

### PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated July 04, 2012 in which the Ministry of Social Development (the “ministry”) held that the appellant’s eligibility for income assistance pursuant to section 2 of the *Employment and Assistance Act* could not be determined until he had provided the information requested by the ministry pursuant to section 10 of the Act, that is in the appellant’s circumstances, information concerning his income over a period of several months prior to his application for income assistance.

### PART D – Relevant Legislation

*Employment and Assistance Act* (EAA), ss. 2 and 10.

## PART E – Summary of Facts

The parties agreed to conduct the appeal by teleconference. At the time scheduled for the hearing the appellant had not joined the teleconference. The panel delayed the start of the hearing for 15 minutes and then began. The appellant joined the teleconference 15 minutes later. The panel then restarted the hearing and advised the parties that it would disregard everything that had been said by the ministry prior to the restarting of the hearing.

Neither party sought to introduce any new documentary evidence at the hearing of the appeal. The documents that were before the ministry on reconsideration were the following:

1. a one-page form titled Bank Profile (the "Bank Profile") which had been completed by the appellant's bank and that listed the appellant's accounts and loans with the bank and the balance of each;
2. two pages of the bank statement for most of April and May, 2012 for a joint account operated by the appellant (the "Joint Account");
3. three pages of the bank statement for most of April and May, 2012 for the appellant's business account (the Business Account");
4. one page of the bank statement for April and May, 2012 for the appellant's US dollar account; and
5. the appellant's handwritten comments in Section 3 of the Employment and Assistance Request for Reconsideration.

The oral evidence of the appellant on appeal was that:

1. He operated a proprietorship through which he provided telemarketing services. Businesses seeking customers contracted with him to find prospective customers for their products and paid him a fee for this service.
2. He maintained copies of these contracts. They were not contracts in writing but took the form of an exchange of emails setting out the mutual obligations of the parties.
3. The last contract he had was completed in or around February, 2012.
4. This business was his only source of income so when the business fell on hard times, as it had, he was obliged to seek financial assistance from the ministry.
5. He had a line of credit facility with his bank on which the maximum loan had been advanced.
6. His various accounts had minimal balances or were overdrawn.
7. The seven deposits into the Joint Account and the Business Account totaling more than \$5,000.00, which the ministry had questioned, were primarily loans from a friend.
8. He had no documentation backing up the loans from his friend but, had he been asked by the ministry, which he said he had not been, he could have obtained written confirmation from the friend.
9. Initially he had refused to provide the ministry with any financial documentation but, after several requests, he provided the Bank Profile and the statements for the Joint Account and the Business Account (the documents referred to above).
10. He was not prepared to provide the ministry with any information on the contracts unless the ministry agreed to not contact the other party and the ministry had informed him that it would give no such assurance. Indeed, the ministry had made it "crystal clear" that it would contact those parties.
11. He had lost a contract that he expected to be renewed following an earlier instance in which

the ministry had contacted the other party and, as a result of that contact, the other party had decided not to renew because it did not wish to deal with anyone who was involved with "welfare".

12. The appellant was not prepared to provide the ministry with any credit card statements because he deemed this information to be irrelevant. However, he was prepared to inform the ministry of his total credit card indebtedness.
13. The appellant had been in receipt of financial assistance from the ministry in the past, most recently in 2011.

The panel admitted this oral evidence under subs. 22(4) of the EAA as being in support of the evidence that was before the ministry on reconsideration. Indeed, the ministry representative confirmed that most the appellant's evidence was included in the appeal record and, except for the matters discussed in the next paragraph, the rest of it was known to the ministry even though it was not set out in the reconsideration decision. Regarding item 11, the panel had some initial doubt as to its admissibility but, since it provided a concrete and rational reason for the appellant's unwillingness to provide the ministry with the name of a party with whom he had contracted, an unwillingness that is implicit in the reconsideration decision, the panel admitted it pursuant to subs. 22(4) of the EAA.

The evidence of the ministry on appeal was largely that set out in the reconsideration decision. However, the ministry took issue with the appellant's recollection of what he would have been told in his discussions with the ministry. The representative stated that the ministry would not have told the appellant that it would have automatically contacted the parties with whom he had entered into contracts; this is only done in rather exceptional circumstances, none of which appeared to be present in the appellant's circumstances. Further, the appellant would not have been led to believe that he did not need to provide documentation in regard to his income or the loans if such documentation was available. Such confirming documentation was normally required.

The panel admitted the oral evidence of the ministry pursuant to subs. 22(4) of the EAA. It was in support of the evidence before the ministry on reconsideration.

## PART F – Reasons for Panel Decision

In its July 4, 2012 reconsideration decision the ministry held that it could not determine whether or not the appellant was eligible for income assistance pursuant to section 2 of the *Employment and Assistance Act* because he had not complied with its request pursuant to section 10 of the Act, for information in regard to his income over a period of several months prior to his application for assistance. The issue on this appeal is whether or not the ministry's decision was a reasonable application of the relevant legislation in the circumstances of the appellant.

The relevant legislation is as follows:

### EAA

- 2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the income 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 income assistance, hardship assistance or supplement under this Act.
- 10 (1) For the purposes of
- (a) determining whether a person wanting to apply for income assistance or hardship assistance is eligible to apply for it,
  - (b) determining or auditing eligibility for income 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 income 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 income 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 income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

### **The positions of the parties**

The position of the ministry was that it was entitled to the information it had requested from the appellant and that the provision of this information was a prerequisite to establishing whether or not he was eligible for income assistance. Though the appellant had complied in part in providing it with information, his compliance was incomplete and inadequate. The position of the appellant was that he had provided information sufficient for the ministry's purposes and that any other information that it now said it required was either irrelevant to his application, had not been requested, or would require that he divulge information that was prejudicial to his financial interests.

### **The issues on appeal**

The panel dealt first with the conflict between the evidence of the appellant and the ministry on the two issues, that is, first, whether or not the ministry would as a matter of course have contacted former employers (or, in the circumstances of the appellant, former parties with whom he had contractual relations) and, second, whether or not there was a reasonable expectation placed on the appellant to provide corroborating documentary evidence in regard to his income. In regard to these matters, the panel noted that the appellant was an articulate person who had, apparently, operated a successful business in a competitive field over a number of years. It was a business, however, that was sensitive to market conditions and when, as at the present time, those conditions were not favourable, the business suffered.

### **Contact with former employers**

Considering the evidence as a whole, the panel concluded that the conflict in the evidence of the appellant and the ministry concerning the issues of contacting persons who could provide corroborating evidence of the appellant's income should be resolved in the ministry's favour. The ministry's position, that this was done only in doubtful situations, was more reasonable than that put forward by the appellant, that is that it was done in every instance and was not limited in time. In coming to this conclusion the panel did not consider that the appellant was being less than candid. Rather, it appeared to the panel that the appellant's general animus towards the ministry – he said that he found dealing with the ministry "painful, depressing and such as to make him wonder if it had any regard for the best interests of the persons it was supposed to assist" – may have led him to misinterpret what the ministry said to him.

Further, the panel observed that the appellant's concern – that such contact could jeopardize his business relations with those contracting parties – while certainly a legitimate concern, could have been addressed in a manner that dealt with concern yet still provided the ministry some of the information that it sought. The appellant, for example, could have provided the ministry copies of the emails he exchanged with the other party with the information identifying that other party deleted. This, or some other compromise, would have at least demonstrated some effort to accommodate the ministry. There is clearly a limit to the private information to which the ministry is entitled, but for the appellant to have made no effort to address the ministry's concerns was not reasonable. In any

event, as is discussed later in this decision, in the circumstances of this appeal any conclusion reached by the panel in regard to this issue was not ultimately determinative of this appeal.

### **Provision of corroborating evidence**

On the other issue on which the evidence of the appellant and the ministry was in conflict – whether or not he had been requested to provide corroborating documentary evidence – the panel concluded that the appellant's understanding, that is that he did not need to provide any such documents, was patently unreasonable. The appellant acknowledged that the ministry had a right to make inquiries as to his income in order to determine whether or not he was eligible for financial assistance. When finally, and reluctantly, he provided the ministry with his bank statements he most certainly should have known that the existence of deposits ranging in amount from \$274.95 to \$1,500.00 and totaling more than \$5,000.00 over a period of less than two months, required explanation. He stated that these amounts were loans from a friend. Given that this was the case, the appellant's concerns about privacy discussed above would not, it seemed to the panel apply to these loans. In any event, the appellant did not so suggest. Indeed, the appellant volunteered that had his friend been asked to provide such confirmation, he would have..

Even if the appellant had misapprehended the ministry's expectation that he should document the loans that he had received, to persist in taking that position following the reconsideration decision was untenable. In that decision the ministry specifically references the impugned bank deposits and states that the appellant had not "provided sufficient information to confirm ... your income sources". In deciding to appeal that decision the appellant was again given an opportunity to satisfy the obligation he clearly had to explain those deposits. He chose not to do so. This, the panel concluded, was not an oversight; it was a deliberate decision to confront the ministry and challenge its right to obtain such information.

### **Jurisdiction to seek information**

Regarding the ministry's right to seek such information, the panel noted that subsections 10(1)(e),(f) and (g) of the EAA explicitly give the minister the requisite jurisdiction, both to require the appellant to provide information and to require the appellant, or for the ministry to directly seek, to verify that information. The purposes for which that information may be sought are set out in subsections (10)(1)(a) through (d) of the EAA. Clearly those purposes include the information sought in regard to the income that the appellant appeared to have received recorded on the Joint Account and the Business Account statement.

Though it is not necessary for the disposition of this appeal, the panel noted that there may be some doubt, in the circumstances of this appeal, whether the ministry's jurisdiction to request the appellant's past credit card statements or for information relating to business contracts that had been concluded some months, or longer, in the past could be found in section 10 of the EAA. Such historical information must be rationally related to a person's present eligibility for financial assistance and the scheme of the act limits such eligibility to considerations of an applicant's present income and assets. The ministry's right to require the provision of information relating to the past must necessarily be limited. Such information must be rationally and reasonably connected to the eligibility criteria set out in the legislation and must be obtained in a manner which minimally affects the applicant's right to privacy.

**Conclusion**

The appellant did not like dealing with the ministry. He found it demeaning and embarrassing. He had, at least as he saw it, been treated unsympathetically, perhaps discourteously, by ministry staff. He rankled at the notion that his word should be doubted and that he should prove his eligibility by producing documents or third party corroboration. So, he at first refused to provide documentation and then, reluctantly, provided documents that answered some questions but raised others. He again dug in his heels and refused to provide further documentation.

The unanswered questions led the ministry to conclude that "As you have not provided sufficient evidence to confirm your banking activity, employment, and income sources the ministry is unable to make an informed eligibility decision." The panel is not persuaded that the appellant had anything more to tell the ministry regarding his employment (using that term to include income from business activities) but the panel agrees that the appellant failed to provide sufficient information in regard to the sources of his income, that is the deposits to the Joint Account and the Business Account.

That is sufficient for the panel to conclude that the decision of the ministry - that the appellant had not provided information sufficient to determine his eligibility for financial assistance - was a reasonable application of the relevant legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.