

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development (the ministry) dated 19 July 2012, in which the ministry denied the appellant's request to back-date the effective date of his eligibility for income assistance. The ministry found that the appellant had completed and signed his Application for Income Assistance (Part 2) form on 09 July 2012 and in accordance with section 26(2) of the Employment and Assistance Act he became eligible for income assistance on that date. The ministry held that there are no legislative provisions to back-date the effective date of eligibility to a prior date.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 33
Employment and Assistance Regulation, section 26(2)

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant is currently receiving income assistance as a single person. His file opened on 09 July 2012.
2. A completed Application for Income Assistance (Part 2) form signed and dated by the appellant on 09 July 2012.
3. The appellant's Request for Reconsideration dated 12 July 2012, to which he attaches a narrative, summarized below, of the difficulties he encountered in the process of applying for income assistance:
 - In mid-April, he went to [his employment counseling service provider]. At that point, the service provider was vague about financing but later told him that financing was no longer available. As a result he was in arrears for his May rent.
 - He went to the ministry office in early June. The staff would not take his documents nor begin the process. He was told to go home and do an online assessment and application.
 - Although his first language is English, is not proficient on the computer. He tried to fill in and send the application online, but he did not get an e-mail reply with the necessary codes.
 - He again went to the ministry office and was told to go home and do it online. A worker did show him how to find it and gave him some codes. He went home and finished the assessment and application and sent it in. He got what he thought was a confirmation code. He waited for a few days for the phone call that never came. He tried to double check, but the codes were no good.
 - Throughout this period he had an eviction notice for past rent you for May, June and July, and food was an issue
 - He went to the ministry again and finally got a worker who said that though his eviction notice was not on the prescribed paper, he would accept it at this time. The worker seemed to know from online that he needed food and shelter allowance immediately. The worker told him to come back the next day for a cheque.
 - He went in the next day to get the check and was asked to fill in more forms to have his case reassessed.
 - He went in again and signed some papers. When he got home he noticed the papers said he had started the process on July 3. This he considered a "blatant mistake."
 - The balance of the narrative goes to argument.

In his notice of appeal dated to 26 July 2012, the appellant writes:

"Simply - the time I did go to apply was not what [the] ministry says, considering the dates I was advised to go to [the] ministry by my employment counselor. I was trying to get finances from [the] ministry or [employment counseling service provider] and was either ignored or told to go home and wait or use computer. Even several visits to [the] ministry are not being acknowledged."

At the hearing the appellant explained that up to April of this year he had been attending college with financial assistance provided through another government program. This also included employment counseling from an employment program service provider. His studies included the use of advanced

music computer programs. The financial assistance program was discontinued in April, though it took some time for him to become aware of this and for the implications to sink in. He eventually approached the ministry for income assistance sometime in June. At that point he explained to the worker what he had been doing and mentioned the computer/music course he had been taking. The worker may have assumed from this that he was a "computer genius." The worker explained to him how to apply for income assistance online. He stated that he was "too embarrassed" to tell the worker that, while he was proficient in using the computer to compose music, he was otherwise not computer literate in doing office-related tasks, even email. He was not able to make any progress in completing his application online and returned to the office some days later where he was given some advice as to how to find the website and fill in the form. He went home and was able to get some help from a friend and thought that he had successfully submitted the form. This was on the Friday before the July long weekend. When he did not hear back from the ministry he went again to the office where he was advised that his form had not been received. At that point (presumably on 09 July 2012) a ministry worker set him up at a computer in the office and helped him complete and submit the form.

The ministry representative explained that the current requirement is that the application forms be submitted online. If an applicant does not have the computer skills or access to a computer, ministry staff will provide the necessary instructions for the applicant to work with family or friends to complete the form and if that does not work, or is not possible, then a ministry worker will sit down with the applicant to help fill out the form and submit it online from a computer in the ministry office.

The ministry stood by its position at reconsideration.

The panel finds that the new information provided by the appellant and by the ministry at the hearing are in support of the information and records that were before the ministry at the time of reconsideration. The information concerning the appellant's lack of computer skills and the chronology of his visits to the ministry office leading up to his successful application clarify the narrative contained in his Request for Reconsideration. The testimony of the ministry regarding administrative procedures was helpful in understanding the application process. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Regulation.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably denied the appellant's request to back-date the effective date of his eligibility for income assistance. The ministry found that the appellant had completed and signed his Application for Income Assistance (Part 2) form on 09 July 2012 and in accordance with section 26(2) of the Employment and Assistance Regulation he became eligible for income assistance on that date. The ministry held that there are no legislative provisions to back-date the effective date of eligibility to a prior date.

The relevant legislation is set out in the EAR:

Effective date of eligibility

- 26 (1) Except as provided in subsection (2), (2.1) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.
- (2) A family unit becomes eligible
- (a) for a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form,
 - (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and
 - (c) for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.

The following from the EAA is also relevant:

Minister's powers

33 .

- (3) The minister may
- (a) prescribe forms for use under this Act, and
 - (b) specify forms for use under this Act.

The position of the ministry is that, while acknowledging the appellant's statement that he had difficulties with the application process, in accordance with the legislation the effective date of eligibility for income assistance commences on the day the application form is completed. There is no dispute that application form was completed on 09 July 2012. There are no legislative provisions to back-date the effective date of eligibility to an earlier date.

The position of the appellant is that the requirement for an applicant to submit the application form online created an undue delay in his ability to complete his form, as he did not have the computer skills that would have enabled him to submit his form in a more timely way. While admitting that he should have been more forthcoming about his lack of computer skills when he first began the process, he feels that he should not be disadvantaged by the online submission requirement with which many, including him, would find difficult to comply.

The appellant has implicitly raised the general issue of the reasonableness of the ministry's

requirement to submit the application form online. The panel notes that section 33 of the EAA gives the minister the authority to prescribe and specify forms, and the panel considers this authority to extend to how the forms are to be submitted. With respect to these matters, however, the panel's mandate is limited and does not extend to making a determination based on whether the ministry's administrative requirements are reasonable. The panel does note that it is the testimony of the appellant that throughout the process ministry workers gave him the information necessary to complete the form, and when he went home and found his skills were not up to the task, he was given more detailed instructions, up to the point where the help became "hands-on" and the form was successfully submitted.

The panel considers section 26(2) a clear statement that the date for determining the start date for eligibility for support and shelter allowances is the date that all the information needed to assess eligibility has been provided – that is, the date the application for income assistance (part 2) form is submitted. The panel also notes that the legislation does not contain any provision that would give the minister any discretion to over-ride this section. The panel therefore finds that the ministry's decision to deny the appellant's request to back-date his date of eligibility for income assistance is a reasonable application of the legislation in the circumstances of the appellant.

Accordingly, the panel confirms the ministry's decision.