

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of February 10, 2012, wherein the ministry declared the appellant no longer eligible for disability assistance in accordance with section 28 of the Employment and Assistance for Persons with Disabilities Regulation. The basis for the declaration was that the appellant failed to comply with the ministry's direction to provide information as required under section 10 of the *Employment and Assistance for Persons with Disabilities Act*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 10
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 28(1)

PART E – Summary of Facts

The appellant did not attend the appeal hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of the reconsideration decision included the following:

- The appellant's Request for Reconsideration, which included background information provided by a ministry worker.
- A type-written submission from the appellant dated February 1, 2012.
- A Shelter Information form date-stamped as being received by the ministry on January 18, 2010. This form is meant to provide the ministry with details of the appellant's shelter arrangements. It indicates the appellant was renting a lower suite at an address in community A, but provided a mailing address for the appellant in nearby community B. It shows the appellant paying rent of \$650 per month, with utilities included in the rental rate. The form was apparently signed by the appellant's father as landlord on January 14, 2010. The signature itself is illegible.
- A hand-written rent receipt dated Sept 2011 apparently signed by the appellant's father, showing rents of \$700 for each of September and October, and utilities charges of \$50 for each of September and October, all for the address in community A. The signature itself is illegible.
- Bank statements in the name of the appellant and her boyfriend for the period March 21, 2011 to October 20, 2011 and an account details printout for the same account dated January 19, 2011.
- Letters from the ministry to the appellant dated October 19, November 1, and November 15, 2011, advising the appellant to attend appointments that had been scheduled with her to conduct an annual review of her file, and directing the appellant to provide specified information.
- A letter from the ministry to the appellant dated December 12, 2011 advising that the appellant was no longer eligible for assistance for failure to provide the previously specified information.

The ministry's annual review letters of October 19, November 1, and November 15 2011 directed the appellant to provide information relating to:

- Ownership of the appellant's bank account, with the account number specified by the ministry;
- 6 months bank statements from the bank and all financial institutions dealt with by the appellant;
- Daycare subsidy information showing which daycare the appellant's child attends, its address, and authorized individuals who may pick the child up from the daycare;
- Legal tenancy documents from the appellant's landlords, as well as legal documents notifying the appellant of rental increases.

- Specific utility bills and receipts for specified dates;
- Proof of billings from a specified cable company;
- Proof of billings from a specified mobile phone carrier;
- Payments to specified insurance policies, including information about beneficiaries and any equity in the policies;
- Unexplained transfers/deposits from the bank account;
- Evidence of rent payments and the source of funds used for rent payments. The November 15 letter expanded on this request by asking for "verifiable proof of how you pay your rent, and what source of monies is used for your rent payments".

The information from the ministry worker in the Request for Consideration was that the ministry had received allegations made by the public to the effect that the appellant is in a common law dependency relationship with her boyfriend, residing in community B. The appellant had earlier submitted a Shelter Information form stating she was renting a lower suite from her father in nearby community A. When contacted by the ministry's investigative officer, the appellant's father was evasive and said he did not know how much rent the appellant paid, and did not know how often she stayed there. He requested that the investigative officer should contact his wife for those details. It took several weeks to contact the wife (the appellant's stepmother). The stepmother stated they have no lower suite and that there was no written tenancy agreement, but that the appellant stayed there on a periodic basis and that rent varied based on the length of the stay. The stepmother also said that the parents paid for the food and the appellant purchased specialty items for the appellant's daughter as required. The appellant subsequently contacted the ministry in July 2011 to advise that she was not renting a suite from her parents and did not know how that information had come to be on file. The appellant's stepmother advised that as of August 2011 the appellant was required to move out of their home. The appellant has a joint bank account with her boyfriend. The appellant's bank statements show inconsistencies between the amount the appellant claims to pay her parents for Hydro and actual payments to Hydro. The appellant pays cable bills and mobile phone bills from her bank account, and makes several withdrawals from gas stations though she does not drive or own a vehicle. There are unexplained transfers and deposits into the bank account, and no indication of any rental payments to the appellant's parents.

In the appellant's typewritten submission of February 1 2012, she wrote that she was forced onto assistance when she got ill during pregnancy in 2008. She eventually became too ill to live on her own and moved in with her father and stepmother on February 1, 2010. At the time she was in a relationship with her boyfriend. She appellant stated she could not live with her boyfriend because he works, and when she is too ill to look after herself or her child she needs the support her father can provide. The appellant advised that she and her boyfriend have had joint custody and guardianship of her child since May 2009, and that an investigation of her relationship with her boyfriend in July 2010 resulted in her continuing to remain eligible for disability assistance. She advised that she does stay at her boyfriend's home from time to time when her parents are on holidays or if her boyfriend is not working and can get the appellant to her appointments. She stated she periodically is unable to get herself out of bed to get to the bathroom by herself, and at those times cannot independently do grocery shopping or banking. Accordingly, the appellant wrote, she added her boyfriend's name to her bank account so he could pay bills and get her rent money when needed. Her boyfriend did not have access to online banking, so when the appellant started online banking herself she also started paying bills for her boyfriend.

Specifically with respect to the issue as to whether she provided the ministry with the information it had requested, the appellant acknowledged that she could not attend the scheduled appointments due to illness but said that she provided the ministry with all the information it had requested.

In her Notice of Appeal, the appellant wrote that she had provided the investigative officer all the information she requested. She alleged the investigative officer has a dislike for her and that the appellant had several times requested a different investigator. The appellant wrote that the investigator refused to listen to the appellant's step mother who confirmed her residence, and "...would not look at the previous investigation showing this is a continuous malicious act and the female making to accusation wont even leave their name".

According to the reconsideration decision, the appellant has been in continuous receipt of "income assistance" as a single person since April 2008, and the appellant has Persons with Disabilities (PWD) status. Because section 3 of the *Employment and Assistance Act* provides that a PWD is not eligible for income assistance, the panel concludes that the ministry's reference to "income assistance" was in error, and should have referred instead to "disability assistance". This conclusion is supported as well by the context of the bulk of the evidence.

Also according to the reconsideration decision, the appellant did submit a bank account summary showing a history of her transactions which, while showing payments for Hydro and cable, gave no indication of rental payments. The appellant provided the rental receipt for September and October 2011 purportedly signed by the appellant's father as landlord, but failed to provide a legal tenancy agreement from the landlord, legal notices of rent increases, or documentation confirming the identity of the appellant's landlords and their address. The reconsideration decision referred to file information showing that the appellant's parents had asked the appellant to leave their residence by August 2011.

At the appeal hearing before this panel, the ministry representative stated that the letters of October 19, November 1, and November 15, 2011 provided adequate notice of the specific information the appellant was required to provide. The letters spelled out the consequences of the failure to provide the information and contained copies of the relevant legislative provisions which clearly identify a declaration of ineligibility as a potential consequence. Contact information for the ministry's investigative officer was provided with each letter. The ministry representative stated that the appellant did receive the letters as she contacted the ministry on November 15th to reschedule the appointment that had been set for December 6, 2011.

In response to questions from the panel as to any other contacts the appellant had with the ministry regarding the requests for information, the ministry said that all the information obtained by the ministry was gathered independently by the ministry's investigating officer, having been either provided by the appellant through other contact with the ministry as part of an individual monthly cheque request (for example, the rental receipt for September and October, 2011) or from external sources as part of ongoing enquiries by the investigating officer. He said that the appellant had not provided any information specifically in response to the letters of October 19, November 1, or November 15, and she did not contact the investigating officer to explain whether she was having difficulty obtaining any of the requested information.

The panel finds that the ministry representative's oral testimony is related to information which the

ministry had at the time of reconsideration and therefore admits that testimony as being in support of the information and records that were before the ministry pursuant to section 22(4) of the *Employment and Assistance Act*. Similarly, the panel admits the information provided by the appellant in her Notice of Appeal as being written testimony in support of the information and records that were before the ministry in accordance with section 22(4).

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to declare the appellant no longer eligible for disability assistance due to her failure to provide information in accordance with section 10 of the EAPWDA, with said ineligibility to last until the requested information is provided in accordance with section 28(1) of the EAPWDR.

The relevant legislative provisions are as follows:

EAPWDA

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
- (2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.
- (3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).
- (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.
- (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

EAPWDR**Consequences of failing to provide information or verification when directed**

28 (1) For the purposes of section 10 (4) [*information and verification*] of the Act, the period for which the minister may declare the family ineligible for assistance lasts until the applicant or recipient complies with the direction.

The appellant's position, as expressed in her submission for the reconsideration decision and in her Notice of Appeal, is simply that she did supply all the information that was requested of her and that the ministry's investigative officer, on the basis of an alleged personal dislike for the appellant, has refused to accept relevant information.

The ministry's position is that the information requested by the ministry was reasonable and relevant to clarifying inconsistencies regarding the applicant's eligibility for disability assistance. The ministry says the appellant acknowledged the information requests but that she chose through action or inaction not to provide the information requested or any other mitigating information.

The evidence and the inconsistencies demonstrated by it support the conclusion that the requested information was relevant to "determining or auditing eligibility for disability assistance" as specified in EAPWDA section 10(1)(b). In particular the ministry had concerns about whether the appellant was paying rent while living with her parents as she claimed, or whether she was in fact living in a common law marriage-like relationship with her boyfriend. The evidence also supports the ministry's conclusion that the appellant failed to supply information which the ministry had properly requested pursuant to EAPWDA section 10(1), such as documentary evidence to clarify the alleged landlord/tenant relationship with her father and information to verify various deposits and withdrawals from her bank account.

The appellant has not provided a credible explanation for her failure to provide information, and instead merely asserts that she did provide all requested information and that the investigating officer ignored relevant information. The evidence does not support her assertion.

Based on a consideration of all the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision to declare the appellant ineligible for disability benefits until she provides the requested information was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the circumstances of the appellant.

Accordingly, the ministry's decision is confirmed.