

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 31, 2013 which found that the appellant is not eligible for income assistance under Section 10 of the *Employment and Assistance Act* (EAA) for failing to comply with a direction to supply requested information and verification.

The ministry also found that the appellant continues to be ineligible for income assistance pursuant to Section 32 of the *Employment and Assistance Regulation* (EAR) because he has not fully complied with the direction since requested information remains outstanding, namely:

- Bank statements for June, July and August 2013; and,
- Confirmation that his son was in his care from May 2011 through August 2013.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 32

Employment and Assistance Act (EAA), Section 10

PART E – Summary of Facts

The appellant did not attend the hearing and the advocate stated that the appellant is unable to attend today as he is sick, but he had given authority for the advocate to proceed with the hearing on his behalf. A Release of Information form had been provided by the appellant authorizing his advocate to make decisions on his behalf.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated September 18, 2013 from the ministry to the appellant which states in part that the appellant's file has been selected for review and that information may be requested in order to determine or audit eligibility for assistance; the ministry stated the following information or documentation is required by October 4, 2013:
 - Current rent receipts and utility bills;
 - Pay statement or pay stubs for all income for the period of March 1, 2011 to September 18, 2013;
 - Record of employment from all employers during the period of March 2, 2011 to September 18, 2013;
 - Documents to confirm the status of any claims in his name settled since March 2011;
 - Profiles and statements for all bank accounts, sole or joint, for the period of June 18, 2013 to September 18, 2013;
 - Statements for all investments, RRSP's, pension funds and any other assets;
 - Income tax Notices of Assessment for 2010, 2011 and 2012;
 - Confirmation that he can provide like school records, medical records, etc. that confirm that his son was in his care from May 2011 through August 2013.
- 2) Letter dated October 4, 2013 from the ministry to the appellant which states in part that the appellant's file has been selected for review and that information may be requested in order to determine or audit eligibility for assistance; the ministry stated the following information or documentation is required by October 21, 2013: (list as set out in September 18, 2013 letter);
- 3) Letter dated October 21, 2013 from the ministry to the appellant which states in part that the appellant to provide information by way of letters dated September 18 and October 4, 2013 and the ministry has not yet received the requested information. As the appellant's eligibility cannot be determined, he is no longer eligible for assistance. His file will be closed on November 19, 2013;
- 4) Shelter Information form dated October 24, 2013 with a start date of September 1, 2013 for a unit at a monthly rental of \$450;
- 5) Bank Profiles dated November 21, 2013 and November 28, 2013, and bank statements for two accounts in the appellant's name covering the periods September to October 2013 for one account and August to September, 2013 for the other account;
- 6) Shelter Information form dated November 18, 2013 with a start date of December 1, 2013 for a unit a monthly rental of \$560;
- 7) Letter dated December 16, 2013 from the appellant's advocate in which he wrote that several of the requests for information set out in the ministry's letters do not pertain to the appellant. The appellant has not worked since 2011 and has never had a WCB or ICBC claim, therefore, the ministry asked for documentation that the appellant would never be able to provide. The appellant has already submitted his banking information and intends to rent as well as rent receipts for his previous residence. The only outstanding document is confirmation that his son lived with him while he was on income assistance. Through numerous efforts, we have been unable to locate the appellant's son. It is suggested that an overpayment be created on

the appellant's file while he tries to locate some form of verification that his son was in his care. The appellant has been homeless for quite some time; and,
8) Request for Reconsideration dated November 28, 2013.

At the hearing, the advocate provided a letter from the ministry to the appellant dated December 2, 2013, which states in part that the next income assistance cheque issue day is December 18, 2013 and it will be held until an Employment Plan (EP) has been received.

In his Request for Reconsideration, the appellant wrote that he would like the document held until he can submit further evidence. In the Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision because the ministry was unreasonable in its interpretation of Section 10 of the EAA as he was asked to submit several documents.

At the hearing, the advocate highlighted the wording of section 10(2) of the EAA which allows the ministry to direct a recipient to supply verification of information if that information relates to the eligibility of the family unit for income assistance. The advocate stated that the appellant received what he would call a "form letter" from the ministry which asked him to submit various documents, including bank statements and confirmation that the appellant's son was in his care. The advocate stated that the ministry has a file of information about the appellant and the appellant had not previously said that he was involved with ICBC or WCB or that he had been employed, so these documents should not have been requested. The appellant has been homeless and has substance abuse issues and when he showed up at these offices requesting information, he has been considered by staff to have mental health issues. The advocate stated that the information requested by the ministry needs to be more specific so the appellant is not put into stressful situations attempting to obtain information that does not apply to him. Several bank statements were provided by the appellant and a few were missed because so many other documents were requested. The advocate stated that the ministry agreed at reconsideration that the Notices of Assessment for Revenue Canada were not required, for example, yet the appellant had spent time trying to obtain these documents.

The advocate stated that the interactions between the ministry and the appellant have also been confusing since the letter dated December 2, 2013 directs the appellant to attend at a different local office to enter into an EP. The advocate stated that the appellant called the ministry in his presence and the appellant started arguing with the investigative officer but, at that point, the appellant had already been denied income assistance. On December 16, 2013, the appellant was being told both that he needed to get further verification and also that he did not need it. The appellant went to the school that his son had attended to request information but the school was not receptive to providing the information to the appellant. The advocate stated that the appellant and his son lived with the appellant's parents for a period of time, but the appellant has since had a "falling out" with his parents and cannot get information from them. The appellant's son has moved to another community in northern British Columbia and the appellant does not have a contact number for him. The appellant collected the federal child tax benefit for his son until December 2013 and there was no issue.

The advocate stated that key information has not been produced on the appeal since the appellant went to his local MLA who said that this situation would be investigated and, if the dates that the appellant stated his son resided with him did not match up, there would be a recommendation for a fraud charge against the appellant. After this was looked into and the ministry district office was

contacted, the appellant agreed to an overpayment of \$1,800 being added to his file, with \$20 deducted from his cheque each month, with no recommendation for a charge against him. The advocate stated that it was expected that the ministry district office would communicate the terms of this arrangement to the local office, under a natural justice duty to disclose.

The ministry relied on its reconsideration decision. The evidence of the ministry included that the appellant is a sole recipient of income assistance. At the hearing, the ministry stated that an investigation was commenced since a third party allegation had been received that the appellant's son had not been in the appellant's care for the past 5 years. On September 18, 2013 the ministry mailed the appellant a letter to his address on file requesting documents by October 4, 2013, as listed in the letter. As the information had not been received by October 4, 2013, a second letter was mailed to the appellant requesting that he submit the information listed by October 21, 2013. As the information had not been received by the ministry by October 21, 2013, a third letter was mailed to the appellant advising that he was no longer eligible for income assistance due to failure to provide the requested information. The ministry stated at the hearing that the appellant did not contact the ministry during this time and the mail was not returned to the ministry. If the appellant had contacted the ministry, the list of documents required would have been adjusted to reflect his situation based on the information provided by him.

On October 29, 2013, the appellant contacted the ministry as he had not received his November assistance. The appellant stated that he had not received the ministry's letters and copies of the 3 letters were then provided to him. The ministry provided an extension until November 13, 2013 for the appellant to provide the information requested in the letters. As the information had not been received by November 13, 2013, the appellant was denied assistance on November 20, 2013 for failure to provide information. At the hearing, the ministry stated that the ministry requests information relating to income and assets and living arrangements as these all relate to the recipient's eligibility for assistance. The standard time frame provided for providing the information requested is 2 weeks and an additional week can be provided, if needed. The ministry stated that it depends on any contradictory evidence that the ministry may have on file as to whether a written statement by the recipient regarding certain facts will be accepted as satisfactory without further verification. The ministry stated at the hearing that there was nothing in the file to indicate that an arrangement had been reached between the appellant and the district office of the ministry, and the ministry did not previously have this information. The ministry pointed out that it did not have the appellant's consent to deal with the advocate on his behalf until December 16, 2013.

Admissibility

The ministry did not object to the admissibility of the letter dated December 2, 2013, and did not raise an objection to the additional oral evidence on behalf of the appellant except to note that this was the first time the claim of an agreed arrangement between the ministry and the appellant had been raised. The panel admitted the letter, pursuant to Section 22(4) of the *Employment and Assistance Act* (EAA), as providing information regarding contact between the ministry and the appellant at the relevant time and being in support of information and records that were before the ministry on reconsideration. The panel did not admit the evidence relating to an arrangement having been reached between the ministry and the appellant regarding an overpayment being added to his file with continuing eligibility for income assistance, as this did not meet the requirements for admissibility under Section 22(4)(a) or (b) of the EAA.

Under Section 22(4)(a), the panel may admit as evidence the information and records that were before the ministry when the decision being appealed was made. The advocate argued that a higher level of the ministry, or the district office, was a party to the arrangement and it was assumed this information would be communicated to the local office and, therefore, even though "the left hand does not know what the right hand is doing", the ministry was aware of the arrangement at the time of the reconsideration. The advocate argued that he did not communicate this information to the ministry as he does not want to be seen to be directing the ministry in any way.

Section 22(4)(a) of the EAA requires that the information must be "before" the ministry when the reconsideration decision is made in order to be admissible on appeal, and the panel finds that the information must be presented before the reconsideration officer specifically and must exist as part of the record. The rules of natural justice require that the adjudicator hear and consider all the evidence offered in support of the party's position. While the advocate's letter dated December 16, 2013, which was provided prior to reconsideration, refers to a suggestion that an overpayment be created and that the appellant pay back the money while he continues his efforts to seek verification regarding his son, the panel finds that there is no information "before the ministry on reconsideration" that an arrangement to this effect had been reached between the appellant and the ministry.

Under Section 22(4)(b) of the EAA, the panel may admit as evidence oral or written testimony *in support of* the information and records that were before the ministry when the decision being appealed was made. The advocate's letter dated December 16, 2013 suggests the potential for an arrangement between the ministry and the appellant, and the advocate stated at the hearing that an arrangement had in fact been reached, as had been suggested in his letter, between the district office of the ministry and the MLA's office on behalf of the appellant. The panel finds that an allegation of an arrangement having been finalized with the ministry on specific terms is of a different nature from a suggestion that the matter be resolved and is, therefore, not "in support of" the information that was before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, that the appellant is not eligible for income assistance under Section 10 of the *Employment and Assistance Act* (EAA) for failing to comply with a direction to supply requested information, and continues to be ineligible for income assistance pursuant to Section 32 of the *Employment and Assistance Regulation* (EAR) because he has not fully complied with the direction since requested information remains outstanding, namely: 1) bank statements for June, July and August 2013 and 2) confirmation that his son was in his care from May 2011 through August 2013, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 10 of the *Employment and Assistance Act* (EAA) provides:

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.¹⁰

Section 32(1) of the *Employment and Assistance Regulation* (EAR) provides that:

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.

Ministry's position

The ministry's position is that under Section 10 of the EAA, the ministry may direct a recipient to supply information for the purpose of auditing eligibility for income assistance or seek verification of information and if the recipient fails to comply with the direction the ministry may declare the family unit ineligible for assistance for a prescribed period. The ministry argued that the appellant failed to submit all the information requested by the ministry and is, therefore, ineligible for income assistance. The ministry acknowledged that the appellant submitted information or a satisfactory explanation for all the requested items except the appellant's bank statements for June, July and August 2013 and confirmation from the school or doctor and a written statement from the appellant of the time that the appellant's son resided with him. The ministry argued that the information has not been provided by the appellant to the date of the decision and, therefore, the appellant is ineligible for assistance until he complies with the direction, pursuant to Section 32 of the EAR.

Appellant's position

The appellant's position is that Section 10(2) of the EAA allows the ministry to request verification of information if that information relates to the eligibility of the family unit for income assistance and the ministry requested many documents from the appellant that the ministry should have known did not apply to him. The advocate argued that while the bank statements relate to the appellant's eligibility, he has provided most of the statements requested by the ministry but missed some months because so many other documents were requested at the same time. The advocate argued that the appellant has tried to obtain the information regarding his son residing with him from his son's school, but the school did not provide this information to him. The advocate argued that, given the appellant's circumstances of being homeless at times and suffering with substance abuse issues, as well as the confusion in his interactions with the ministry, he has made reasonable efforts to obtain the requested information.

Panel decision

Pursuant to Section 10(1)(e) and (b) of the EAA, the ministry may direct a recipient to supply the ministry with information, within the time and in the manner specified by the ministry, for the purposes of determining or auditing eligibility for income assistance and, pursuant to Section 10(2) may direct a recipient to supply verification of information received if the information relates to the eligibility of the family unit for income assistance. The panel finds that the letters forwarded by the ministry to the appellant dated September 18, 2013 and October 4, 2013 requested specific information from the appellant, pursuant to Section 10(1) of the EAA, by the deadlines of October 4, 2013 and October 21, 2013 respectively. The appellant stated that he did not receive these letters via mail but did not dispute that he was provided with a copy of these letters on or about October 29, 2013. The appellant also did not dispute that, as a result of extensions granted by the ministry, he was required to submit the information to the ministry, as set out in the letters, by December 31, 2013. While the advocate argued that some of the information requested in the letters did not relate to the appellant's eligibility in particular because he did not have a claim with ICBC or WCB, the panel finds that the information listed by the ministry relates to eligibility generally for auditing purposes and, once requested by the ministry, the onus falls on the appellant to confirm with the ministry that these potential sources of income or assets do not apply to him.

The ministry acknowledged that the appellant submitted information or a satisfactory explanation for all the requested items except the appellant's bank statements for June, July and August 2013 and confirmation from the school or doctor and a written statement from the appellant of the time that the

appellant's son resided with him. The appellant does not claim that he provided all the information requested by the deadline of December 31, 2013 but argued that he made reasonable efforts to provide this information given his circumstances, the confusion in interactions with the ministry, and the resistance received at his son's school to providing this information to him. The ministry stated that the usual procedure is to allow two weeks from the date of receipt of the request for information for that information to be provided to the ministry, with the possibility of a one-week extension in extenuating circumstances. In the appellant's circumstances, the ministry allowed two months from his receipt of the request for information on October 29, 2013 to provide the information by December 31, 2013, which is much longer than the usual time allowed. While the appellant attended once to obtain information from his son's school, there was no evidence of a letter being forwarded to the school to formally request this information or of any further efforts made to obtain the outstanding bank statements. The panel finds that the ministry reasonably determined that the appellant did not provide information as directed by the ministry pursuant to Section 10 of the EAA within the time specified by the ministry, or by December 31, 2013.

Pursuant to Section 32 of the EAR, the period for which the ministry may declare the family unit ineligible for assistance lasts until the recipient complies with the ministry's direction. The panel finds that the ministry acknowledged that all of the requested information had been provided by the appellant at the time of the decision on December 31, 2013, with the exception of the appellant's bank statements for June, July and August 2013 and confirmation from the school or doctor and a written statement from the appellant of the time that the appellant's son resided with him over the period May 2011 through August 2013. Therefore, the panel finds that the information outstanding to comply with the direction by the ministry consists of the appellant's bank statements for June, July and August 2013 and confirmation from the school or doctor and a written statement from the appellant of the time that the appellant's son resided with him over the period May 2011 through August 2013. The panel finds that the ministry reasonably determined that the appellant is not eligible for income assistance, pursuant to Section 32 of the EAR, until he complies with the direction to provide this information.

Conclusion

Therefore, the Panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.