

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 December 13, 2022 (the “**Reconsideration Decision**”), in which the Ministry determined that the Appellant was ineligible for disability assistance (the “**DA**”) that he received for the period between February 6, 2020 to September 30, 2020, resulting in an overpayment of \$9,316.97 (the “**Overpayment**”). As a result, the Appellant is liable to repay the Overpayment.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – sections 11, 14.1, and 18
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – sections 15 and 29

Note: The full text is available after the Decision.

Part E – Summary of Facts**(a) The Reconsideration Decision**

The evidence before the Ministry at the Reconsideration Decision consisted of:

- The Appellant had been the sole recipient of DA until September 2020.
- On September 4, 2020, the Appellant advised the Ministry that he had been living in Alberta since December 2019 and had since returned.
- On October 14, 2022, the Ministry advised the Appellant of its determination that he received an overpayment of DA in the amount of \$11,869.20 given that he collected DA while living outside of British Columbia (the "**Decision**"). An overpayment chart was provided to the Appellant which explained how the Overpayment was calculated for the period between December 2019 to September 2020.
- On November 23, 2022, the Appellant submitted a Request for Reconsideration of the Decision (the "**Request**"). The Appellant explained the circumstances that led him to move to Alberta on or about November 24, 2019, and his return to British Columbia on or about December 21, 2019. The Appellant further explained that he moved his belongings to a mobile home in Alberta on or about January 6, 2020. Given the onset of the (then) emerging COVID-19 pandemic and his health challenges, the Appellant advised that he needed to remain in Alberta to protect himself. It should be noted that this latter information had not been disclosed to the Ministry on September 4, 2020, as the Appellant did not think it was relevant.
- With the Request, the Appellant also submitted:
 - a photo of his statement of health care coverage reflecting the Appellant's Alberta address, and which indicated that coverage began on or about June 13, 2020; and
 - an Alberta Identification Card issued September 28, 2020.
- Upon review of the Request, the Ministry issued the Reconsideration Decision wherein determined:

"The ministry notes you advise in your Request for Reconsideration that you originally went to Alberta on November 24, 2019, but returned December 21, 2019, to pack your belongings. Therefore, the ministry finds you were not out of the province for more than 30 days at that time, and as such, you were eligible to receive your December Disability Assistance.

However, you further advise you moved to Alberta into your family's mobile home on January 6, 2020, and you did not return to British Columbia after that time because of the pandemic. Therefore, the

ministry determines you ceased to be eligible for disability assistance after 30 days from January 6, 2020, in accordance with Section 15 of the EAPWD Regulation, which means you became ineligible for disability assistance on February 6, 2020 (the 31st day you were out of the province). It is also important to note you did not have the ministry's prior authorization to continue to receive disability assistance while out of British Columbia for the purpose of participating in a formal education program, or obtaining medical therapy prescribed by a medical practitioner or to avoid undue hardship.

- As a result, the Ministry recalculated the Overpayment of DA to the Appellant in the amount of \$9,316.97 to account for the period between February 6, 2020 to September 30, 2020. In closing, the Ministry advised the Appellant that he was required to repay the British Columbian government \$9,316.97.

(b) The Appeal

On February 27, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the following was noted on the Appellant's behalf:

"... [The Appellant's] mental health has not been good. That is why he stayed in Alberta. His mental state didn't allow him to travel during Covid. During the lockdown he was unable to return to BC. [The Appellant] has asthma. For him to be out and about travelling would be ludicrous. The government was telling us not to travel if you have asthma unless absolutely necessary."

"Our primary home was in 100 Mile House. We were displaced because of the forest industry collapse. My husband had to go to where the work was. [The Appellant] went off the rails earlier that year and went to Kelowna for care. In November I couldn't care for him when I had my [surgery]. My husband and The Appellant] were staying in a travel trailer. My daughter and I moved to Alberta in December."

".... The Appellant's] mental state from 2018 until about 6 months ago was not good..."

... in March 2020 I called her up, [a doctor]. I called her and asked her if it would be safe to bring [the Appellant] back to BC. She almost cruelly said 'No. Do not take him travelling. You can't knowingly put [the Appellant] in danger knowing his Asthma..."

The Appeal hearing was held on July 28, 2023 via teleconference. The Appellant attended the hearing and was assisted by an advocate (the "**Advocate**").

Prior to the hearing, the Appellant submitted written argument and medical records obtained from British Columbian health authorities relating to the Appellant's mental health challenges experienced between October 2019 and September 2020. The Ministry did not object to the Appellant's additional evidence.

During oral submissions, the Advocate challenged the reasonableness of the Reconsideration Decision. In doing so, the Advocate made a limited appeal to human rights explaining that the Ministry failed to accommodate the Appellant during its review of the Decision and the Request. The Advocate also argued that the outcome of the Reconsideration Decision, which confirmed the Overpayment, amounted to a sanction pursuant to the *BC Employment & Assistance Policy & Procedure Manual* (the "**Manual**"). The Advocate argued that, per the Manual, the Ministry has discretion to not apply a sanction where there are mitigating circumstances, or the non-compliance is a one-time occurrence. On review, the Manual states that sanctions are not to be applied in situations where non-compliance is beyond a client's control. The Manual also provides examples where sanctions are inappropriate; for example, where a client with a severe mental health condition is unable to complete an activity in their Employment Plan. Relying on the Manual, the Advocate explained that the Appellant was unable to comply with the relevant sections of the legislation as his asthma and mental health conditions, which included instances of suicidal ideation, prevented him from returning to British Columbia after he moved Alberta. In sum, the Advocate argued that the Appellant's inability to comply with the legislation arose from factors beyond his control; as a result, the Ministry should have exercised its discretion by not applying a sanction against him.

Upon questioning from the Panel, the Advocate confirmed that, upon turning 18 in late 2018, the Appellant was free to live anywhere he wanted and was under no orders limiting or restricting his place of residency. Further, the Advocate explained that, while the Appellant moved to Alberta in January 2020, he always felt his home was in British Columbia during the material time.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision.

Upon questioning from the Panel, the Ministry explained that its finding of the Overpayment did not amount to a sanction as argued by the Advocate. Rather, the obligation to repay the Overpayment is not a discretionary sanction, but a non-negotiable provision of the relevant legislation due to failure to meet eligibility requirements.

The Ministry had no objection to the Appellant's oral submissions or additional evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry determined that the Appellant was ineligible for the DA that he received for the period between February 6, 2020, and September 30, 2020, resulting in an Overpayment of \$9,316.97.

Appellant's Position

The Appellant argues that he should be eligible for the DA he received between February 6, 2020, and September 30, 2020 given that his asthma and mental health conditions prevented him from returning to British Columbia to take up physical residency. In the alternative, the Appellant argues that the Ministry unreasonably applied a sanction against him which it should not have; rather the Ministry should have exercised its discretion given that his non-compliance with the relevant legislation was beyond his control and arose from his mental health conditions.

Ministry's Position

The Ministry maintains that the Appellant is ineligible for the DA for the reasons stated in the Reconsideration Decision; as a result, its finding regarding the Overpayment should stand.

Panel Decision

Section 11 of the Act provides that, for an individual to be eligible for DA, they must submit a form and notify the Ministry of any change in circumstances or information that may affect their eligibility for DA.

Section 29 of the Regulation requires a recipient of DA to report any change in circumstances or information that may affect their eligibility for DA on the 5th of each month.

As set out in Section 15 of the Regulation, a recipient who is outside of British Columbia for more than a total of thirty (30) days in a year ceases to be eligible for DA unless the Minister has given prior authorization for the continuance of DA 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.

Section 18 of the Act provides that, if DA is provided to an individual that is not eligible for it, the recipient for which the overpayment is provided is liable to repay to the government the amount or value of the overpayment provided for that period.

Sections 14.1(1) and (2) of the Act provide for the reduction of DA if the Minister determines that DA was provided to a recipient that was not eligible for it.

To the extent the Appellant and Advocate argue or appeal to human rights, the Panel notes that it does not have the authority to consider human rights issues such as discrimination. For clarity, section 19.1(f) of the Employment and Assistance Act says that section 46.3 of the *Administrative Tribunals Act* applies to the Employment and Assistance Appeal Tribunal. As a result, this Tribunal is “without jurisdiction to apply the *Human Rights Code*.” As such, the Panel can neither comment on nor rule on the Appellant’s allegations of discrimination which arise from the Ministry’s alleged failure to accommodate him.

On review of the available evidence, the Panel finds that the Appellant did not reside in British Columbia from January 6, 2020 and onwards; as a result, he was required to advise the Ministry of his change in circumstances by February 5, 2020. In this case, the Appellant did not advise the Ministry of his change in circumstances until September 4, 2020.

While the Appellant could have continued to receive DA after moving to Alberta, he would have first required the Ministry’s prior authorization. For clarity, the Appellant could have received the Ministry’s prior authorization for the continuance of DA if his time in Alberta arose from:

- (a) his participation in a formal education program,
- (b) his obtaining of medical therapy prescribed by a medical practitioner, or
- (c) his avoidance of an undue hardship.

On review of the available evidence, the Panel finds that the Appellant’s relocation to Alberta did not arise from the above noted factors. Regardless, the Panel finds that the Appellant did not ask for or receive the Ministry’s prior authorization for the continuance of DA.

As the Appellant resided outside of British Columbia for more than 30 days beginning on January 6, 2020, without the Ministry’s prior authorization for the continuance of DA, the Panel finds that the Ministry reasonably determined that he was ineligible for DA beginning on February 6, 2020 and, therefore, is liable to repay the Overpayment for the period between February 6, 2020 and September 30, 2020 as required by section 18 of the Act.

To the extent that the Appellant argues that the Ministry unreasonably applied a sanction against him, the Panel finds that Ministry did not. The Panel notes that sections 14.1(1) and (2) of the Act permit the Minister to reduce the Appellant’s DA if he was ineligible to receive it. Further, the Panel finds that, in the case of the Appellant, he failed to submit monthly reports that indicated a change of circumstance that affected his eligibility for DA and it was not beyond the Appellant’s control to report his change of circumstance, namely that he was outside of British Columbia for a total of more than 30 days. While the Appellant argues that being outside of British Columbia may have been beyond his control due to his mental

health conditions and asthma, the Panel finds that it was not beyond his control to report this change of circumstance of residing in Alberta. In other words, the Appellant's non-compliance was not beyond his control. Further, the Panel finds that the obligation to repay an overpayment is not a discretionary sanction, but a non-negotiable provision of the relevant legislation due to failure to meet eligibility requirements. As a result, the Panel finds that the Ministry's decision to find the Appellant liable for repayment of the Overpayment was a reasonable application of the legislation in the circumstances.

Conclusion

The Panel finds that the Ministry's decision to find that the Appellant was ineligible for the DA, and liable for repayment of the Overpayment was a reasonable application of the legislation in the circumstances.

The Appellant is not successful on appeal.

Legislation

Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41

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.

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*].

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002

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.

Reporting requirement

- 29** For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,
- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
 - (ii) a family unit receives earned income as set out in paragraph (b) (vi);
 - (iii) a family unit receives unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) as set out in paragraph (b) (vii), and
- (b) the information required is all of the following, as requested in the monthly report form specified by the minister:
 - (i) change in the family unit's assets;
 - (ii) change in income received by the family unit and the source of that income;
 - (iii) change in the employment and educational circumstances of recipients in the family unit;
 - (iv) change in family unit membership or the marital status of a recipient;
 - (v) any warrants as described in [section 14.2 \(1\)](#) of the [Act](#);
 - (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
 - (vii) the amount of unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) received by the family unit in the calendar month.

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[en. B.C. Reg. 335/2007; am. B.C. Regs. 85/2012, Sch. 2, [s. 4](#); 332/2012, s. 1; 226/2014, s. 1; 151/2018, App. 2, [s. 9](#); 270/2019, App. 2, [s. 5](#); 268/2020, App. 2, [s. 2](#).]

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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) or Section 24(1)(b)

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

Part H – Signatures

Print Name
Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)
2023/07/28

Print Name
Linda Pierre

Signature of Member

Date (Year/Month/Day)
2023/07/28

Print Name
Daniel Chow

Signature of Member

Date (Year/Month/Day)
2023/07/28