

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") reconsideration decision dated February 17, 2014 which held that the Appellant had been denied income assistance for failing to attend an appointment for an eligibility review as set out in section 34 of the Employment and Assistance Regulation ("EAR").

PART D – Relevant Legislation

Section 34 of the Employment and Assistance Regulation ("EAR").

PART E – Summary of Facts

The Appellant was not in attendance at the hearing. After confirming the Appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration was as follows:

1. Letter from the Ministry dated December 17, 2013 to the Appellant informing the Appellant that her file has been selected for review.

The Appellant was asked to provide current documents and the Appellant was booked a telephone appointment for January 7, 2014. The Ministry notified the Appellant that she is required to send all her documents a minimum 2 days prior to the appointment and gave instructions on the method of delivery including fax, mail and hand delivery.

The second step in the review process was an eligibility interview upon receiving all the requested documents which was stated to be either in person or by phone.

The letter listed items that are to be provided if they are applicable to the recipient, including shelter documents for renters or homeowners, income documents, assets and self-employment documents.

2. Letter from the Ministry dated January 7, 2014 to the Appellant informing the Appellant that she did not answer the phone for the appointment for eligibility that was scheduled on January 7, 2014 as noted in the letter of December 17, 2013.

The Ministry scheduled a second appointment for January 17, 2014 and advised that she would receive a phone call on a specific number. The Ministry advised that if the number listed is not in service, to advise of a number where they can contact her two days prior to the appointment date.

The Ministry stated that the February income assistance cheque will be held pending completion of the interview.

The Ministry also stated that if the Appellant does not contact the Ministry by the date above, the assistance will be discontinued pursuant to section 10 of the EAA ("a person who fails to provide information and/or verification to the ministry when required") and section 34 of the EAR ("a person who fails to attend an eligibility review when required by the ministry, ceases to be eligible for assistance").

3. Ministry of Social Development Employment and Assistance Request for Reconsideration form dated February 5, 2014 completed and signed by the Appellant (the "Reconsideration Form")

The Appellant indicated under Reasons for Reconsideration that she disagreed with the Ministry's decision to deny her assistance. The Appellant indicated that she is attending school and not able to work due to her mental instability. She indicated that she has no other income and is fearful that without assistance she will be "homeless." The Appellant confirmed that her doctor wrote a letter stating why she is unable to work.

In a letter attached to the Reconsideration Form, the Appellant asked that the Ministry

reconsider her eligibility for assistance as she is in "desperate need of assistance." The Appellant indicated that she is working on finishing her grade twelve so she can move on to possibly college education and establish a career. The Appellant indicated that she has no other income besides income assistance.

The Appellant also stated that she had given all the requested information to the Ministry.

4. Rent receipt dated January 2014 received by the Ministry February 5, 2014 in the amount of \$325.00.

For the hearing, the appellant provided the following additional documentary evidence:

1. Employment and Assistance Appeal Tribunal Notice of Appeal form dated March 10, 2014 completed and signed by the Appellant (the "Appeal Form").

The Appellant stated that she disagrees with the reconsideration decision as she is in extreme need of assistance and that she confirms this with her doctor's note which states she is unable to work due to "severe mental conditions." The Appellant states that she is close to eviction and will be living on the street.

The Appellant explains that she was not able to receive calls of appointment as she cannot afford a phone and she was not informed of another appointment after going into the office to appeal her denial.

2. Referral Letter dated March 10, 2014 from the Appellant's medical practitioner stating that at the present time the Appellant is "unfit" to work because of "severe medical issues." The practitioner anticipated the Appellant would not be able to work until the end of May at the earliest.
3. Letter (no date) from the Appellant's landlord stating that he is terminating her tenancy as of April 1, 2014 as she remains in arrears on rent and utilities.

There is no additional oral evidence provided by the Appellant as she did not attend the hearing.

PART F – Reasons for Panel Decision

The issue whether the Ministry's decision to deny the Appellant income assistance for failing to attend an appointment for an eligibility review contrary to section 34 of the EAR is a reasonable application of the legislation in the circumstances of the Appellant or is reasonably supported by the evidence.

The relevant legislation relied on by the Ministry in the Reconsideration Decision is section 34 of the EAR.

Section 34 EAR addresses the requirement for eligibility audit and is reproduced below:

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. (B.C. Reg. 84/2012)

(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).

Section 34 of the EAR is intended to assist the Ministry in auditing eligibility for assistance or ensuring a recipients continuing compliance with the relevant legislation and allows the Ministry to 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 minster for use under this section and deliver the form to a ministry office specified by the minster."

Section 34(2) of the EAR states that if the recipient is required under subsection (1)(b) to complete the form but who is not required to attend in person at a ministry office must deliver the form within 20 business days after being notified of the requirement to complete the form. The options given to the recipient for delivery of the form are listed as hand delivery or mail pursuant to section 3(a)(b).

Section 34(4) specifically states that a recipient ceases to be eligible for assistance if the recipient "fails to attend in person at the ministry office when required to do so by the minister under subsection (1)(a) or ceases to complete and deliver the form pursuant to subsection (1)(b).

The Ministry argued the Appellant was not eligible for assistance as she failed to attend two eligibility appointments and stated that "[a]s a result of failing to attend two eligibility interview appointments as requested by the ministry, you are ineligible for assistance as per section 34 of the EA regulation."

The Ministry relied on two letters mailed to the Appellant dated December 17, 2013 and January 7, 2014. In the letter dated December 17, 2013, the Ministry directed the Appellant to provide them with documents related to shelter.

The Appellant was asked to provide the Ministry with the applicable documents, including current rent receipts, current utility bills, property insurance and property tax assessment statements and proof of strata fees or maintenance charges; proof of all sources of income; account information and investments documents. The Appellant was also scheduled to attend a telephone appointment for January 7, 2014.

The Ministry explained in the letter that the second step in the review process was an eligibility interview upon receiving all the requested documents. The Ministry stated that they would advise the Appellant by letter of the interview time and whether the interview would be in person or by phone upon receiving the requested documents.

The Ministry cautioned that the failure to provide the requested documents by the date of their interview may delay the Appellant's assistance.

In the letter to the Appellant dated January 7, 2014 the Ministry informed the Appellant that she failed to answer her phone and therefore failed the eligibility review on January 7, 2013. The Appellant was rescheduled for a second eligibility review appointment January 17, 2014. The letter noted that the Appellant's February cheque would be held pending completion of the January 17, 2014 interview.

The Appellant was again asked to provide the requested documents at least two days prior to the interview. The Ministry informed the Appellant that her failure to contact the Ministry on the date of her interview will result in the discontinuation of her assistance.

The Appellant did not attend her second eligibility interview and the Ministry notified the Appellant that she was no longer eligible for assistance.

The Appellant argued that she had provided all the requested information to the Ministry she is in extreme need of assistance and provides a Referral Letter from her doctor dated March 10, 2014 which confirms the Appellant is unable to work due to "severe mental conditions."

The Appellant states that she is also close to eviction and will be living on the street and provides a note written by her landlord confirming the same.

The Appellant explains that she was not able to receive calls for appointments as she cannot afford a

phone and she was not informed of another appointment though she does not clarify which appointment she is referring to and that she has given all the requested information to the Ministry.

Panel Decision

The Ministry in their Reconsideration Decision relied on section 34 of the EAR to deny the Appellant assistance for failing to attend an appointment to determine her continued eligibility of income assistance.

The Ministry is given the discretion to require a recipient to attend in person to the Ministry office and/or complete a form and either mail or hand-deliver a standard form to the Ministry office. If the recipient fails to comply with the Ministry's direction, the Ministry can render a recipient ineligible for assistance pursuant to subsection 1(a) of the EAR.

In the letter dated December 17, 2014 the Ministry requested a telephone interview and directs the Appellant to provide applicable documents. The Ministry notifies the Appellant that the failure to provide the requested documents by the date of their interview may delay the Appellant's assistance.

In the letter dated January 7, 2014 the Ministry notified the Appellant that failure to attend the interview will result in the discontinuance of her assistance.

The Ministry gave evidence at the hearing that it is common for recipients to attend their eligibility interview by telephone. The practice allows the Ministry to accommodate those who live in more remote areas and those who may not have transportation. The Ministry noted that the form is completed by the Ministry worker over the telephone as part of the telephone interview.

The Appellant was aware she had a telephone interview scheduled on two different occasions as outlined in the letters to the Appellant from the Ministry dated December 17, 2013 and January 7, 2014. The letter dated January 7, 2014 is clear that the failure to attend the last interview will result in the Appellant being denied income assistance. The Appellant did not attend her telephone interview.

While section 34(1)(a) is clear that a recipient is no longer eligible if she "fails to attend in person" at the "office of the minister" the practice of the Ministry is to allow for telephone interviews to conduct the eligibility review in order to accommodate individuals, particularly those who are in more remote areas and those may not have transportation.

A recipient is required to provide requested documentation and information by way of a form or questionnaire to be used by the Ministry as a means to ensure continued eligibility of income assistance whether this information is obtained in person or by telephone.

The purpose of the interview is to give the Ministry the opportunity to gather information to accurately determine eligibility.

The Panel finds that the Appellant was notified by the Ministry that she was required to attend two appointments and by failing to attend would become ineligible for income assistance and the Appellant chose not to attend the appointment. The Ministry found as required by legislation that Appellant was no longer eligible for income assistance pursuant to section 34(1)(a) of the EAR .

The Panel therefore finds the Ministry's determination that the Appellant was denied income assistance for failing to attend eligibility review appointments was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.