

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 19, 2013 which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Act (EAA) for failing to comply with a direction to supply requested information and verification. The ministry also found that the appellant continues to be ineligible for income assistance pursuant to Section 32 of the Employment and Assistance Regulation (EAR) because he has not fully complied with the direction since requested information remains outstanding, namely: -rent receipts from August 2009 to present.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 32

Employment and Assistance Act (EAA), Section 10

PART E – Summary of Facts

The appellant did not attend the hearing and the advocate stated that she had been unsuccessful in contacting the appellant, but he had given her authority to proceed with the hearing on his behalf. A Release of Information form was provided by the appellant authorizing his advocate to make decisions on his behalf.

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

- 1) Letter dated March 15, 2010 from a lawyer to the appellant confirming a settlement of \$15,000 and enclosing the balance of \$8,661.12 after payment of account and expenses;
- 2) Motor Vehicle Purchase Agreement dated March 16, 2010 in the appellant's name for a 1998 BMW for the price of \$8,995;
- 3) Statement dated November 22, 2012 for repossession of 1998 BMW on November 15, 2012 and fees totaling \$1,875.16;
- 4) Print out dated December 1, 2012 for registration of a PPSA Security Agreement for a 1998 BMW;
- 5) Letter dated December 19, 2012 from the ministry to the appellant which states in part that the appellant's file has been selected for review and that information may be requested in order to determine or audit eligibility for assistance; the ministry stated the following information or documentation is required by January 4, 2013:
 - (1) rent receipts from October through December 2012;
 - (2) shelter information form indicating current address, owner's name and contact information;
 - (3) specified bank profile (as attached) and bank statements for all accounts from April 2012 to present;
 - (4) income tax Notices of Assessment for 2009, 2010, and 2011 including tax information slips;
 - (5) current car insurance, registration, purchase and loan documents for 1998 BMW;
 - (6) school registration for son or confirmation of when he moved out; and,
 - (7) WorkSafe BC Consent to Disclosure signed and returned to ministry;
- 6) Note dated January 3, 2013 from the appellant 'To Whom It May Concern' stating in part that the ministry asked him to provide rent receipts- his rent was paid directly to the landlord. He is currently living in his car. He sent his son back to another community on October 29, 2012. He does not have any WorkSafe documents. He sent his T-4 for December 19, 2012 and 2009, 2010 and 2011 tax returns;
- 7) Note dated January 4, 2013 'To Whom It May Concern' stating in part that this person paid "repo fees" on November 30, 2012 for a loan financed for the appellant;
- 8) Letter dated January 8, 2013 from the ministry to the appellant which states in part that the appellant's file has been selected for review and that information may be requested in order to determine or audit eligibility for assistance; his February 2013 assistance cheque will be held until the information is received; the ministry stated the following information or documentation is required by January 22, 2013:
 - (1) current utility bills: phone;
 - (2) rent receipts for all accommodations from August 2009 to the present;
 - (3) specified bank profile and bank statements for all accounts from August 2009 to April 2012;
 - (4) income tax Notices of Assessment for 2009, 2010, and 2011 including tax information slips;;
 - (5) proof of how he managed a monthly auto loan of \$431.00 plus ICBC monthly insurance, rent and monthly personal expenses from March 2010 to July 2011;
 - (6) vehicle loan agreement from a specified company from September 2012 and proof of how you paid off the loan on December 1, 2012; and,
 - (7) settlement showing net proceeds received for a specified ICBC claim on March 8, 2010;
- 9) Letter dated January 31, 2013 from the ministry to the appellant stating in part that on December 19, 2012 and January 8, 2013 letters were sent to the appellant asking him to provide information and these letters advised that this information is required in order to determine eligibility and that failure to comply could result in denial of assistance. The appellant was directed to provide the following information:
 - (1) current utility bills: phone;
 - (2) rent receipts for all accommodations from August 2009 to the present;
 - (3) specified bank profile and bank statements for all accounts from August 2009 to April 2012;
 - (4) income tax Notices of Assessment for 2009, 2010, and 2011 including tax information slips;

(5) proof of how he managed a monthly auto loan of \$431.00 plus ICBC monthly insurance, rent and monthly personal expenses from March 2010 to July 2011;

The ministry has not received the information requested and, therefore, the appellant is no longer eligible for assistance. His file will be closed on February 28, 2013;

- 10) Statement dated March 11, 2013 from ICBC setting out a claims history and an history of vehicle insurance carried by the appellant;
- 11) Fax dated March 13, 2013 from the appellant's advocate to the ministry requesting no adjudication as they are still in the process of gathering the additional requested documents, and attaching some documents;
- 12) Fax dated March 19, 2013 from the appellant's advocate to the ministry attaching the appellant's Statutory Declaration and Notices of Assessment for 2009, 2010, and 2011;
- 13) Statutory Declaration dated March 19, 2013 by the appellant stating in part that he is currently homeless and he suffers from memory loss due to an injury. He is unable to recall his addresses from 2009 to the most recent address on record. He has requested that the ministry release copies of his Intent to Rent forms for the period in question to assist his memory and he has not received these. He requested copies of his Notices of Assessment for 2009, 2010 and 2011 from the Canada Revenue Agency (CRA) and he has provided the ministry with all the information forwarded to him. He informed the ministry that he put \$5,000 toward the purchase of a vehicle from the ICBC settlement for which he received \$8,061.12. He made payments of \$431.00 from April 2010 to November 2010 with his income assistance support monies and, from December 2010 to July 2011 he did not make any payments. His friends paid the remaining balance by the deadline of July 2011. He is unable to provide information on how he spent his income assistance monies during the time of his vehicle loan payments or where he resided due to his memory impairment;
- 14) Notices of Assessment for the years 2009, 2010, and 2011, Statements of Benefits for 2009, and tax slips;
- 15) Request for Reconsideration dated February 19, 2013.

Prior to the hearing, the appellant provided a copy of a fax page from the ministry dated March 19, 2013 and stamped faxed at 12:10 pm attaching Shelter Information forms submitted by the appellant to the ministry from 2009 to the present, as follows:

- Notice to End Tenancy for Unpaid Rent due on August 1, 2009;
- start date June 1, 2010 for \$375 per month for appellant's portion with 2 adults and no children at the address and including a rent receipt for the month of June 2010;
- July 1, 2011 for \$425 for appellant's portion with 2 adults and no children at the address;
- September 1, 2011 for \$600 for appellant's portion with 2 adults and 1 child at the address;
- May 1, 2012 for \$375 for appellant's portion with 2 adults and no children and including a rent receipt for the month of May 2012;
- September 1, 2012 for \$800 for appellant's portion with 1 adult and 1 child at the address;
- October 1, 2012 for \$550 for appellant's portion with 2 adults and 2 children at the address and including a rent receipt for the month of October 2012;
- December 1, 2012 for \$400 for appellant's portion with 3 adults at the address.

The ministry did not object to the admissibility of the fax and the Shelter Information forms but questioned the relevancy. The advocate argued that the fax from the ministry was sent at 12:10 which is after the reconsideration decision was made at noon that day, as required by policy. However, the reconsideration officer referred to the documents having been previously "supplied" when this was actually the first time the advocate had seen them. The advocate argued that this statement in the decision was not accurate and pointed out that the fax on the same day did not provide a reasonable opportunity for the appellant to respond. The ministry pointed out that the advocate's fax request for the forms was received by the ministry after hours on March 15, 2013 which was a Friday, that Monday was the worker's day off, and that the documents were provided at the first available opportunity on Tuesday. The panel admitted the fax and the Shelter information forms, pursuant to Section 22(4) of the Employment and Assistance Act, as providing detail regarding the appellant's rent at various times and being in support of information and records that were before the ministry on reconsideration. At the hearing, the appellant's advocate provided a written argument.

In the Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision because the ministry made false statements and stepped outside its mandate. The ministry has narrowly interpreted "reasonable efforts" under Section 10.

At the hearing, the advocate stated that originally an outreach worker from the advocate's office was working with the appellant to find him shelter and that she also assisted him with trying to collect the required documents but she is not specifically trained in this area. It was not until March 4, 2013 that the appellant's file was transferred to the current representative and reasonable efforts have been made to collect the information. The advocate stated that the appellant was not given rent receipts by his landlords over the years and the ministry knows that this is common practice and if there is a question the ministry usually calls the landlord to confirm the tenancy details. The advocate pointed to the Statutory Declaration signed by the appellant on March 19, 2013 which states that he is unable to recall his addresses from 2009 to the most recent address on record, that he has requested that the ministry release copies of his Intent to Rent forms for the period in question to assist his memory and he has not received these. The advocate stated that the appellant did not have any time to contact all the landlords based on the intent to rent forms that were faxed on March 19, 2013, which was the date of the decision. The advocate stated that if the appellant had any information about his previous landlords, they could have tried to call them and he still might not be able to get rent receipts and then he would have to prepare a statement. The advocate acknowledged that the appellant could have sought information about his previous tenancies from the person(s) with whom he was living over the years, or from sources other than the ministry, but this is the route that she chose for the appellant. The advocate stated that the appellant is currently homeless and does not receive a shelter portion for assistance.

The evidence of the ministry is that the appellant is a single employable recipient of income assistance with no dependants. On December 19, 2012 the ministry handed the appellant a letter requesting documents by January 4, 2013, as listed in the letter. The appellant was offered an in-person or telephone interview to discuss the information and he was informed that he may be contacted at a later date if further clarification or information is needed. On January 8, 2013, the ministry provided a letter to the appellant stating he had not submitted all the requested information and requesting that he provide documents by January 22, 2013 as listed in the letter. The appellant told the ministry that sometimes his girlfriends gave him money and sometimes he lived in his vehicle and did not pay rent. On January 16, 2013 the ministry left a message for the appellant's advocate stating the appellant was required to submit rent receipts for all accommodations from August 2009 to present, Notices of Assessment for 2009, 2010 and 2011 and proof of how he managed a monthly auto loan of \$431 plus ICBC monthly insurance, rent and monthly personal expenses from March 2010 to July 2011. On January 22, 2013, the ministry reminded the appellant's advocate that all outstanding information was to be submitted by January 31, 2013. On January 31, 2013, the ministry gave the appellant a letter denying the appellant income assistance for failure to submit the requested documents.

On February 6, 2013, the ministry spoke with the appellant's advocate and clarified the outstanding documents that the appellant failed to provide, namely: rent receipts from August 2009 to present, Income Tax Notices of Assessment for 2009 to 2011, and how the appellant paid for a car loan, ICBC, rent and living expenses from March 2010 to July 2011 with \$610 each month. On March 13, 2013, the advocate faxed the ministry stating the appellant was still in the process of gathering the additional requested documents.

At the hearing, the ministry stated that although the decision indicated that only the rent receipts from August 2009 to present remain outstanding, it is not clear whether other requested information was provided, such as how the appellant paid for his car loan at \$431 per month, plus ICBC expenses, rent and living expenses on income of \$610 per month. The appellant did not state anywhere in his Statutory Declaration that he paid rent at any time. The ministry acknowledged that the list of required information changed from the December 19, 2012 letter to the January 8, 2013 letter. The ministry clarified that rent was paid on the appellant's behalf directly to the landlord for the months of November and December 2012, therefore no rent receipts would be required for these months. The appellant advised the ministry on December 7, 2012 that his most current tenancy had been terminated.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Act (EAA) for failing to comply with a direction to supply requested information, and continues to be ineligible for income assistance pursuant to Section 32 of the Employment and Assistance Regulation (EAR) because he has not fully complied with the direction since requested information remains outstanding, namely: -rent receipts from August 2009 to present, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 10(1) and (4) of the Employment and Assistance Act (EAA) provide that:

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.

(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.

Section 32(1) of the Employment and Assistance Regulation (EAR) provides that:

32 (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.

The appellant's position is that Section 10 of the EAA is written in the present tense and applies to present, not past, eligibility and that any doubt regarding the interpretation of the section should be resolved in favour of the appellant. The advocate argued that the ministry is satisfied that the appellant has submitted all requested items except for his rent receipts from August 2009 to present and that he has made reasonable efforts to submit these rent receipts. The advocate argued that the appellant is not a sophisticated person and he suffers from a brain injury explaining why he is unable to recall the addresses of his residences. The advocate argued that the appellant was never issued rent receipts for his places of residence since 2009, that the ministry is aware that landlords do not typically issue them, and the ministry should have provided disclosure of the intent to rent forms in January 2013 to assist the appellant. The advocate argued that since the time the appellant obtained appropriate representation he requested the ministry to release his intent to rent forms to assist him in contacting landlords and gathering the required information and he has, therefore, made reasonable efforts to comply with the ministry's request.

The ministry's position is that under Section 10(1) of the EAA, the ministry may direct a recipient to supply information for the purpose of auditing eligibility for income assistance and if the recipient fails to comply with

the direction the ministry may declare the family unit ineligible for assistance for a prescribed period. The ministry argued that the appellant failed to submit all the information requested by the ministry and is, therefore, ineligible for income assistance. The ministry acknowledged that the appellant submitted information for all the requested items except the appellant's rent receipt from August 2009 to present. The ministry argued that the appellant has not made reasonable efforts to submit any rent receipts from August 2009 to present, that the appellant could have requested his intent to rent forms from the ministry in January 2013 but he did not do so until March 14, 2013. The ministry argued that the information has not been provided by the appellant to the date of the decision and, therefore, the appellant is ineligible for assistance until he complies with the direction, pursuant to Section 32 of the EAR.

Pursuant to Section 10 of the EAA, the ministry may direct a recipient to supply the ministry with information within the time and in the manner specified by the ministry, for the purposes of determining or auditing eligibility for income assistance. The panel finds that Section 10 applies to both assessing current eligibility as well as auditing ongoing and past eligibility for income assistance, given the reference to a "recipient" of income assistance and that one of the purposes for seeking information is to "audit" eligibility. The panel finds that the letters forwarded by the ministry to the appellant dated December 19, 2012 and January 18, 2013 requested specific information from the appellant, pursuant to Section 10(1) of the EAA, by the deadlines of January 4, 2013 and January 22, 2013 respectively. The appellant did not dispute that he received these letters nor that he was aware of the information that was being requested by the ministry. The appellant provided some of the requested information and the ministry granted an extension of time to January 31, 2013 in order for the appellant to provide the balance of the documents.

In the ministry's letter of January 31, 2013 the following documents were stated to be outstanding: (1) current utility bills: phone; (2) rent receipts for all accommodations from August 2009 to January 31, 2013; (3) specified bank profile and bank statements for all accounts from August 2009 to April 2012; (4) income tax Notices of Assessment for 2009, 2010, and 2011 including tax information slips; and, (5) proof of how he managed a monthly auto loan of \$431.00 plus ICBC monthly insurance, rent and monthly personal expenses from March 2010 to July 2011. The appellant does not claim that he provided all the documents requested by January 31, 2013 but argues that he was making reasonable efforts to provide these documents and that the ministry should have provided disclosure of the intent to rent forms in January 2013 to facilitate his ability to obtain his rent receipts as requested. The panel finds that obtaining the intent to rent forms from the ministry was only one option to aid the appellant's memory as to where he lived from August 2009 to January 31, 2013. The appellant does not describe any other efforts made by him to obtain this information, such as discussions with the people with whom he has lived over the years, referring to the address provided to purchase the vehicle in March 2010, or checking with either ICBC or CRA for his residences listed for the purposes of insurance registrations or filing income taxes. The panel finds that the ministry reasonably determined that the appellant did not provide information as directed by the ministry pursuant to Section 10 of the EAA within the time specified by the ministry, or by January 31, 2013.

Pursuant to Section 32 of the EAR, the period for which the ministry may declare the family unit ineligible for assistance lasts until the recipient complies with the ministry's direction. Although the ministry stated at the hearing that it is not clear whether other requested information was provided by the appellant, the panel finds that the ministry acknowledged that all of the requested information had been provided by the appellant at the time of the decision on March 19, 2013, with the exception of the appellant's rent receipts from August 2009 to January 31, 2013. The panel finds that rent receipts are attached to the shelter information forms for the months of June 2010, May 2012, and October 2012, and the ministry admitted that the appellant's rent was paid directly to the landlord for the months of November and December 2012 and that he was homeless for January 2013. Therefore, the panel finds that the information outstanding to comply with the direction by the ministry includes rent receipts for August to December 2009, for 11 months of 2010, and 8 months of 2012, or a confirmation by the appellant of the months that he lived in his vehicle and did not pay rent. The panel finds that the ministry reasonably determined that the appellant is not eligible for income assistance, pursuant to Section 32 of the EAR, until he complies with the direction to provide this information.

APPEAL #

Therefore, the Panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.