

Appeal Number 2025-0052

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

The Appellant appealed the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the "Ministry") dated February 5, 2025, denying the Appellant's request for a comforts allowance.

The Ministry determined that the Appellant was currently detained in a lawful place of confinement. This was based upon determining that he was detained in a Forensic Psychiatric Hospital (FPH) for a court-ordered assessment.

### **Part D – Relevant Legislation**

This decision cites:

*Employment and Assistance for Persons with Disabilities Act* (the "Act"):

Section 3

Section 5

*Employment and Assistance for Persons with Disabilities Regulation* (the "Regulation"):

Section 14

Text of the above legislation is attached at the end of the decision.

## Part E – Summary of Facts

### Hearing Proceeding

A video hearing was held 2025-March-05 with the Appellant appearing with representation.

### Background and Relevant Information

The Appellant is designated as a Person With Disabilities (PWD).

The following is a summary of the key dates and information for this Appeal:

**2024-September-3:** A social worker with the FPH contacted the ministry to request a comforts allowance on the Appellant's behalf and stated that he should be receiving it but it stopped in March 20204.

The ministry reviewed the Appellant's file and noted that the Appellant had a court date on April 19, 2024, but could not determine whether the Appellant was currently held in custody. The ministry advised the social worker to provide documentation showing the Appellant's legal status.

**2025-September-4:** The Appellant:

- confirmed that the Appellant was being detained at the FPH; and
- submitted a streamlined application for reinstated disability assistance, declaring zero sources of income and no outstanding warrants.

**2024-December-5:** The ministry reviewed the Appellant's request and determined that the Appellant as a person admitted to an FPH through a court order while detained in custody was not eligible to receive disability assistance (including a comforts allowance), hardship assistance, or supplements, as such people are considered to be corrections clients detained in a lawful place of confinement.

**2024-December-27:** The Appellant was advised that the Appellant was not eligible for disability assistance.

**2025-January-22:** The Appellant submitted a Request for Reconsideration. The Appellant included the following information:

... Am currently █ in remand because I have been found "fit but fragile", the judge has told me to go back █ but the FPH facility has ignored this.

**2025-February-5:** The ministry issued its Reconsideration Decision and denied the Appellant's request for a comfort allowance stating, as reasons:

Section 14(a) of the ... Regulation explains that a person is not eligible for disability assistance, hardship assistance or supplements while they are detained in a lawful place of confinement.

A review of your file confirms that you are currently admitted to a ... FPH ... for a court-ordered assessment as a corrections client in custody. [there] is confirmed to be a secure facility for

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individuals who are referred by the courts and transferred temporarily from correctional facilities for assessment and treatment. As such, the ministry is satisfied that you are currently detained in a lawful place of confinement.

The ministry notes that the intent of the legislation under Section 14 of the ... Regulation is to prevent assistance being provided to persons who are already receiving support from another jurisdiction. The ministry finds that, as a person held in lawful confinement, your basic needs are currently being provided for by the federal or provincial government.

For these reasons, the ministry finds that you are ineligible to receive a comforts allowance at this time in accordance with Section 14(a) of the ... Regulation. ....

### **Appellant Submissions**

The Appellant provided no written submissions other than the statement of the "Reasons for Appeal" as follows:

The reconsideration decision notes that [the Appellant] is at FPH for a court-ordered assessment. This is incorrect. [The Appellant] is at FPH for treatment under "Fit but Fragile" status.

In oral submissions, the Appellant acknowledged that he is still facing criminal charges but reiterated that the court-ordered assessment was complete with the above finding. The Appellant described being no longer considered as temporarily absent from a corrections facility but diverted to being held for treatment under the jurisdiction of the British Columbia Review Board.

The possible outcomes of the criminal charges were described as 'not guilty' or 'guilty'. The latter would then require determining whether the Appellant would be found not criminally responsible due to a mental disorder with the sentence served at the FPH.

The Appellant asserted that he was being held at the FPH for treatment like other patients, most of whom are receiving comfort allowances that allow expenditure for such purposes.

### **Ministry Submissions**

The Ministry provided no written submissions and relied upon the appeal record.

In oral submissions, the Ministry requested from the Appellant and received the Appellant's acknowledgment that all physical and mental needs are being met or treated at the FPH. However, the Appellant stressed that he had no income for clothes (which are not supplied), patient social events, books, musical instruments and the like.

The Ministry referred to Regulation section 14(a) and the requirement for it to follow the legislation that a person is not eligible for disability assistance, hardship assistance or supplements while they are detained in a lawful place of confinement.

### **Admissibility of New Evidence**

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Under section 22(4) of the *Employment and Assistance Act*, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Any evidence that the Panel admits is admitted on that basis.

No new documentary evidence was submitted by the Appellant or the Ministry.

The Panel heard oral submissions with testimony. None was objected to by either party. Any testimony admitted as relevant to the decision is cited in the decision below.

## **Part F – Reasons for Panel Decision**

### **Purpose and Standard of Review**

The purpose of the Panel is not to redo the Reconsideration Decision under appeal or decide whether it agrees with the Ministry's decision. It is to decide whether the Ministry did, or did not, reasonably come to the decision it made considering two factors. These are whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances of the Appellant. The standard includes whether any evidence, that might alter the outcome, was overlooked, unreasonably given improper weight, or mischaracterized. The decision itself must be internally coherent with no relevant evidence missed, given unreasonable weight, or mischaracterized. It also must, as a whole, be transparent, intelligible and justified as required for the circumstances.

### **Discussion of Issues**

In the Reconsideration Decision, the basis for the denial was that the Ministry was satisfied that the Appellant was currently detained in a lawful place of confinement and that this made him ineligible for the requested comforts allowance under the mandatory terms of section 14(a) of the Regulation.

The Appellant's position is that he is no longer detained under the court order for assessment. The Appellant also notes that most people at the FPH receive the comforts allowance. The Panel accepts the latter as implying that the Ministry was applying Section 14 improperly or unfairly in some appealable way.

As this is an appeal the Appellant bears the burden of showing how the Ministry was wrong.

The Panel accepts the submissions that the Appellant is no longer being evaluated under court order, however, the Appellant's representative stated that the court order for detention is not over. She referenced a Warrant of Committal for treatment. The Panel finds no evidence that the Appellant has been released from detention while still facing criminal charges and trial.

The Appellant's representative referenced treatment and the applicability of the BC Review Board but was unable to explain how that was the case while the Appellant still faced criminal charges. The BC Review Board is an independent tribunal under the Criminal Code with a primary role concerning people after being found guilty but not criminally responsible on account of mental disorder or unfit to stand trial. Neither of these circumstances was shown to apply or shown to establish that detention has ended.

All of the foregoing is consistent with the information the Appellant provided with his appeal in which he described himself as held on remand. Being held on remand means being held in custody while awaiting trial.

The Appellant also did not dispute the Ministry's determination that the FPH was a lawful place of confinement nor provide evidence that it was an unreasonable finding. The evidence and testimony support the conclusion that the FPH is a place of confinement for people being assessed or treated while awaiting trial, found not fit to stand trial, or tried but found not criminally responsible on account of mental disorder. All these are reasons for confinement that are detentions in that place.

The Panel also considered the claim that most other patients at the FPH were receiving comforts allowance. The Panel has insufficient information to assess or comment on this claim. Even if it did the Panel has no power to resolve complaints of unfairness.

The Panel finds that the Reconsideration Decision was reasonably supported by the evidence and the Ministry reasonably applied the legislation in the circumstances.

The Reconsideration Decision is internally coherent and is transparent, intelligible and justified appropriate to the circumstances. The Panel found no relevant evidence that was overlooked, given unreasonable weight, or wrongly stated in any meaningful way. While the Ministry determined that the Appellant was admitted to the FPH for a court-ordered assessment the Panel finds it to be irrelevant whether that assessment has been completed. Section 14(a) of the Regulation applies because the Appellant is "detained" making it immaterial whether the assessment is concluded.

As such the Panel finds that the Reconsideration Decision satisfied the standard required by the *Employment and Assistance Act*, SBC 2002, c 40 in section 24, and was:

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

## **Conclusion**

The Appellant is **unsuccessful** on appeal, the Panel having found that in the Reconsideration Decision, the applicable laws were reasonably applied, and the evidence was also reasonably applied in the circumstances.

Accordingly, the Panel **confirms** the Reconsideration Decision.

## **Appendix – Relevant Legislation**

### ***Employment and Assistance for Persons with Disabilities Act***

#### **Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

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

#### **Disability assistance and supplements**

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

### ***Employment and Assistance for Persons with Disabilities Regulation***

#### **Effect of being in prison or other lawful place of confinement**

**14** A person is not eligible for disability assistance, hardship assistance or supplements, other than a supplement under Division 7 [Housing Stability Supplement] of Part 5, while the person

- (a) is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp, or
- (b) is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

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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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2025/03/07

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2024/03/10

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2025/03/07