

### PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated June 11<sup>th</sup>, 2013 in which the Ministry of Social Development (the “ministry”) determined, pursuant to section 10(4) of the *Employment and Assistance Act*, that the appellant was not eligible for further income assistance because, first, he failed to provide information requested by the ministry pursuant to section 10(1) of the said Act and, second, he failed, pursuant to section 34(4) of the *Employment and Assistance Regulation*, to attend in person at the ministry office when required to do so pursuant to section 34(1) of the said Regulation.

### PART D – Relevant Legislation

*Employment and Assistance Act* (EAA), section 10  
*Employment and Assistance Act Regulation* (EAR), section 34

## PART E – Summary of Facts

The written evidence before the ministry on reconsideration which was included in the appeal record was comprised of the following documents:

1. Letter [determined by the panel to be dated on or about April 5<sup>th</sup>, 2013] from the ministry to the appellant (the "First Letter") advising him that his file was to be reviewed to confirm his eligibility for continued financial assistance and instructing him to provide certain financial information as outlined in a form enclosed with the letter.
2. Letter [determined by the panel to be dated on or about May 1<sup>st</sup>, 2013] from the ministry to the appellant (the "Second Letter") advising him that he was required to attend an eligibility review (the "Review") on May 9<sup>th</sup>, 2013.
3. Letter [determined by the panel to be dated on or about May 9<sup>th</sup>, 2013] from the ministry to the appellant (the "Third Letter") advising him that he was no longer eligible for income assistance.
4. Handwritten comment by the appellant dated May 24<sup>th</sup>, 2013 forming Section 3 – Reason for Request for Reconsideration of the Employment and Assistance Request for Reconsideration (the "Request") in which he:
  - (a) stated "I admit I didn't attend the [eligibility] review ... because I have health issues ... and am still not doing well (I have a verry high prescription of PTSD med.) and during that period of time I had to check my self in Phycatric Clinic where I spend almost 2 weeks";
  - (b) advised that after he returned from the Clinic he didn't receive the Second Letter right away because he does not have access to the mail but has to wait until his landlord delivers it to him; and
  - (c) provided the ministry contact information for his case manager at the psychiatric clinic and asked the ministry to contact this person for further information about his medical condition.

Additionally, the oral evidence introduce by the appellant at the hearing included the following:

1. His health issues, which he described globally as Post Traumatic Stress Disorder, include mood swings and almost daily panic attacks. He takes medication to control these symptoms but they have worsened over the past six or so months and his doctor has changed his medications about four times during that period. When he feels a panic attack coming on he takes his medication but it takes several hours before the symptoms are under control.
2. He is in the care of a doctor who has an office at a psychiatric clinic in a nearby city and he uses public transportation when he goes to the clinic. He has attended at the clinic about once a week over the past two and one-half years.
3. The "clinic" referred to in time 4(a), above, is not the psychiatric clinic referred to in the previous item but is a home that provides temporary accommodation and help for persons such as himself who are experiencing symptoms that are particularly unmanageable. His recollection is that he spent approximately one week beginning April 23<sup>rd</sup> or 24<sup>th</sup>, 2013 and another week (in a different such home) beginning approximately May 7<sup>th</sup>, 2013.
4. He shares a basement suite in a private home with one or two roommates. The tenancy agreement is not in his name. Since there is no rental agreement in his name, he cannot provide the ministry with a copy of the rental agreement or a receipt for the rent in his name. Nor can he provide a bill from BC Hydro bill as that expense is included in the rent.
5. He is dependent on the landlord of the house in which he shares a basement suite for the delivery of his mail. The landlord lives upstairs where the mailbox is located.
6. He has no current, operating bank account. He had a bank account but when he was released several years ago from prison after serving a period of incarceration he had lost his ID and the bank refused to give him access to his account. He cashes cheques at Money Mart and pays

cash for his purchases. Because of this he says he was unable to provide the ministry with banking information.

7. His telephone is a pay-as-you-go disposable phone and, accordingly, he cannot provide the ministry with a telephone bill.
8. On or about April 22<sup>nd</sup>, 2013 he delivered a rent receipt (in the name of one of his roommates) to the ministry and at that time he generally explained to a ministry caseworker the circumstances set out in items 1 through 7, above. He thought that the ministry was satisfied with the information he had provided.

In response to questions from the panel, the appellant agreed that:

1. He received the First Letter with its enclosure but had not provided the ministry with any documents other the rent receipt.
2. He received the Second Letter but not until after the date set for the Review.
3. He received the Third Letter and shortly thereafter went to the ministry office where he completed Part 3 of the Request.

The ministry submitted that most of the oral evidence introduced by the appellant was inadmissible. However, when asked to provide specific examples of evidence that was not "in support of the information and records that was ... before the minister when the [reconsideration] decision" ... was made", the ministry was unable to provide any such examples. The panel was of the opinion that the oral evidence enumerated above was in fact in support of the evidence before the minister on reconsideration and, accordingly, the panel admitted that evidence pursuant to section 22(4) of the EAA.

The ministry did not seek to introduce any additional evidence at the hearing.

The panel found as facts:

1. The appellant received the First, Second and Third Letters.
2. The appellant read and understood the contents of the three Letters.
3. The appellant met with a ministry caseworker on at least one occasion after the receipt of the First Letter and prior to reconsideration and generally informed the caseworker of the matters set out in items 1 through 7, above.
4. Other than the rent receipt, at no time material to this appeal did the appellant provide the ministry with any documentary evidence to confirm his oral statements concerning his shelter expenses, income, assets, employment or medical condition.
5. The Review was scheduled for May 9<sup>th</sup>, 2013 and the Second Letter advising the appellant of the Review was dated on or about May 1<sup>st</sup>, 2013.
6. The appellant was unable to attend the Review because he did not receive the Second Letter until after the date set for the Review and, in any event, on the date scheduled for the Review his mental problems were such that he was residing in a supportive home for mentally ill persons in a nearby city.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether, pursuant to section 10(4) of the EAA, the minister reasonably declared that the appellant was ineligible for continued income because he had not provided the minister with requested information or alternatively, whether, pursuant to section 34(4) of the EAR, the appellant was ineligible for continued income assistance because he had not attended at the ministry office for a scheduled eligibility review.

The relevant legislation is as follows:

### EAA

#### 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.

### EAR

#### Requirement for eligibility audit

34 (1) For the purposes of auditing eligibility for assistance or ensuring a recipient's continuing compliance with the Act and the regulations, the minister may do either or both of the

following:

- (a) require the recipient to attend in person on the date, and at the ministry office, specified by the minister;
  - (b) require the recipient to complete a form specified by the minister for use under this section and deliver the form to a ministry office specified by the minister.
- (2) A recipient who is required under subsection (1) (b) to complete a form but who is not required to attend in person at a ministry office must deliver that form to the specified ministry office within 20 business days after being notified of the requirement to complete the form.
- (3) Delivery of the form under subsection (2) may be made by
- (a) leaving it with an employee in the ministry office, or
  - (b) mailing it to that office.
- (4) A family unit ceases to be eligible for assistance if
- (a) a recipient in the family unit fails to attend in person at the ministry office when required to do so by the minister under subsection (1) (a), or
  - (b) a recipient in the family unit fails to complete and deliver the form when required to do so by the minister under subsection (1) (b).

The position of the appellant on appeal was that he had not provided the ministry with documentation (other than the rent receipt which did not name him as a tenant) because he had no documentation of the sort specified in the enclosure that accompanied the First Letter. The rental agreement for the basement suite he shared with a roommate was in the name of the roommate and he did not have a copy of that agreement. Nor could he produce a hydro bill because that expense was included in the rent. He had no assets nor any income so he could produce no documents in respect of these matters. His only bank account was inaccessible to him as it had been frozen several years before because he could not provide the bank with proof of his identity (having lost all such documents following his release from prison several years ago) and so he was unable to provide the ministry with banking records. Since his account was inaccessible to him he cashed his cheques at Money Mart and transacted his financial affairs with cash.

As for his failure to attend the Review, the position of the appellant was that at the material time his mental illness had become symptomatic to the extent that he had to move into a supportive home for mentally ill persons in a nearby city. He was in the home on the date of the Review and, moreover, because of his absence from the residence to which the Second Letter was mailed, he did not receive that letter until after the date of the Review.

The position of the ministry was that the appellant had an obligation to deal with the request for information set out in the First Letter in a responsive way. He should have provided some credible documentation regarding his shelter costs but there was no evidence that had made an effort to do so. Though the ministry deemed that it was the appellant's responsibility to provide information about his shelter expenses, the ministry had nonetheless taken the initiative in contacting the appellant's landlord only to be advised that the appellant no longer lived at the address he had provided the ministry. Further, the appellant informed the ministry of a bank account (that he said he could not

access) but provided no further information regarding the account leaving the ministry unable to ascertain any particulars concerning that account. Similarly, the appellant provided the ministry with an explanation for falling to attend the Review (his temporary residence in a supportive home) but he failed to provide the kind of corroborating evidence concerning his absence that the ministry deemed should have been readily available to the appellant, such as a letter from his doctor or the psychiatric clinic or even the supportive home, with dates, would have provided the ministry with something tangible to confirm the appellant's unsupported statements. But the appellant took no such proactive steps with regard to any of these matters and simply acted on what appeared to be the assumption that he was under no obligation to document any of his statements, particularly where to do so was reasonably straightforward. This, the ministry argued, fell well short of the obligation imposed on the appellant by section 10(1) of the EAA, that is the obligation to supply information and provide verification of that information.

The panel was of the view that the evidence with respect to the first branch of this appeal, the appellant's duty, pursuant to section 10(1) of the EAA, to document the particulars of his shelter and financial status conclusively demonstrated that the appellant fell well short of his statutory obligations and that it was, therefore, reasonable for the ministry to find that he had ceased to be eligible for financial assistance. That is sufficient for the panel to make its decision in this appeal.

However, the panel wishes to comment also on the second branch of this appeal, the obligation of the appellant to attend the Review. The panel found that it was unreasonable for the ministry to have expected the appellant to attend the Review because he did not receive the Second Letter in time to attend. The appellant so informed the ministry in the Request but the ministry took the view that this information was insufficient because it was not corroborated by a third party. No doubt it would have been prudent, even sensible, for the appellant to have provided this sort of corroboration but, unlike the statutory obligation to provide documentation in connection with section 10 of the EAA, there is no such statutory obligation in connection with section 34 of the EAR

In this appeal, it is sufficient for the panel to find that the ministry acted reasonably in respect to either the first or second branch of the appeal. Accordingly, having been found by the panel to have acted reasonably in respect of the first branch, the panel concludes that the decision of the ministry – that the appellant was ineligible for continued income assistance– was a reasonable application of the relevant statutory provision to the appellant. The June 11<sup>th</sup>, 2013 reconsideration decision is confirmed.