

**PART C – Decision under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development (“the ministry”) dated January 4, 2012 which held that pursuant to section 26 of the Employment and Assistance Regulation (EAR) the appellant was not eligible for a support allowance prior to the submission of the Application For Income Assistance (Part 2) [“the application”] which is the date she signed the application.

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR), section 26

**PART E – Summary of Facts**

The undisputed evidence is that the appellant made an on-line application to the ministry as a single person for income assistance on November 3, 2012. Following this date, both the ministry and the appellant report communication difficulties described by the ministry as unsuccessful attempts to contact the appellant from November 9 to November 15, 2012 with contact made on November 19, 2012, and by the appellant as each party missing the others' calls with the appellant leaving numerous voicemail messages. The ministry states that on November 19<sup>th</sup> the appellant was advised of the outstanding documents required to proceed with her application for income assistance which were provided on November 22<sup>nd</sup>, at which time the appellant was advised of her eligibility interview appointment on November 29<sup>th</sup>. On November 29<sup>th</sup>, the ministry determined that the appellant was eligible for income assistance and issued a pro-rated support allowance for November 29<sup>th</sup> and 30<sup>th</sup> and a full shelter allowance for the month of November.

Included in the appeal record is a copy of the application which is either initialed and/or signed by the appellant and date stamped NOV 30 2012 on all four (4) pages.

Neither party introduced new evidence on appeal.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant a support allowance prior to the date she signed the application was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable in deciding that the application was not submitted until the date it was signed by the appellant?

### **Relevant Legislation - 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.

### **Parties' Positions**

The appellant's position is that the date she submitted the application is the date she filled in the application on-line, November 3, 2012, and consequently, she is eligible for a support allowance as of that date pursuant to the legislation. The appellant states the ministry's representative confirmed her eligibility during a telephone conversation but argues that the date on which she spoke with the ministry and the date when her eligibility was confirmed are irrelevant, and that the relevant fact is that she was in immediate need of financial support as of November 3, 2012.

The ministry's position is that the application was not submitted until it was signed by the appellant on November 30, 2012 and that the appellant was not eligible for a support allowance before this date pursuant to section 26(2)(a) of the EAR.

**Panel's Decision**

Section 26 of the EAR dictates the date upon which an applicant is eligible for a benefit which, pursuant to subsection (1), is the date on which the minister determines eligibility. However, subsection (1) is subject to the exceptions set out in subsection (2). At issue in the appellant's case is the exception set out in subsection (2)(a) which provides that eligibility for a support allowance takes effect on the date of an applicant's submission of the application for income assistance (part 2) form. This appears to reflect an intention to allow for the "backdating" of a support allowance to cover the potential interim between the submission of an application and the date upon which eligibility is determined by the ministry which could arise for reasons including the need to obtain documents from a third party. In considering the meaning of section 26(2)(a), the panel notes that "submitted" is not defined in either the *Employment and Assistance Act* or the EAR. The panel also notes that the application clearly requires that all 4 pages be initialed and dated by an applicant and a witness, and that page 4 requires the applicant's signature to authorize a Medical Services Plan Client Release and to declare the truthfulness and completeness of the information provided in "Part 1 and Part 2 of the application process." In the absence of any legislative direction to the contrary, the panel finds the ministry reasonable in considering that the application has not been submitted until it has been completed which includes the provision of the required signatures. Therefore, notwithstanding that the ministry has provided a support allowance for November 29<sup>th</sup>, one day prior to the appellant signing the application, the panel finds that the ministry has reasonably determined that the appellant's submission of the application did not occur until she signed and completed the application on November 30, 2012. Accordingly, the panel finds the ministry reasonably determined that pursuant to section 26(2)(a) of the EAR the appellant was not eligible for a support allowance prior to November 30, 2012.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for income assistance prior to the date the application was signed by the appellant was a reasonable application of the legislation in the circumstances of the appellant and confirms the decision.