

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated May 22, 2012 which held that the appellant was not eligible for disability assistance due to his failure to provide information required by the ministry to determine his eligibility for income assistance pursuant to 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

PART E – Summary of Facts

The evidence before the ministry at the time of its reconsideration included the following:

1. The appellant's Request for Reconsideration dated April 20, 2012;
2. A letter dated November 24, 2011 from the ministry to the appellant requesting information ("Request letter #1") and enclosing three blank "Bank Profile" forms and two blank "Confirmation of Earnings" forms for the years 2009 and 2010;
3. A letter dated March 5, 2012 from the ministry to the appellant requesting information ("Request letter #2");
4. A letter dated March 22, 2012 from the ministry to the appellant requesting information ("Request letter #3");
5. A one page Canada Revenue Agency Notice of Assessment for the appellant for 2009 and dated May 20, 2010;
6. The appellant's application for income assistance dated July 19, 2011;
7. A company Name Request form (date unclear) prepared by the appellant; and
8. An email string dated March 17, 2012 between the appellant, the ministry and a third party.

At the hearing, the appellant sought to admit a number of documents in support of his appeal as follows:

1. A copy of the third page of the Reconsideration Decision with the appellant's handwritten notes at the bottom commenting on his shelter arrangements for November 2011 through April 2012;
2. An unsigned and undated Confirmation of Earnings form for the year 2011 prepared by the appellant;
3. A paystub issued to the appellant by an employer dated March 14, 2011;
4. An invoice issued by the appellant's company to a customer dated April 14, 2011;
5. An invoice issued by the appellant's company to a customer dated June 2011;
6. An invoice issued by the appellant's company to a customer dated May 5, 2011;
7. Seven pay-stubs issued to the appellant by "Employer A" dated January 21, 2011, January 27, 2011, February 3, 2011, February 28, 2011, March 14, 2011 (this is a copy of #3 above), November 4, 2011 and December 27, 2011;
8. Two cheque records indicating payments by a customer to the appellant's company dated April 21, 2011 and May 5, 2011;
9. An unsigned and undated Confirmation of Earnings form for the year 2009 prepared by the appellant;
10. A three page Canada Revenue Agency Income Tax Return for the appellant for the year 2009;
11. Seven pay-stubs issued to the appellant by "Employer B" and dated January 2, 2009, January 16, 2009, January 30, 2009, February 13, 2009, February 27, 2009, March 2, 2009 and August 12, 2009;
12. Two pay-stubs issued to the appellant by "Employer C" and dated March 26, 2009 and September 11, 2009;
13. An invoice issued by the appellant's company to a customer dated May 18, 2009; and
14. Three pay-stubs issued to the appellant by "Employer A" and dated September 30, 2009, November 9, 2009 and November 12, 2009.

The ministry did not object to the admissibility of the aforementioned documents. The documents in question were relied upon by the appellant in support of his position at reconsideration that he had

provided all of the information requested by the ministry. The panel admitted the documents under section 22(4)(a) of the *Employment and Assistance Act* as being in support of information and records that were before the minister when the decision being appealed was made.

The appellant applied for income assistance in April 2009 and he received income assistance benefits in April, May and June 2009 after which his file was closed. The appellant re-applied for income assistance in October 2009 and the appellant was granted Persons With Disability ("PWD") status in February 2010.

On November 24, 2011, the ministry wrote to the appellant ("Request Letter #1") and requested that he attend a meeting with it and also provide to it the following information:

1. A copy of the appellant's marriage certificate;
2. A current phone number, address and immigration for his spouse;
3. A current rent receipt, phone, hydro and gas bills;
4. Bank profile forms and 90 day transaction printouts for personal and business accounts at three different financial institutions;
5. 2009 and 2012 Canada Revenue Agency ("CRA") Notices of Assessment;
6. Confirmation of Employment from all employers for 2009 and 2010;
7. Financial documentation regarding gross business income for 2009 and 2010;
8. A company registration and business license;
9. Credit card #1 statements for January 2011 – December 2011; and
10. Credit card #2 statements for January 2011 – December 2011.

On March 5, 2012, the ministry wrote to the appellant again ("Request Letter #2") and requested that he deliver to it the following information:

1. 2009 financial documents (monthly breakdown) that matched the amounts of gross business income and employment income declared to the CRA;
2. 2010 financial documents (monthly breakdown) that matched the amounts of gross business income, interest income, employment income and other income declared to the CRA;
3. 2011 financial documents (monthly breakdown) that matched the amounts of gross business income, employment income, other income and interest income declared to the CRA;
4. A current rent receipt, phone and hydro bills;
5. Documentation of how the appellant was meeting his shelter expenses; and
6. 90 day transaction printouts for all bank accounts.

On March 22, 2012, a third letter was written by the ministry to the appellant advising him that it had not received the information requested in Request Letter #1 and Request Letter #2 and because of that he was no longer eligible for assistance and his file was to be closed April 20, 2012.

In his Notice of Appeal, the appellant submits that it is inappropriate to deny him assistance.

In response to questions from his advocate, the appellant confirmed he worked abroad in 2009 for two months but that his work was irregular and that when he wasn't working he received income assistance and was aware of his income reporting obligations. The appellant gave evidence that in 2011 he did some work for an employer but otherwise received income assistance. The appellant

gave evidence that when he was asked by the ministry in November 2011, he provided all of the records that he had in his possession. He noted that as the investigation went on, he had difficulty in providing the monthly breakdowns sought by the ministry due to a variety of reasons. The appellant stated that with respect to tracking his income, he did not have a proper system but rather sent receipts to his accountant. He noted that he had asked his accountant to assist him in preparing the monthly income breakdowns but he was unable to do so. The appellant explained that he completed monthly Confirmation of Earnings breakdowns for 2009 and 2011 based on invoices that he had found. The appellant gave evidence that his disability did not prevent him from providing the ministry the requested information but rather his problem was with gaining access to the information.

In response to questions from the panel, the appellant stated that he did provide information to the ministry as best he could. He could not say when or if he had submitted the 2009 and 2011 Confirmation of Earnings to the ministry prior to the hearing but he maintained that he had provided the ministry with the 2011 invoices and pay-stubs in support of the 2011 Confirmation of Earnings but not the 2009 invoices and pay-stubs.

The ministry stated that at the investigation into the appellant's file began in November 2011 and at the time of Request Letter #1, the appellant had never disclosed the existence of his business to the ministry. The ministry went on to explain that Request Letter #2 asked for information that was in part based on some of the materials provided by the appellant after he received Request Letter #1. The ministry stated that the information requested from the appellant is necessary in determining his eligibility for continued disability assistance benefits and that at the time of reconsideration, the appellant had provided some, but not all of the necessary information to the ministry. Specifically, the ministry stated that the appellant had not submitted documents to prove his 2009 and 2011 business income.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably concluded that that the appellant was not eligible for disability assistance due to his failure to provide information required by the ministry to determine his eligibility for income assistance pursuant to section 10 of the Employment and Assistance for Persons with Disabilities Act.

The relevant legislation, section 10 of the EAPWDR, provides as follows:

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.

Section 28 of the EAPWDR provides as follows:

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 unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

(2) For the purposes of section 10 (5) [information and verification] of the Act,

(a) the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit is \$100 for each calendar month, and

(b) the period for which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction.

The ministry takes the position that the appellant failed to provide as directed to the ministry, the required information which was necessary for it to make a determination as to the appellant's continued eligibility for disability benefits.

The appellant argues the issue is whether he provided sufficient information. He says that the relevant legislation has to be applied giving consideration to the context and specific circumstances of the situation. The appellant believes that he was trying to provide the requested information and he thinks that he met the ministry's requests but that he had challenges in doing so. The appellant says that he did what he could to cooperate.

Section 10(1) of the EAPWDA allows the ministry to, *inter alia*, direct a recipient of disability assistance to supply the minister with information within the time and in the manner specified by the minister for the purposes of determining or auditing eligibility for disability assistance, hardship assistance or a supplement. Where an applicant or recipient fails to comply with such a direction, section 10(4) of the EAPWDA permits the minister to declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period. Section 28(1) of the EAPWDR states that the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

In the present case, the minister directed the appellant in Request Letter #1 to supply it with information to determine his eligibility for disability assistance. The appellant provided some but not all of the information requested and based on the information provided, the minister directed the appellant in Request Letter #2 to supply it with further information. Despite this request, the appellant did not provide the minister with the information requested. Specifically, in Request Letter #2 the minister directed the appellant to provide it with various documents including monthly breakdowns for business, employment, interest and other income for 2009, 2010 and 2011. The appellant did not provide this information to the ministry and the panel finds on that basis that the ministry's declaration that the appellant was therefore ineligible for disability assistance to be reasonable.

The Panel finds that the ministry's Reconsideration Decision was reasonably supported by the evidence and confirms the decision.