

PART C – Decision under Appeal

The decision under appeal is the ministry's August 15, 2013 reconsideration decision that pursuant to section 10 of the Employment and Assistance Act, and section 32 of the Employment and Assistance Regulation, the appellant is not eligible for assistance until he has complied with the direction to provide the information of his previous employer.

PART D – Relevant Legislation

Employment and Assistance Act (EAA)
Information and verification, Section 10

Employment and Assistance Regulations (EAR)

) Consequences of failing to provide information or verification when directed, Section 32(1)

PART E – Summary of Facts

The appellant agreed to the ministry's request to allow a ministry staff member to attend the hearing as an observer.

The evidence before the ministry at reconsideration was

- A request for reconsideration form stating the appellant is a single employable recipient receiving income for support only, that he was a farm worker, but quit his job due to unfair working conditions. The appellant told the ministry he was asked to work an extra eight hours of overtime at his regular rate of pay. To support the appellant's claim, the ministry asked for contact information for the employer. The appellant stated he did not know the name of the employer or farm, did not have any contact information, and was unable to attend the farm to get the contact information. The appellant said he did not have anywhere to live as of August 2013, that he provided all the information he had, and was being forthright with all information.
- A June 14, 2013 bank document showing a \$194.35 cheque, with \$190.00 cash to customer and \$4.35 deposit, and a ministry monthly report form showing employment income of \$194.35.

At the hearing, the appellant's advocate distributed a written submission elaborating upon the appellant's experience as an employee at the farm and addressing the reconsideration decision.

From the submission

The appellant advised he met an acquaintance on the street, who told him he had recently been hired to work at a farm, and that there may be a job for the appellant. The appellant never saw an advertisement for the position, did not formally apply for the job nor have any contact information about the prospective employer, but went with the acquaintance to the farm the next day where he was offered a position. He accepted, understanding he would be paid \$10.25 an hour and would work eight hours a day. There was no written employment contract. The appellant advised he contacted the ministry to report he had a job. Subsequently the acquaintance quit working at the farm, and the appellant has not since seen him, and does not have his contact information.

The employer told the appellant he would have to do some overtime work, and although this was not his understanding of the position, the appellant agreed. The employer then told the appellant he would be expected to work eight hours of overtime amounting to sixteen hours a day at \$10.25 an hour, with no additional overtime pay. Believing this to be unfair working conditions and not the agreed to terms of employment, the appellant quit without notice after working a short time.

On June 14, 2013 the appellant cashed his \$194.35 pay cheque, and on July 24, 2013 reported to the ministry he had left his job because the employer wanted him to work eight hours overtime. He declared the \$194.35 employment income. On the same day he requested from the bank a copy of his pay cheque, but was informed all they could provide was evidence of the transaction, which he gave to the ministry.

The ministry asked for contact information for the employer, to determine whether the appellant had just cause to leave his job. The appellant replied he did not know the name of the employer or the farm, and had no contact information. He was unable to provide a copy of the original pay cheque. The appellant was denied assistance for August for failing to provide information pursuant to Section 10 of the Act. The appellant requested a reconsideration of the ministry's decision. The reconsideration adjudicator concluded the appellant was not eligible for assistance until he complied

with the direction to provide employer information, pursuant to section 32(1) of the Employment and Assistance regulations.

Appellant

The appellant said he travelled by bus to work at the farm, where he worked for about eighteen days in total. He is not sure of the employer's name which he said was Italian and difficult for him to pronounce. He could describe the farm and stated he knows how to get to the farm, but did not feel comfortable about going back to the employer to obtain the information for the ministry as he did not want the employer involved in his private life. He "walked away" from the money he earned above the one cheque he received. He said he is trying to be productive and proactive in finding employment, and has been honest.

Ministry

The ministry confirmed the requirement to comply with the request for information was ongoing. In addition, the Ministry stated the information was requested because under Section 13 of the Employment and Assistance Act, if a person in receipt of benefits voluntarily left employment without just cause, that person then is ineligible for benefits for a period of two calendar months under section 29 of the EAR.

The panel determined the additional evidence was admissible under section 22(4) of the Employment and Assistance Act as it was in support of the records before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's decision that the appellant is not eligible for assistance, until he has complied with the direction to provide contact information for his previous employer.

Relevant legislation

Employment and Assistance Act

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.

Employment and Assistance Regulations

- i) **Consequences of failing to provide information or verification when directed**
- i) **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.**

Parties' Positions

The ministry acknowledged the level of detail provided at the hearing was considerable but not available before the hearing date. The ministry argued it was reasonable to require the appellant to submit employer information, as required by the legislation, to enable the ministry to verify whether the appellant left his employment with just cause, and to determine whether there was sufficient explanation why the information was not available. The ministry further argued that it is reasonable to ask someone to go to their former place of employment to find the name or address and bring back

the information.

The appellant argued he consistently maintained he does not have the requested information, is unable to provide it, and given his circumstances, the ministry unreasonably applied the legislation in determining the appellant was ineligible for assistance for failing to provide information. While acknowledging the onus to provide the information is on him, the appellant argued there is nothing in the reconsideration decision indicating the ministry investigated or analysed his explanation, and there is no evidence contradicting his account of his employment experience or earnings. The appellant further argued that the ministry could have issued a warning letter to put the appellant on notice of what they required and the consequences of not providing the information, as they have done in other cases.

Panel's Decision

The Employment and Assistance Act Section 10(4) says if an applicant fails to comply with a direction under that section, the minister may find the family unit ineligible for income assistance.

The Employment and Assistance Regulations 32(1) states the period for which the minister may declare assistance ineligibility lasts until the applicant or recipient complies with the direction.

The onus is on the appellant to provide the employer information required by the ministry. The panel accepts in the unusual circumstances of the appellant obtaining employment without knowing the name or contact information of his employer, combined with the lack of a copy of his one salary cheque and his abrupt departure from the job, that he did not have the required information at hand. Nevertheless, although distasteful to the appellant, it was within his power to return to the place of employment to obtain that information and to provide it to the ministry.

The panel finds the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.