, the appellant had concerns about administrative fairness in regard to transparency and bias.

In regard to transparency, the appellant stated that her file had been "restricted", which meant that her ability to access her file and raise questions about her case was "unfair" and there "was no transparency in any of this". The appellant submits that she was not able to know the case being made against her and respond in a timely manner. The ministry stated that the appellant's case file was restricted due to her specific situation. The panel has reviewed the specific circumstances of the restriction. In this case, and while limiting additional details as this decision is to be made public, the panel finds that the ministry acted reasonably in restricting the file.

In regard to bias, the appellant submits that she experienced bias due to her employment situation and because of this she "was not taken seriously". The ministry admitted that during her application, the appellant "may have received conflicting information". Upon review, the panel notes that, although conflicting information may have been provided by the ministry, in the end the appellant was not impeded from receiving either PWD designation or disability assistance. In this case, the panel finds no evidence that the ministry acted with bias.

The panel finds that, in this case, the ministry applied the relevant regulations and legislation reasonably. The ministry's reconsideration decision was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant is not successful in the appeal.

2022-0213

**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

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2022/10/07

Print Name

Neena Keram

Signature of Member

Date (Year/Month/Day)

2022/10/07

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2022/10/07