

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”)’s Reconsideration Decision dated July 18, 2012 which found the appellant ineligible for income assistance pursuant to Section 14 of the *Employment and Assistance Act* (EAA) for failing to pursue income or other means of support that would enable the appellant to be completely or partly independent of income assistance. In particular, the Ministry found that by failing to apply for Canada Pension Plan (CPP) benefits, the appellant was failing to pursue available income.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Sections 14
Employment and Assistance Regulation (EAR) Sections 9 & 31

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Request for Reconsideration dated July 3, 2012 in which the appellant states that “...it is my understanding that the Province of B.C. has assumed it has the authority to deny my human rights guaranteed under.... see affidavit”; and
- 2) Affidavit of the appellant dated July 6, 2012, 13 pages (the Affidavit”) in which he states that the Province of British Columbia has denied his human rights under various acts and laws including the United Nations Universal Declaration of Human Rights and the Canadian Constitution Act 1982.

In his Notice of Appeal dated July 26, 2012, the appellant questions why the Ministry asked for written submissions and then ignored his submission. He states that “[F]orwarding on my age discrimination and human rights violation sure is an easy out but didn’t address any of the legal questions submitted! However the Law and Equity Act brings’ everything ignored at the appeal back onto the table.” The appellant states that his Affidavit was recognized but un rebutted and has now “become the judgment in commerce in this matter”, that “issues regarding service quality have not been addressed” and all “rule of law questions were simply ignored”. The appellant states that “[a]s a tribunal you have been presented with a ruling that states you have the duty to regard any inconsistent statute as being no longer “of force or effect”.

The appeal proceeded by way of written hearing. Prior to the appeal, the appellant submitted the following documents:

- 1) Affidavit dated August 16, 2012 (Affidavit #2), 5 pages in which the appellant deposes that the EAA and/or the EAR deny access to and ignore the Constitution Act 1982. The appellant deposes that the EAA blocks access to remedies by imposing restrictions on the tribunal without the authority to do so. The appellant deposes that the EAA violates The United Nations’ Universal Declaration of Human Rights and then claims the authority to self-administer complaints against the legislation by using the same legislation to decide if it did violate any rights to begin with. The appellant refers to various refers to various legal maxims, the Constitution Act 1982, and various legal principles such as “Justice isn’t to be denied nor delayed”;
- 2) Second Affidavit dated August 16, 2012 (Affidavit #3), 5 pages;
- 3) Email dated August 16, 2012 advising that Affidavit #2 and Affidavit #3 are the same but that there was an error in the page numbering of Affidavit #2; and
- 4) Certificate of Service Affidavit dated August 17, 2012.

The new documents submitted by the appellant were his submissions and did not contain any new evidence.

The appellant’s evidence is that the Ministry does not have the authority to deny him income

assistance pursuant to the EAA and/or EAR. The appellant states that the Province is not adhering to legal maxims in that they did not respond to each point of his affidavit including items such as his application of unconstitutional legislation and human rights violations, proof of his slave status, fraud, not implementing his disability status, and discrimination in relation to his access to public services. The appellant states that he has suffered physical, emotional and psychological damages because of the Province's "...*threat to comply or we will deny your human rights and allow you no security of person. Threats that started with the intake process and that have been on going.*" The appellant states that the Province has never responded to his request for proof that government employees are not the only ones who can legally apply for and receive support under this legislation and proof that the EAA was not originally enacted in response to the U.N. Declaration of Human Rights. The appellant also states that he provided copies of the Affidavit to various other government parties.

In the Affidavit, the appellant deposes that "*it is my understanding that the Province of British Columbia has assumed it has the authority to deny my human rights guaranteed under the United Nations Universal Declaration of Human Rights and the Canadian Constitution Act 1982*".

The appellant also states that his understanding is that the "*Maxims' at Law*" are clear such that an "...*unrebutted affidavit stands as the truth in commerce*" and "...*[h]e, who does not deny, admits.*" The appellant deposes that it is his understanding that the Constitution is the supreme law and no Canadian law supersedes the Constitution. The appellant states that section 14 of the EAA is discretionary and the minister does not have to take the action it did. The appellant also states that as the EAA has no force or effect the corresponding EAR does not have any legal standing. The appellant states that the EAA Section 14.1 and the EAR sections 9 & 31 have no legal effect. The appellant states that the Ministry does not have the authority to deny his request for income assistance. The appellant also states that on the intake papers that he signed, there was a section titled "my responsibilities section box" is the total of his responsibilities and as there was no written authorizing the Ministry to demand his compliance with other terms, extraneous information cannot be evaluated.

In the Affidavit, Affidavit #2 and Affidavit #3 the appellant's evidence is that EAA "...*has a duty and is 100% responsible for its client's health and wellbeing*". He states that the EAA's discriminatory legislation violates the Constitution Act 1982 and that the "*age discrimination*" has caused him injury.

The Ministry relied on the Reconsideration Decision and did not provide any further submissions. The Ministry's evidence is that the appellant's file was opened in January 2012 and that on March 15, 2012 the Ministry advised the appellant that he was required to apply for CPP. The Ministry's evidence is that on April 12, 2012 a ministry worker called the appellant and advised him that he would have a month and a half to apply for CPP and was given contact information for advocates in his area that could assist him in filling out the application.

The Ministry's evidence is that a ministry worker called the appellant on May 4, 2012 to remind him that he needed to apply for CPP and a letter was mailed to the appellant advising him that if he did not apply for CPP that he may be found ineligible for income assistance. The Ministry's evidence is that on June 29, 2012 the appellant attended the Employment and Assistance Office, confirmed that he had received the Ministry's letters but would not be applying for CPP because he was concerned how his CPP would be affected later if he applied now and then went back to work. The Ministry's evidence is that the appellant was advised that by choosing not to apply for CPP he would be failing

to pursue income and may be found ineligible for income assistance.

The Ministry's evidence is that having been found ineligible for income assistance, Section 31 of the EAR explains that the period of ineligibility lasts for as long as the person continues to fail to pursue the income.

The Ministry's evidence is that the various service issues that the appellant complains of in the Affidavit have not been addressed within their Reconsideration Decision but have been forwarded to the Community Relations Service Quality Manager in the appellant's Region as well as to the manager of his local Employment and Assistance Office.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant applied for income assistance;
- The Ministry requested that the appellant apply for CPP; and
- The appellant did not apply for CPP.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision which found the appellant ineligible for income assistance pursuant to Section 14 of the *Employment and Assistance Act* (EAA) for failing to pursue CPP income was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

EAA**Consequences of not accepting or disposing of property**

- (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:
- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;
 - (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.
- (2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:
- (a) disposed of real or personal property to reduce assets;
 - (b) [Not in force.]
- (3) In the circumstances described in subsection (1), the minister may
- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
 - (b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

EAR

- (A) Requirement to apply for CPP benefits

9 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for

the family unit to continue to be eligible for income assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan* (Canada) directing that

- (a) an amount up to the amount of income assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and
- (b) the amount deducted be paid to the minister. (B.C. Reg. 463/2003)

Division 2 - Factors Related to Income and Assets

(B) Effect of failing to pursue or accept income or assets or of disposing of assets

31 (1) For the purposes of section 14 (3) (a) [*consequences of not accepting or disposing of property*] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 14 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,

- (a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and
- (b) the period of the reduction is one calendar month for each \$2000 of the value of the forgone consideration.

(4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2000 of the value of the forgone consideration.

(5) For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2000 of the value of the real or personal property that was disposed of to reduce assets.

The appellant argues that the Ministry does not have the authority to deny him income assistance as the EAA and EAR are of no force and effect and that they violate the Constitution Act of Canada 1982 and various other laws. The appellant argues that as the EAA and EAR are of no legal effect, the Ministry does not have the authority to require him to apply for CPP in order to be eligible for income assistance. The appellant argues that by denying him income assistance the Ministry has caused him personal injury. The appellant argues that by not responding to the points in the Affidavit, the Ministry's failure to respond and deny his statements means that they are unrebutted and true.

The Ministry argued that CPP income would enable the appellant to be at least partly independent of income assistance and by failing to apply for CPP, the appellant is failing to pursue available income as required by section 14 of the EAA.

The panel notes that the appellant has advanced a number of arguments regarding the constitutional validity of the EAA and EAR but pursuant to section 19.1 of the EAA and sections 44 and 46.3 of the Administrative Tribunals Act, the panel does not have the jurisdiction to address those issues. The panel's decision is limited to whether the Ministry's Reconsideration Decision was a reasonable application of the legislation in the appellant's circumstances.

The panel finds that the legislation is clear with regard for an applicant or recipient of income assistance to accept or pursue income or other means of support that would, in the minister's opinion, enable the recipient or applicant to be completely or partly independent of income assistance. The panel finds that the appellant, by his own evidence, is aware of the requirement to apply for CPP benefits, but has not done so. The appellant did not provide any evidence as to how his CPP might be effected later if he applied for CPP now and then later went back to work.

As the appellant did not apply for CPP as requested the panel finds that the Ministry's decision that the appellant did not comply with Section 14 of the EAA and is therefore ineligible for income assistance and remains so until he complies pursuant to section 31 of the EAR was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

Therefore, the panel confirms the Ministry's decision.