

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry)'s reconsideration decision dated March 20, 2013 that found that the appellant was not eligible for backdated income assistance for October and November 2012. In particular the ministry determined that the appellant had not completed his income assistance application until December 5, 2012, and pursuant to section 26 of the *Employment and Assistance Regulation*, was not eligible for income assistance before that date.

### PART D – Relevant Legislation

*Employment and Assistance Act* (EAA) sections 1 & 4  
*Employment and Assistance Regulation* (EAR), sections 4.1, 4.2, 26

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) The appellant's Application for Income Assistance, parts 1 & 2, dated December 5, 2012; and
- 2) The appellant's Request for Reconsideration (RFR) dated March 7, 2013, in which the appellant states that his Employment Insurance (EI) ran out in September which he never knew until much later, he was busy with work search, and he and his son were living off his credit card. The appellant states that he applied for income assistance, but expected that he would get called to work so incurred increasing credit card to pay for his monthly expenses. The appellant states that he does not expect to be on income assistance for much longer but needs the backdated assistance to support himself and his son, who lives part time with him and part-time with his mother. The appellant states that after he applied for income assistance he wondered why he did not hear anything from the ministry and when he finally called the ministry, he was advised that the worker could not reach him because he had inadvertently written down the wrong phone number on his application. The appellant states that as he missed the deadline by one day, it is unfair to deny his application.

In his Notice of Appeal the appellant states that he was using a time limited computer when he completed his income assistance application and that it was a genuine mistake providing the wrong number. He states that he was given a notice of eviction dated March 16, 2013 and he expects any day to be moved out on the street, along with his / year old son, and expects to become homeless. With his Notice of Appeal, the appellant submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2013 indicating that the appellant had failed to pay rent of \$2,925 that was due on March 1, 2013 (Eviction Notice).

Prior to the hearing, the appellant submitted a Notice of Dispute Resolution Hearing (Notice) indicating that a hearing was set for April 29, 2013 in respect of the Eviction Notice.

### *Admissibility of New Evidence*

The panel has admitted the Eviction Notice and the Notice into evidence as it is information in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the Eviction Notice and the Notice relate to the appellant's evidence regarding his financial circumstances and need for income assistance as set out in the RFR.

With the consent of the parties, the hearing proceeded by way of a written hearing, so neither the appellant nor the ministry attended the hearing.

The ministry relied on the reconsideration decision and submitted no new information.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for income assistance for October and November 2012 pursuant to section 26 of the EAR, as he had not completed the income assistance application until December 5, 2012 and not determined eligible for income assistance until that date, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the EAR are as follows:

### Process for assessment of eligibility for income assistance

**4** The eligibility of a family unit for income assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2. (B.C. Reg. 304/2005)

### Application for income assistance - stage 1

**4.1** (1) The first stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (2). (B.C. Reg. 304/2005)

(2) The applicants for income assistance in a family unit

(a) must complete and submit to the minister an application for income assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 7 (2), and (B.C. Reg. 197/2012)

(ii) the information, authorizations, declarations and verifications specified by the minister, as required in the application for income assistance (part 1) form,

(b) subject to subsections (4) and (6) must (B.C. Reg. 85/2012) (B.C. Reg. 197/2012)

(i) complete searches for employment as directed by the minister for the applicable period under subsection (2.1) immediately following the date of the application under paragraph (a), or (B.C. Reg. 197/2012)

(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a), and in either case provide information about and verification of the searches for employment, in the form specified by the minister. (B.C. Reg. 98/2009)

(2.1) The applicable period for the purposes of subsection (2) (b) (i) is

(a) 3 weeks, if any applicant in the family unit is a former recipient, and

(b) 5 weeks in any other case.

### Application for income assistance - stage 2

**4.2** (1) In this section, "**applicant orientation program**" means a program established by the minister to ensure that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of

- (a) rules about eligibility for income assistance or supplements,
  - (b) the process of applying for disability assistance,
  - (c) required employment search activities, community based job search resources and ministry and community programs,
  - (d) mutual obligations of the minister, applicants and recipients,
  - (e) employment plans,
  - (f) the minister's authority to collect and verify information, and
  - (g) the availability of alternate resources, such as, federal programs and other Provincial programs. (B.C. Reg. 304/2005)
- (2) The second stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (3). (B.C. Reg. 304/2005)
- (3) Subject to section 47.2 (2), on completion of the first stage process provided for in section 4.1, the applicants for income assistance in the family unit must complete and submit to the minister an application for income assistance (part 2) form and must include as part of the application (B.C. Reg. 197/2012)
- (a) proof of the identity of the persons in the family unit and of their eligibility under the Act,
  - (b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and (B.C. Reg. 85/2012)
  - (c) the information, authorizations, declarations and verifications specified by the minister as required in the application for income assistance (part 2) form. (B.C. Reg. 304/2005)

#### 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. (B.C. Reg. 340/2008)
- (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.C. Reg. 304/2005)
  - (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 (B.C. Reg. 304/2005)

The position of the ministry, as set out in the reconsideration decision, is that the appellant submitted an online application for income assistance on November 9, 2012, but did not complete part 1 and part 2 of the application until December 5, 2012. The ministry determined that the appellant was eligible for hardship assistance effective December 5, 2012 pending completion of a 3 week satisfactory work search and eligible for income assistance effective January 2013 onward. The ministry also determined that although the appellant has a child, the child does not reside with the

appellant at least 50% of the time. The ministry states that the appellant called in February 2013 requesting income assistance for October and November 2012 but was advised that he was not eligible for income assistance for those months as they preceded stage 2 of the application date.

The appellant's position, as set out in the RFR and Notice of Appeal is that his EI ran out in September; prior to his assistance he and his son had been living off his credit cards; he is supporting his 15 year old son financially as he is living between two houses (i.e. part time with the appellant and part-time with his mother); he is actively looking for work, and he is concerned that he may end up homeless without the extra income assistance as he has been issued the Eviction Notice and has no funds to pay the outstanding rent. The appellant states that although he made a mistake and provided the wrong telephone number on his income assistance application, it was a genuine mistake, likely made because he was using a time limited computer, and as he only missed the deadline by one day, it is unfair to deny his request for backdated income assistance.

The panel finds that an applicant for income assistance must complete the two step process as set forth in EAR section 4. Pursuant to EAR section 26, a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date that the minister determines that the family unit is eligible for the income assistance or supplements. EAR section 26(2)(a) provides that a family unit becomes eligible for support allowance on the date of the applicant's submission of the application for income assistance. EAR section 26(2)(b) provides that a family unit becomes eligible for shelter allowance 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 remain unpaid on the date of that submission.

The panel reviewed the evidence contained in the appeal record and determined that the appellant did not complete the two stage process required by EAR section 4 until December 5, 2012. The panel appreciates that the appellant made a genuine mistake in providing the incorrect telephone number on his income assistance application. However, even if he had provided the correct telephone number and the ministry had contacted him and he had completed his income assistance application during November 2012, he would not have been eligible for October 2012 income assistance as that was a period that occurred before the date the minister determined that he was eligible for income assistance.

The panel also notes that the appellant may have been found eligible for income assistance for November 2012 had the ministry been able to contact him during November and he had been able to complete his income assistance application during that month. However, as the appellant's application was not completed until December 5, 2012, and as the application process for income assistance is statutory, the legislation does not provide the ministry with the discretion to back date income assistance. Accordingly, the panel finds that the ministry's determination that the appellant was not eligible for income assistance for November 2012 was reasonable.

The panel finds that the ministry's reconsideration decision that the appellant was not eligible for income assistance for October and November 2012 pursuant to section 26 of the EAR was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision.