

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of July 15th, 2013 wherein the ministry determined the appellant was ineligible for disability assistance as stated under section 10(4) Employment and Assistance for Persons with Disabilities Act (EAPWDA) because she failed to submit all the information requested by the ministry under the authority of section 10 (2) EAPWDA.

Further, that under section 28(1) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the ministry declared the appellant ineligible for assistance until the appellant complies with the direction.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), 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 reconsideration:

- Letters from ministry to the appellant dated May 17th, 2013, May 31st, 2013, June 12th 2013 advising all information requested in the ministry letters has not been received. The ministry requested information on the vehicle registered in the appellant's name, clarification on some bank entries and additional bank records. The ministry advised the appellant that if the information is not received she will no longer be eligible for assistance and her file will be closed on July 5th, 2013.
- Ministry application for assistance form with Consent for Disclosure signed by appellant.
- Fax dated June 13th, 2013 from the ministry to the auto dealer to provide ownership information on a vehicle purchased in appellant's name on December 21st, 2012.
- Owner's Certificate of Insurance and Vehicle License in the appellant's name dated December 21st, 2012;
- Conditional Sales contract in name of appellant for the purchase of vehicle listed on owner's certificate;
- Motor Vehicle purchase agreement between car dealer and appellant dated December 21st, 2012.
- Transfer/Tax Form dated December 21st, 2013. Information is illegible.
- 10 pages of bank records from the bank (bank #2) for period of October 1st, 2012 to May 28th, 2013;
- 3 pages of bank records (bank #3) dated May 28th, 2013 where car loan is held – notation on ministry request for information form states, "Dealer link loan only, *No personal relationship";
- 17 pages of bank records from (bank #1) covering the period from September 22nd, 2012 to March 22nd, 2013.
- Request for reconsideration dated June 14th, 2013.

The appellant is a recipient of disability assistance and an audit on the appellant's eligibility was conducted by the ministry. On April 18th, 2013 the ministry's Investigative Officer (IO) wrote the appellant advising of the audit and requested the appellant to submit various documents and information by May 2nd, 2013. On May 3rd, 2013, a second letter of request was sent as the appellant had not submitted any of the requested documents. On May 14th, 2013 the appellant spoke with the IO inquiring why she needed to submit the requested information and, at this time, the IO reviewed the list of requested documents with the appellant. The appellant submitted a letter to the IO explaining that although the vehicle was purchased and registered to her that another individual made the loan payments on the vehicle through bank #3 because he wanted the appellant's family in safe and reliable transportation. The appellant submitted the Transfer/Tax Form but the information on it was illegible. On May 15th, 2013 the appellant submitted several documents including her bank statements from bank #1. These bank records revealed the appellant was not paying her rent from this account, however, this bank account (bank #1) showed unexplained deposits/credits/transfers which the IO requested the appellant to explain. The IO determined the appellant was paying her rent from another bank account (bank #2) which was also in her name. The IO was not informed of this account and the bank records for bank #2 reveal this account also has multiple deposits and transfers from unidentified sources. The IO requested that the appellant submit an explanation for the deposits/credits and transfers on these bank records. On June 12th, 2013 the ministry sent the appellant another letter under section 10(2) EAPWDA specifically requesting the vehicle documentation and an explanation of the various bank transactions (deposits, transfers, etc) that had not been provided to the IO. The June 12th, 2013 letter advised the appellant that because she had not provided the requested information the ministry could not determine her eligibility, and she was therefore no longer eligible for assistance, and her file would be closed on July 5, 2013. On July 10th, 2013 the IO received copies of the purchase/loan documentation directly from the car dealer. The ministry's file notes that as of July 10th, 2013 the appellant had not provided the requested information regarding the deposits/transfers into her bank accounts.

Prior to the hearing the appellant submitted the following document to be considered by the panel;

1. An undated letter signed by a friend of the appellant and addressed, To Whom It May Concern. The letter states that he is a family friend who "has been living at the appellant's renting the spare room and

helping out with utilities". He states, "I hope this information is sufficient in regards to this situation and the appellant is able to resume feeling that her and her child have the security of having a roof over their heads and food on their plates".

The ministry did not object to the letter being received by the panel for consideration.

The panel finds this letter addresses the living situation that existed between the parties (appellant and him) and that he contributed financially to the appellant living expenses. The panel finds the letter does not contain information relevant to the issue under appeal and that this letter does not contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is not admissible as evidence under section 22(4) of the Employment and Assistance Act (EAA).

At the hearing the ministry provided the panel with a detailed timeline of the contact the ministry had with the appellant in an effort to resolve the issue under appeal and the process that was involved in this matter. The ministry stated that in addition to the letters that were sent to the appellant, the IO also spoke with the appellant on the phone several times and also met with the appellant on at least one occasion to explain what information the ministry needed to determine her eligibility for assistance. The ministry stated that before the matter went to Reconsideration the appellant's mother (advocate) spoke with the IO who explained what bank information the ministry needed and the information could be obtained from the bank, the "detailed record of transactions", as a response to the ministry's request. The ministry testified that the IO called the bank (bank #2) and obtained a contact name at the bank that the appellant could call as the appellant was the only person who could make the request for this type of information. The ministry testified that in the letter(s) to the appellant the ministry provided copies of the bank statements so the appellant knew which transactions the ministry needed to have clarified. The ministry stated the appellant failed to provide the information requested to clarify the various transactions on her bank statements (bank #1 and #2) and therefore was declared ineligible for assistance and would remain ineligible for assistance until she complied with the ministry's request.

The panel finds this testimony provided by the ministry does contain information relevant to the issue under appeal and is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) of the Employment and Assistance Act (EAA).

The appellant did not testify. The appellant's advocate told the panel that due to unforeseen circumstances the family friend (renter) was unable to attend the hearing and therefore provided a letter (above). The advocate stated that the appellant has very poor cognitive skills which is related to her disability and therefore she did not understand what the ministry (IO) wanted. The advocate acknowledged that the appellant and her male friend (renter) did attend the ministry office and speak to the IO but still the information on what the ministry wanted was not forthcoming. The advocate stated that the appellant has difficulty understanding what is being said to her and also has poor reading and comprehension skills. The advocate told the panel the appellant could not survive on the assistance that was being provided and therefore rented out a room to the family friend; that the rent (\$1,400) was shared and she was only paying \$700 a month which is the amount shown on one portion of the statement for bank #1. The advocate stated the appellant only had one account and that was with bank #1; that the account at bank #2, although in the appellant's name, belonged to the renter because he had other issues (garnishee orders) so he could not have an account in his name.

The panel finds the testimony provided by the appellant does contain information relevant to the issue under appeal and is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) of the Employment and Assistance Act (EAA).

The panel makes the following finding of fact:

1. That the appellant has a Person with Disabilities designation (PWD) and is receiving disability assistance.
2. That on April 18th, 2013 the ministry wrote to the appellant regarding an audit that would be conducted in accordance with section 10 EAPWDA legislation to determine her ongoing eligibility and was provided with a checklist of the information that the ministry required;
3. That the ministry requested further banking information from the appellant to clarify transactions shown on her account at bank #1 and bank #2;

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant was not eligible for disability assistance as stated under section 10(4) EAPWDA because the appellant failed to submit all the information requested by the ministry under section 10(2) EAPWDA. Further, that under section 28(1) EAPWDR the ministry declared the appellant ineligible for disability assistance until the appellant complies with the ministry's direction.

The legislation considered:

Employment and Assistance For Persons with Disabilities Act

Information and verification

Section 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.

Employment and Assistance For Persons with Disabilities Regulation

Consequences of failing to provide information or verification when directed

Section 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.

The ministry's position is that the appellant did not comply with the ministry's request to provide an explanation of the deposit(s) and transfer(s) that appeared on the bank statements for bank #1 and #2 that were requested in the letters, telephone calls and during the personal interview with the appellant. The ministry argued that the

appellant's mother was also informed on June 10th, 2013 what information the ministry needed to determine the appellant's eligibility for assistance and what the appellant needed to do to get that information so she could provide it to the ministry but still the information was not provided. The ministry argued that the information requested to complete the review was reasonable and the appellant had been given sufficient time to provide the information so that her eligibility for ongoing disability assistance could be determined.

The appellant's position is that she has poor cognitive skills and did not understand what information the ministry wanted or needed; that bank account #2 belonged to the family friend (renter) and the appellant had nothing to do with it. The appellant argued that her share of the rent was \$700 that she paid directly to the landlord through bank #1 and that this is supported in the March 2013 bank #1 statement.

Section 10(2) EAPWDR states 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.

The evidence is that the ministry sent several letters to the appellant, spoke with the appellant by telephone and in a personal interview requesting information to determine her eligibility for ongoing disability assistance. The appellant stated that she has cognitive issues and didn't understand what the ministry wanted but there is no medical evidence before the panel regarding the appellant's cognitive impairment(s). On June 12th, 2013 the appellant's mother spoke with the IO who advised the mother what the ministry needed and the ministry called bank #2 and obtained a contact person from the bank that the appellant could call and obtain the information but still the banking information was not provided to the ministry.

The panel finds the evidence supports that the ministry reasonably determined that the appellant failed to comply with the ministry's request to provide an explanation for the email money transfers and deposits shown on the bank statements for bank #1 and bank #2 as requested under section 10(2) EAPWDA. The panel finds the ministry's decision to declare that the appellant is ineligible for disability assistance, hardship assistance or a supplement for the prescribed period as set out in section 10(4) EAPWDA was reasonable.

In reference to the consequences for failing to provide information or verification when directed, section 28(1) EAPWDR states that for the purposes of section 10(4) of the EAPWDA, 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 panel finds that the ministry reasonably applied section 28 EAPWDR in declaring that the family unit is ineligible for disability assistance until the ministry's direction is complied with.

Therefore, the panel finds that based on the evidence the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.