

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry)'s reconsideration decision dated May 16, 2013, finding the Appellant is not eligible to continue to receive a supplement to prevent undue hardship while dealing with his outstanding arrest warrant in accordance with section 15.2 of the Employment and Assistance Act (EAA) and section 77.4 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

The relevant legislation is section 15.2 of the EAA and section 77.4 of the EAR.

PART E – Summary of Facts

The Appellant applied for income assistance in August 2012 but was denied because he had an outstanding warrant for his arrest in another province. The Appellant did, however, qualify for and receive a supplement to prevent undue hardship while he was dealing with his arrest warrant. He received this supplement for 6 months from August, 2012 to January, 2013.

In January the Ministry mistakenly made him eligible for regular income assistance and paid him the same for February and March, 2013.

On March 21, 2013, the Ministry informed the Appellant that he was not eligible for income assistance and was no longer eligible to receive a supplement to prevent undue hardship as that supplement was available for a maximum of 6 months only.

On April 19 the Ministry received the Appellant's Request for Reconsideration and granted the Appellant an extension to submit additional information.

On May 16 the Appellant submitted to the Ministry a letter from his lawyer stating that the Appellant was in the process of having the charges moved to this province and that this would take some time.

At the appeal hearing the Appellant introduced a document which was not before the Ministry at the time of the Reconsideration Decision. This was a letter from the Appellants lawyer dated June 11 stating that ... and also containing receipts for payments made on outstanding offence tickets issued to the Appellant.

The Panel considered the admissibility of this evidence under section 22(4) of the EAA which states:

- (4) In a hearing referred to in subsection (3), a panel may admit as evidence only
 - (a) the information and records that were before the minister when the decision being appealed was made, and
 - (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The panel concluded that the additional evidence did not fit either of the requirements as:

- (1) it was not before the Ministry at the time of the Reconsideration Decision, and
- (2) it is new evidence, not in support of evidence that was before the Ministry at the time of the Reconsideration Decision in that it speaks to a change in the circumstances of the Appellant subsequent to the Reconsideration Decision.

PART F – Reasons for Panel Decision

The issue under appeal is the Ministry's finding that the Appellant is not eligible to continue to receive a supplement to prevent undue hardship while dealing with his outstanding arrest warrant.

The relevant legislation is section 15.2 of the EAA and section 77.4 of the EAR:

Consequences in relation to outstanding arrest warrants

- 15.2** (1) No income assistance, hardship assistance or supplement may be paid to or for a family unit on account of an applicant or recipient for whom a warrant for arrest has been issued under
- (a) the *Immigration and Refugee Protection Act* (Canada), or
 - (b) any other enactment of Canada in relation to an indictable offence, and
- on whom the warrant has not been executed.
- (2) Despite section 5 and subsection (1) of this section, and subject to the regulations, the minister may provide
- (a) income assistance, hardship assistance or a supplement to or for the family unit on account of the person who is subject to the warrant, or
 - (b) a supplement to
 - (i) the person who is the subject of the warrant, for the purpose of the person returning to the jurisdiction that issued the warrant, or
 - (ii) the family unit, for the purpose of the family unit returning to the jurisdiction that issued the warrant.
- (3) If a family unit includes a person described in subsection (1), the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for income assistance, hardship assistance or a supplement, except as otherwise provided in the regulations.
- (4) In this section, "**indictable offence**" includes an offence that is deemed under section 34 (1) of the *Interpretation Act* (Canada) to be an indictable offence.

Supplement to prevent undue hardship while dealing with outstanding arrest warrant

- 77.4** (1) The minister may provide a supplement to or for a family unit of an applicant or recipient for whom a warrant for arrest within the meaning of section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act has been issued for the purposes of section 15.2 (2) (a) of the Act, if the minister considers that undue hardship will otherwise occur.
- (2) A supplement under this section may be provided only for the calendar month in which the supplement is requested.
 - (3) A supplement under this section may be provided for only three consecutive calendar months unless the minister authorizes up to three more monthly payments.
 - (4) Despite any other section of this regulation, the maximum amount of a supplement provided under subsection (1) is the difference between
 - (a) the maximum amount of income assistance determined under Schedule A for the calendar month for a family unit that matches the family unit in size but does not include a person for whom a warrant for arrest within the meaning of section 15.2 of the Act has been issued, and
 - (b) the amount of income assistance provided for the calendar month to the family unit.
 - (5) A recipient of a supplement must agree in writing to repay the amount paid under this section.

At the appeal hearing the Appellant's representative stated that she and the Appellant are now working with a lawyer, have paid the offence tickets and the charges against the Appellant are being moved to BC. She also stated that they would have done this much earlier, but were not aware how

to proceed.

The Ministry reiterated that, as the legislation allows the supplement to prevent undue hardship to be provided only for up to 6 months and the Appellant has received the supplement for that period (August 2012 to January 2013), the Ministry has no authority to continue to issue the appellant this supplement.

The panel finds that section 77.4(3) of the EAR clearly establishes that the supplement to prevent undue hardship can only be issued for a maximum of six months. The facts show that the Appellant has received the supplement for that period and therefore the ministry's decision to find the Appellant ineligible to continue to receive that supplement was reasonable.

Accordingly, the Panel finds that the Ministry's decision is a reasonable application of the relevant legislation and confirms the ministry's decision pursuant to sections 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.