

**PART C – Decision under Appeal**

This is an appeal of the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated January 9, 2014, in which the Ministry denied the Appellant's request for income assistance for the months of May, June, July and August 2013 because the Ministry determined that the Appellant had failed to submit monthly reporting stubs for these months as required by section 11 of the *Employment and Assistance Act*.

**PART D – Relevant Legislation**

*Employment and Assistance Act* (EAA) sections 1 and 11.  
*Employment and Assistance Regulation* (EAR) section 33.

## PART E – Summary of Facts

The information before the Ministry at reconsideration included the following documents:

- A letter from the Appellant's advocate dated November 20, 2013 requesting the Ministry release the Appellant's income assistance cheques for May, June, July and August 2013. In this letter, the Appellant's advocate notes that the Ministry provided the Appellant her income assistance cheques for March and April 2013 in October 2013 following a reconsideration decision by the Ministry. The Appellant's advocate also notes the Appellant was living in a shelter for the period of May through August 2013, so she does not request the shelter allowance for these months.
- The Appellant's submissions on reconsideration prepared by her advocate and dated December 20, 2013 (4 pages), which are discussed below.

At the hearing, the Appellant submitted 58 pages of documents that she obtained through a request under the *Freedom of Information and Protection of Privacy Act* ("FOI Request Documents"). These included the following documents:

- One page letter signed by the Appellant dated February 14, 2013 indicating she received funds from GICs and the amount of these funds.
- A Medical Report – Employability form completed by the Appellant's physician on February 21, 2013 and signed by the Appellant on February 21, 2013 (1 page). The Appellant's physician notes on this form that the Appellant suffers from the primary medical condition of a traumatic brain injury sustained in May 2011.
- A copy of the Appellant's Application for Income Assistance (Part 1) form dated and signed by the Appellant on February 26, 2013 (3 pages). On this form, the Appellant's address is listed as the address of the Ministry office where she completed the form with "NFA" ("no fixed address") noted beside it. There is no phone number for the Appellant listed on this form.
- A copy of the Appellant's Application for Income Assistance (Part 2) form (4 pages). This form is not signed and dated by the Appellant. In this form, the Appellant provides a telephone number, and indicates that she has been homeless in the last 12 months and provides the name of the shelter in which she is living. This form also contains the following comment: "Preferred call back window: 8:30 a.m. – 12 p.m. I suffered an assault 2 years ago which left me with a brain injury. I am homeless & it has been hard to find a place to live with no income. I applied before but was not eligible because of GICs. I have cashed them out & put them in a non discretionary trust."
- A copy of the Appellant's Employment Readiness Information Questionnaire (3 pages). This form is not signed and dated by the Appellant. This form includes the Appellant's telephone number (the same number as provided on the Appellant's Application for Income Assistance (Part 2) form).
- Three different versions of the computer printout of the Ministry's notes for the Appellant's file from February 14, 2013 through March 3, 2014 (12 pages, 9 pages and 6 pages) ("Notes") discussed further below.

The Appellant submitted that the information set out in the FOI Request Documents was before the Ministry at the time the decision under appeal was made and that it is relevant to the Appellant's appeal. The Ministry did not object to the admission of the information contained in the FOI Request Documents and confirmed that all the documents in the FOI Request Documents were copies of Ministry documents and Ministry notes in the Appellant's file. The panel admits the information in the

FOI Request Documents submitted by the Appellant at the hearing under section 22(4) of the *Employment Assistance Act* as information and records that were before the minister when the decision being appealed was made. The panel also admits the information provided by both the Appellant in her testimony and the Ministry representative at the hearing as testimony in support of information that was before the minister when the decision being appealed was made, under section 22(4) of the EAA.

The Appellant suffered a traumatic brain injury in 2011. The Appellant applied for income assistance on February 26, 2013 when she attended at a Ministry office and completed the Application for Income Assistance Form (Parts 1 and 2). At the time she applied for income assistance, she was homeless and living in a shelter, the name of which was indicated on Part 2 of the form. The Ministry representative at the hearing said it is Ministry practice when an individual applying for income assistance is homeless and/or living in a shelter for the worker to indicate the Ministry office address with "NFA" on the Application for Income Assistance Form (Part 1) and this is reflected on the form contained in the FOI Request Documents. The Appellant has a cell phone and this telephone number was provided on the Application for Income Assistance Form (Part 2) and Employment Readiness Information Questionnaire. The Appellant told the panel that her cell phone does not have voice mail and she cannot receive messages on it.

The Ministry confirmed that the Appellant is now designated a person with disabilities ("PWD") under the *Employment and Assistance for Persons with Disabilities Act* and receives monthly disability assistance. The Ministry confirmed that the Ministry advises applicants who seek PWD designation to first apply for income assistance so that they are receiving some income assistance while they wait to be designated a PWD, which process can take several months.

In her submissions on reconsideration and in her testimony at the hearing, the Appellant said that she completed the Application for Assistance Forms on February 26, 2013 at the Ministry office with a Ministry worker. The Appellant could not remember if the Ministry worker explained the reporting stub requirement to her at the time she applied for income assistance. The Appellant said she did not receive any messages from the Ministry after she submitted her application for income assistance and she did not return to or contact the Ministry office from February 26, 2013 through July 2013. The Appellant said that she was not aware that the Ministry had determined she was eligible to receive income assistance and had issued her cheques for March and April 2013 – she said she thought that she was ineligible for income assistance because she had not heard from the Ministry. In August 2013, the Appellant contacted the Ministry office and asked about the status of her application. The Appellant told the panel that because she had also applied for disability assistance and she understood it takes longer to get disability assistance than income assistance, she didn't contact the Ministry office for several months. The Appellant also told the panel that because of her brain injury, she cannot remember things and often forgets things.

The Notes indicate that on or about February 14, 2013, the Appellant applied for income assistance "as critical status" and the Ministry had tried to contact the Appellant by phone but was unable to leave a message. The Notes state, "it appears incident occurred two years ago. Applicant currently states NFA." The Notes indicate that on February 15, 2013, the Ministry tried to contact the Appellant by phone but was unable to leave a voicemail. The Notes for February 19, 2013 indicate that "Stage 1 completed" for the Appellant and refer to the shelter where the Appellant was living and that "booked stage 2 for 2013Feb26@9 a.m. advised of documents to bring in."

The Notes for February 26, 2013 indicate that on that date the Appellant was reapplying for PWD and "states she has been living in shelter for the past 1 year and half ... prior to that she was at [hospital] as she had traumatic brain injury." The Notes state, "wrkr [worker] explained rights/responsibilities, stubs, rates, and rights to [reconsideration]/appeal and third party checks." At the hearing, the Ministry representative explained that the rights and responsibilities are set out on the Income Assistance Application Form (Part 1). The Ministry representative also said that reporting stubs are attached to Ministry cheques and that the stubs are only available at Ministry offices.

The Notes indicate that on March 13, 2013, the Ministry had received all the Appellant's required documents and state, "Clt [client] is eligible for [income assistance] wrkr is processing case." The Notes for March 13, 2013 also state, "Clt is currently NFA. Wrkr has set up monthly ongoing for support \$235 and turned chq production on. Wrkr has issued clt \$235 for March and added MSP. Wrkr has also created an AT employment plan for clt." There is no reference in the Notes for March 2013 that the Ministry attempted to contact the Appellant by telephone. The Notes for April 4, 2013 state, "Clt has not picked up March or April benefits. Cancelled this date. Chq prod [production] off and BF [bring forward] set to close file." The Notes for April 18, 2013 state, "\*\*\*CHEQUE PRODUCTION REMAINS OFF\*\* client has not picked up 2013mar/2013apr supports. Client has trust and RDSP and intends to apply for pwd. File left to autoclose or when pwd app is abandoned. Will need to reassess eligibility." There are no Ministry notes on the Appellant's file from April 18, 2013 to August 13, 2013 – a period of approximately four months.

The Notes for the morning of August 16, 2013 state, "client would like to be reassessed for eligibility/ requesting call back at [telephone number] – advising email sent to off265." The Notes for the afternoon of August 16, 2013 state, "p/c [phone call] from clt re: case. Clt requesting RAP [reapplication] appt booked because she is requesting IA [income assistance] again. Clt's file still open RAP needed. Email to d/o." The Notes for August 20, 2013 state, "call from clt and advocate [name]– clt has a head injury and is currently in a homeless shelter. PWD app is pending. Advsd clt to submit current bank stmnts/profiles to review eligibility for IA ...."

The Appellant told the panel that she never picked up her income assistance cheques for March and April 2013 because she did not know that they had been issued to her. On September 1, 2013, the Appellant requested the Ministry reissue her income assistance cheques for March and April 2013, but the Ministry denied her request. The Appellant's request for reconsideration of the Ministry's decision was successful and in October 2013 the Ministry approved her March and April 2013 income assistance and reissued the cheques to her.

Through the letter from her advocate dated November 20, 2013, the Appellant requested the Ministry reissue cheques for her for the months of May, June, July and August 2013. The Appellant told the panel that she did not know she was supposed to complete a monthly reporting stub in order to receive income assistance because she had never received any income assistance cheques until after her successful request for reconsideration in October 2013.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's determination that the Appellant is not eligible for income assistance for the months of May, June, July and August 2013 because she failed to submit monthly reporting stubs as required by section 11 of the EAA, is reasonable.

### *Applicable legislation*

Reporting requirements for recipients of income assistance are set out in section 11 of the EAA and section 33 of the EAR, which provide the following:

#### 11 – Reporting obligations

- (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must
  - (a) submit to the minister a report that
    - (i) is in the form prescribed by the minister, and
    - (ii) contains the prescribed information, and
  - (b) notify the minister of any change in circumstances or information that
    - (i) may affect the eligibility of the family unit, and
    - (ii) was previously provided to the minister.
- (2) A report under subsection (1) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

#### 33 – Monthly reporting requirement

- (1) For the purposes of section 11(1)(a) [reporting obligations] of the Act,
  - (a) the report must be submitted by the 5<sup>th</sup> day of each calendar month, and
  - (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, (BC Reg. 334/2007)
    - (i) whether the family unit requires further assistance;
    - (ii) changes in the family unit's assets;
    - (iii) all income received by the family unit and the source of that income;
    - (iv) the employment and educational circumstances of recipients in the family unit;
    - (v) changes in family unit membership or the marital status of a recipient;
    - (vi) any warrants as described in section 15.2(1) of the Act.

The words "applicant" and "recipient" are defined in section 1 of the EAA as follows:

#### Interpretation

1(1) in this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, ... on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants.

...

"recipient" means the person in a family unit to or for whom income assistance ... is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

The Appellant submits that the Ministry unreasonably applied to her the reporting requirement set out in section 11 of the EAA and section 33 of the EAR. The Appellant argues that because she never knew that the Ministry had determined she was eligible to receive income assistance in March 2013 and she did not know the Ministry had issued income assistance cheques to her for March and April 2013, she was not a "recipient" under section 1 and 11 of the EAA. The Appellant points to the evidence that she never picked up her March and April 2013 income assistance cheques and the Ministry stopped cheque production on her file in April 2013 to support her argument that she was never a "recipient" of income assistance under the EAA. The Appellant says that because she was not a "recipient" of income assistance, the reporting obligations set out in section 11 of the EAA and section 33 of the EAR do not apply to her and the Ministry unreasonably applied the legislation to her.

The Appellant says that she only received income assistance after the successful reconsideration decision in October 2013. The Appellant also argues that she did not know she was to complete the required reporting stubs for the months of May, June, July and August 2013 because she did not receive the first assistance cheques in March and April 2013 to which the reporting stubs were attached and she had never seen a reporting stub and could not remember the reporting obligation of the stub being explained to her.

The Appellant also argues that because she is a person with a traumatic brain injury who was living in a shelter at the time she applied for income assistance in February 2013, the Ministry had a duty to follow its policies, "Reasonable Steps Prior to Cheque Signalling" and "Providing Services to Clients with Mental Health Issues." The Appellant says that the Ministry knew that she was living in a shelter as it is noted "NFA" on her application (Part 1) and the name of the shelter is listed on the form (Part 2), and that she had a cell phone, but that the Ministry made no attempt to contact her to tell her that the Ministry had approved her application for income assistance and issued assistance cheques to her. The Appellant argues that the Ministry's "Reasonable Steps Prior to Cheque Signalling" policy requires Ministry staff to make reasonable attempts to contact the client and to note the attempts in the client's file notes. The Appellant argues that there is no record in the Notes for her file of attempts to contact her after she was declared eligible for income assistance in March 2013. The Appellant also argues that the Ministry did not follow its policy, "Providing Services to Clients with Mental Health Issues" because the Ministry worker did not confirm that the Appellant understood how the income assistance cheques would be issued to her and the reporting stub requirements.

The Ministry relies on the reconsideration decision and says that the mandatory reporting obligations set out in section 11 of the EAA and section 33 of the EAR apply to the Appellant for the months of May, June, July and August 2013 and because she failed to submit reporting stubs for these months, she is not eligible for income assistance for these months. In response to the Appellant's arguments, the Ministry asserts that because it issued income assistance cheques to her in March and April 2013, income assistance was provided to her and the Appellant was a recipient of assistance under section 11 of the EAA and obliged to comply with the reporting requirement by submitting the prescribed stubs. The Ministry argues that it doesn't matter that the Appellant didn't pick up her cheques. The Ministry says that because the Appellant was living in a shelter, she should have come to the Ministry office to follow up on the status of her income assistance application, and notes that she did not attend at the Ministry office or call the Ministry office between February 26, 2013 and August 16, 2013 although the Appellant has a cell phone and had made contact with the Ministry office.

Section 1 of the EAA defines a "recipient" in the EAA as "the person in a family unit to or for whom income assistance ... is provided under this Act." The Ministry determined that the Appellant was eligible to receive income assistance in March 2013, as evidenced in the Note of March 13, 2013. There is no evidence before the panel that the Ministry communicated its determination of her eligibility to the Appellant until she called the Ministry office in late August 2013; however, the panel notes that the Ministry does not have an obligation to communicate this information to applicants. The evidence before the panel is that the prescribed reporting stubs are attached to the income assistance cheques, as confirmed by the Ministry representative at the hearing. The evidence before the panel is that the Appellant did not receive her first income assistance cheques to which the reporting stubs were attached until October 2013, after the Ministry's reconsideration decision reissuing her March and April 2013 income assistance cheques.

Section 11 of the EAA and section 33 of the EAR provide that for a family unit to be eligible for income assistance, a recipient must submit a report in the prescribed form by the 5<sup>th</sup> day of each calendar month and this reporting obligation is mandatory. In the reconsideration decision under appeal, the Ministry determined that the Appellant was not eligible for income assistance for the months of May, June, July and August 2013 because she did not submit the monthly reporting stubs (the prescribed forms) as required by the legislation.

The Appellant argues that because she did not know that the Ministry had determined she was eligible for income assistance and issued March and April 2013 assistance cheques for her to which the stubs are attached but which she didn't pick up, the Ministry's application of the reporting obligations set out in section 11 of the EAA and section 33 of the EAR is an unreasonable application of the legislation to her circumstances. Essentially, the Appellant's argument is that she was, for all practical intents and purposes, precluded from submitting the mandatory reporting stubs for May, June, July and August 2013 by the passage of time between March 2013 (when she was declared eligible and the Ministry first issued cheques) and October 2013 (when she first received the March and April 2013 income assistance cheques) and that the Ministry has unreasonably, retroactively applied the reporting obligations of the legislation to her.

Under section 24 of the EAA, this panel must confirm the Ministry's reconsideration decision if the panel finds the decision is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the Appellant. If the panel finds that the decision is not reasonably supported by the evidence or is not a reasonable application of the applicable enactment in the circumstances of the Appellant, the panel must rescind the Ministry's reconsideration decision and, if the decision cannot be implemented without a further decision as to the amount, the panel must refer the further decision back to the minister.

In this case, the panels finds that the Ministry's application of the mandatory reporting obligations of section 11 of the EAA and section 33 of the EAR to the Appellant for the months of May, June, July and August 2013 in the circumstances where she did not receive her first income assistance cheques for March and April 2013 and the attached reporting stubs until October 2013 to be an unreasonable, retroactive application of the legislation to the Appellant in her circumstances.

The panel acknowledges that the reporting obligations are mandatory and that the Appellant must comply with the requirements of section 11 of the EAA and section 33 of the EAR by completing

reporting stubs for the months of May, June, July and August 2013 in order for the Ministry to determine the amount (if any) of the Appellant's eligible income assistance for those four months. Accordingly, the panel finds that the Ministry's determination that the Appellant is not eligible for income assistance for the months of May, June, July and August 2013 because she failed to submit reporting stubs as required by section 11 of the EAA and section 33 of the EAR, is an unreasonable application of the applicable enactment in the circumstances of this Appellant. The panel therefore rescinds the Ministry's decision and refers the further decision as to amount back to the minister.