

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (“Ministry”) reconsideration decision dated February 13, 2013, which held that the appellant was not eligible for disability assistance due to failure to provide information related to his eligibility for disability assistance as required by Section 10 of Employment and Assistance for Persons with Disabilities Act (EAPWDA) and Section 28 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

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 the reconsideration decision included:

1. Appellant's Canada Revenue Agency (CRA) Notice of Assessment dated March 15, 2012.
2. Electronic history of Ministry contacts with Appellant from December 3, 2012 to January 24, 2013.
3. Letter from Ministry Investigative Officer (IO) to the Appellant dated December 3, 2012.
4. Letter from the IO to the Appellant dated December 14, 2012.
5. Letter from the IO to the Appellant dated January 2, 2013.
6. Letter from the IO to the Appellant dated January 16, 2013.
7. Email correspondence from the Appellant to the Ministry IO dated January 11, 2013.
8. Letter from the IO to the Appellant dated January 22, 2013.
9. Appellant's CRA Voluntary Disclosure Program Taxpayer Agreement form dated January 30, 2013.
10. Tenancy Agreement dated December 6, 2012.
11. Appellant's bank account activity details for:
 - March 15 – 30, 2012
 - June 1 – 29, 2012
 - July 3 – 31, 2012
 - August 7 – 31, 2012
 - September 4 – 28, 2012
 - October 1 – 31, 2012
 - November 2 – 30, 2012
 - Emailed, two page submissions to Tribunal office dated April 15, 2013.

The Appellant's submission included the following:

- The Appellant began his submission by referring to his email dated April 15, 2013 where he states: [begin quote]

"Note for Tribunal:

It should appear text clear from previous correspondence that every attempt has been made to explain the need for information correction, falling short of a complete description detailing matters which are privy and concern only Revenue Canada.

Nevertheless, from one's point of view we can only see a slice of the whole and there are suffering consequences when rules and realities don't align.

'Often my way is lost by losing this perspective'.

"Having explained the facts to the Ministry in regards to the considered overpayment, such explanation should be deemed suitable for annotation and every opportunity should be given to allow processing time assigned to Revenue Canada to correct and re-present as correct assessment of employment earnings for the year in question. Chapter 165 'right to request correction of personal information' is presented for your [the Panel's] consideration; and,

CHAPTER 165

Right to request correction of personal information

29 (1) *As an applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.*

(2) *If no correction is made in response to request (1), the head of the public body must annotate the information with the correction that was requested by not made.*

(3) *On correcting or annotating personal information under this section, the head of the public body must notify any other public body or any third party to whom that information has been disclosed during the one year period before the correction was requested.*

(4) *On being notified under subsection (3) of a correction or annotation of personal information, a public body must make the correction or annotation on any record of that information in its custody or under its control." [end quote]*

The Appellant then continued his submission which is summarized as follows:

- The Ministry is requesting information on employment earnings that do not exist and the CRA's calculations are wrong.
- Of the information requested by the Ministry, he has provided all that he can to the Ministry at this time.
- He did not receive the Ministry IO's first letter dated December 3, 2012 because he had just recently moved residence; therefore, he first learned of the Ministry's request for information from the Ministry after receiving it on December 14, 2012.
- CRA has certain information the Appellant does not have and cannot get ready access to in his community.
- To remedy this, the Appellant has gone ahead and requested the missing information from CRA via a Voluntary Disclosures Agreement (VDA) which he mailed to them and is currently awaiting a reply.
- He states the CRA will take time to provide this information and get it to him by return mail.
- He states he cannot make the postal system move fast enough to accommodate the Ministry's short timeline of ten days to provide the information.
- He also cannot get the CRA to stamp the VDA, per Ministry requirement, because there are no services of this sort in the community that will provide the required stamp.
- He agrees that he received an Income Tax refund on March 15, 2012 in the amount of \$4768.92.
- He believes that money was an overpayment and he has asked CRA to reassess his information.
- There are no T4 slips or records of employment to verify any employment in 2011.
- He did not refuse to participate in a three way conversation with the Ministry and CRA, where his lack of documentation and CRA's calculation error could be verified.

The Ministry's submission included the following:

- The Appellant has been a recipient of disability assistance since May 2012.
- When the Appellant applied for disability assistance he was advised of the Ministry's requirements for him to provide information to them to assess ongoing eligibility via his signature on application for income assistance.

- In December 2012, the Ministry conducted a file audit of the Appellant's file and subsequently requested the following information from the Appellant in a letter dated, December 3, 2012:
 1. Current rent receipt and utility bills
 2. Pay statements or pay stubs for all incomefor the period of January 1, 2011 to November 30, 2012.
 3. Record of employment for all employers during the period January 1, 2011 to November 30, 2012.
 4. T4 slips from all employers for whom you worked in 2011. (Ministry provided toll free number to Revenue Canada if Appellant did not have these documents on hand and advised Appellant to contact Revenue Canada as soon as possible as it may take more than ten days to receive the information)
 5. Statements of all bank accounts, sole or joint for the period of June 1, 2012 to November 30, 2012.
 6. Statements for all investments, RRSP's, pension funds and any other assets.
 7. Income Tax Notice of Assessment for 2011. (Ministry provided toll free number to Revenue Canada if Appellant did not have these documents on hand and advised Appellant to contact Revenue Canada soon as possible, as it may take more than ten days to receive the information); and,
 8. Proof of receipt of the Appellant's 2011 Income Tax Refund for \$4782.13.
- The Ministry's letter, dated December 3, 2012, indicated the requested documentation is required for the purpose of determining his eligibility for assistance and advised the Appellant to contact Canada Revenue Agency (CRA) immediately as information requested from CRA may take longer than ten days to receive, once requested. In addition, the toll free phone number for CRA was provided to the Appellant.
- The Appellant acknowledged receipt of the December 3, 2012 correspondence from the Ministry by placing a call to the Ministry worker on December 14, 2012. At that time, the Ministry worker reiterated the need for the Appellant to provide the Ministry with his T4 slips, the receipt for his Income Tax refund, and a declaration of his 2011 Income Tax refund.
- The Ministry followed up the December 14 conversation with the Appellant, by sending him another letter of the same date, again clearly requesting the above noted information on or before December 28, 2012 and, again, included information about timelines for obtaining information from CRA.
- On December 27, 2012, the Appellant contacted the Ministry by telephone and requested an interview with the Ministry worker regarding the documents he had not provided to them thus far.
- On December 28, 2012, the Appellant provided a tenancy agreement signed December 6, 2012, a 2011 Notice of Assessment showing taxable income of \$12830.00 and a refund of \$4782.13, and a bank statement from June 1, 2012 to November 30, 2012 for his bank account.
- As of December 28, 2012, the Appellant had not yet not provided the following information to the Ministry:
 - A rent receipt and utility bills
 - Pay statements for all income from January 1, 2011 to November 30, 2012.
 - Records of Employment from all employers from January 1, 2011 to November 30, 2012

- T4 Slips from all employers for 2011.
- Statements for investments, RRSP's, pension funds or any other assets; or, advice that he did not have these or any other types of investments.
- Proof of receipt of his 2011 Income Tax refund for \$4782.13.

- On January 2, 2013, the Appellant advised the Ministry that he had provided all the information he was able to provide, that CRA's calculations were wrong and that no T4's or Records of Employment existed.
- On that same date, the Ministry acknowledged that shelter costs were paid directly to the Appellant's landlord and that he did not have any additional costs for utilities; therefore, the Appellant's shelter costs were considered verified and the Appellant was not required to provide a rent receipt nor utility bill documentation to the Ministry.
- On January 2, 2013, the Ministry, once again, sent a letter a letter to the Appellant outlining which documents he was still required to provide to the Ministry on or before January 18, 2013:
 - Pay statements
 - Records of Employment from all employers for 2011
 - T4 slips from CRA or proof from CRA that no T4 slips exist
 - Statements for all investments, RRSP's, pension funds and any other assets or, advise that you do not any of these or other types of investments
 - Based on the Appellant's indication, a copy of his 2011 Income Tax re-assessment
- The letter from the Ministry to the Appellant dated January 2, 2013 again advised the Appellant to contact CRA immediately as there may be a delay in obtaining requested information.
- On January 16, 2013, in an effort to assist the Appellant with obtaining his tax information, the Ministry sent a letter to the Appellant suggesting that he and a Ministry representative participate in a three-way telephone conversation with the CRA in order to obtain immediate confirmation of the existence of any T4 slips or other income documentation on file with the CRA.
- Appellant contacted the Ministry with respect to making a three way call to CRA. At that time, the Ministry worker advised the Appellant that the Voluntary Disclosures Program Taxpayers Agreement form he provided was insufficient proof that 2011 T4 slips did not exist for him.
- The Ministry, on that phone call, also advised the Appellant that an overpayment in income assistance may have occurred.
- On January 22, 2013 the Ministry advised the Appellant that he was ineligible for further disability assistance due to his failure to provide the requested information and his file would be closed on February 22, 2013.
- On January 29, 2013 the Appellant requested reconsideration of the Ministry decision that he was no longer eligible for disability benefits, and submitted a bank statement that confirmed his receipt of a 2011 Income Tax Refund of \$4,782.13.
- On February 12, 2013 the appellant submitted a copy of a Canada Revenue Agency T1 Adjustment Request, dated February 11, 2013, revising his "employment income" amount from \$12830.00 to \$0.00 and revising the "total income tax deducted" amount from \$4841.87 to \$0.00

PART F – Reasons for Panel Decision

The issue to be decided at appeal is whether the Ministry reasonably concluded that the appellant was not eligible for income assistance because he had not provided the Ministry with the information they required to assess the Appellant's ongoing eligibility for assistance per Section 10 of the EAPWDA and Section 28(1) of the EAPWDR.

The legislation provides:

EAPWDA:

Information and verification

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.

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 Appellant argues:

- That, to the best of his ability, he has complied with the direction of the Ministry regarding Section 10 within the prescribed period by leaving voice mails for the Ministry worker, by showing what information of his has to be corrected and, by submitting documents to the Ministry office;
- All of the information he has, he has supplied to the Ministry and any he has not provided to the Ministry he has explained the lack of that information in full.
- The Ministry is aware that the CRA assessment in question is not accurate and needs correction; and, that the Appellant immediately entered into a Volunteer Disclosure Program to assist the Ministry's investigation so the Ministry would not have to collect [information] on behalf of the federal government.
- That he did not refuse to participate in a three way teleconference call with the Ministry and CRA; that he was frustrated with how the Ministry investigation was conducted.
- That he had requested a face to face meeting with the Ministry worker to sort out these issues and he would bring an RCMP officer to that meeting.
- That this situation is causing him to be without basic needs and now he is in a position to become homeless.

The Ministry argues:

- The Appellant has had a reasonable amount of time to comply with the Ministry's request for information as indicated by the Ministry records of their telephone communications and file copies of the several letters sent to him.
- The Appellant has been advised several times of the importance of contacting CRA immediately due to processing times.
- The Ministry had given the Appellant an opportunity, via a three way teleconference call, to clarify his 2011 T4 slips and 2011 income at large in an expedient manner, and he did not participate in that call.
- The documents the Appellant has provided to the Ministry in regard to his attempts to obtain information from CRA (Voluntary Disclosures Program Taxpayers Agreement form and the T1 Adjustment Request) are dated January 30, 2013 and February 11, 2013 respectively and the Appellant has not provided information to the Ministry to confirm he has actually submitted the documents to CRA. The documents do not establish that the Appellant is actively pursuing the information in question as required by the Ministry.
- The first Ministry letter was sent to the Appellant on December 3, 2012 and confirmed received by the Appellant on December 14, 2012. At the time of reconsideration, it had been approximately eight weeks since the Appellant has been aware of the requirement to provide documentation to the Ministry.
- As of the reconsideration date, the Appellant had not yet provided all of the information required by the Ministry to assess his ongoing eligibility for income assistance.
- The Ministry's position is that the Appellant has not complied with the direction to provide information relating to his eligibility for disability assistance and concludes he is not eligible to receive disability assistance.

The Panel finds the Ministry's decision to deny the appellant's eligibility for disability assistance was a reasonable application of the applicable enactment in the circumstances of the Appellant for the following reasons:

- The Appellant, in his written submission of April 15, 2013, appears to be raising an issue with respect to sharing his information from CRA with the Ministry but his argument has not been presented clearly. Based on this, the Panel finds the Appellant's request, as presented, does not impact the issue at appeal of the right of the Ministry to gather and request information to deem his ongoing eligibility for income assistance.
- The Ministry communicated several times with the Appellant and clearly outlined the information he was required to submit per Section 10 of the EAPWDA; and, as of the date of reconsideration decision, the Appellant had not yet provided the following information that had been requested from him:
 1. T4 slips for 2011 or verification of the Appellant's statement that there are not 2011 T4 slips of file for him at CRA;
 2. Records of employment for 2011 or verification that no records of employment exist;
 3. Statements for all investments, RRSP's, pension funds and any other assets or confirmation that none exist; and,
 4. Information regarding the reassessment of the Appellant's 2011 Income Tax return by CRA.
- The Ministry had given the Appellant ample time and opportunity to comply with its request for information as he was notified of the need to do so several times by the Ministry via their communication with him through correspondence and telephone conversations.

- The Appellant appears to have requested information from CRA via his submission of the Voluntary Disclosure Program Taxpayers Agreement and the T1 Adjustment Request, however, the Ministry had clearly communicated to the Appellant why his attempts to obtain information from CRA (Voluntary Disclosures Program Taxpayers Agreement form and the T1 Adjustment Request) were not acceptable to the Ministry; because those documents had not been officially verified as being sent to and received by CRA.
- The Ministry offered to expedite and verify the Appellant's information gathering and income tax documents via a three way teleconference call with the CRA and the Appellant chose not to participate in that call.
- The Ministry appropriately applied Section 28(1) of the EAPWDR by exercising their authority to deny the Appellant disability assistance as a consequence to the Appellant not complying with their requests for information from the Appellant.

Therefore, the Panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.