

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated March 31, 2014 which held that the appellant is not eligible for Income Assistance pursuant to section 10 of the Employment and Assistance Act (EAA) because he failed to supply the ministry with documentation as requested. Specifically, the ministry found the appellant ineligible because he did not supply information and verification regarding his income and rental accommodations. The ministry further held that the appellant's ineligibility will continue until he supplies the ministry with the requested information pursuant to section 32 of the Income and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act – EAA - section 10
Employment and Assistance Regulation – EAR – section 32

PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- Application for Income Assistance dated December 23, 2012, Parts 1 and 2, signed by the appellant acknowledging he understood his rights, responsibilities, and reporting obligations and consented to third party verification including authorizing the ministry to complete checks with Canada Revenue (CRA) and other agencies;
- 3 letters to the appellant from the ministry dated January 22, February 5, and February 19, 2014, requesting income, asset, and rental accommodation information pursuant to a ministry file review to determine his continuing eligibility for Income Assistance. The first 2 letters included deadlines for submitting the information, February 5th and 19th respectively, and the February 19th letter indicated the ministry had still not received the requested information and was terminating the appellant's Income Assistance payments and closing its file effective March 18, 2014; and
- Request for Reconsideration signed by the appellant on March 3, 2014 in which he states "more time is required to receive information from Revenue Canada and other resources" and some of the ministry's requests for information "such as bank statements" cost money to obtain.

In its reconsideration summary and at the hearing the ministry noted the following:

- The appellant received Income Assistance as a sole recipient from January 2013. In January 2014, the ministry initiated a file review due to an allegation he was operating a small business, earning money he did not declare to the ministry, and living in a common law relationship with a partner who is employed.
- Telephone records dated January 30, and February 21, 2014 in which the appellant told the ministry he borrows money to pay his rent and other expenses; the person alleged to be his common law partner is a friend who used to live at his address; he has a joint line of credit with this person; his bank statements cost money to obtain and he does not have money to spare; and he hadn't done much to supply the ministry with the requested information because he was hoping to get a contract for his business and leave Income Assistance. The ministry noted a further telephone conversation on March 28, 2014 in which it informed the appellant that he had until noon on March 31st to submit any additional information.
- By the time of the reconsideration decision the ministry had received documentation regarding the appellant's vehicles, but had not received financial statements for 3 businesses belonging to the appellant, nor had it received verification of the loans the appellant had obtained from family and friends.

In response to a question from the panel the ministry explained that although it had the appellant's authorization to access his CRA records, CRA provides only a bare bones "TX1 Summary" which indicates whether the client filed tax returns, the amount of income earned, and the amount of taxes paid. The ministry explained that this document does not provide a complete Notice of Assessment, nor does it contain T4 information showing who the income is from, or whether there is a capital gain, etc. Further, only the client can request detailed, supplemental information beyond the TX1 Summary.

In response to another question from the panel, the ministry stated that while a client can authorize the ministry to assist in obtaining records, in the spirit of administrative fairness, it prefers for the

client to provide the information. While it did offer to assist the appellant, he indicated he did not want the ministry to obtain information from others.

The appellant's evidence at the hearing is summarized as follows:

- He had requested more time to supply the ministry with information;
- He operates a small business and attempts to get customers but is not receiving any income from it;
- He provided rental and utility information in the past along with valuations and registration papers for his vehicles, and debt statements that show his maxed out credit cards;
- He has provided income statements all along showing that he has no income; he has no room left in his \$15,000 Line of Credit, and he owes many debts;
- The ministry requested 4 years of CRA records, and 4 years of bank statements which cost 2 dollars per page. They also require him to obtain a bank statement every 90 days with the bank's signature stamp on a ministry form; the last time he gave the ministry his bank statements was February 2014 or December 2013;
- He requested his CRA information in mid-April and is still waiting for it; he was told it could take up to 8 weeks;
- He has never had an account at a cheque cashing place, or a joint savings account with anyone as stated by the ministry; and he does not live with a common law partner but stays at a friend's former residence because it is too expensive to rent elsewhere; and
- When the ministry asked for the appellant's consent to call his potential customer for information, he refused to allow it because "having the ministry talk to them would ruin the prospect of ever getting them as a customer."

In accordance with section 22(4)(b) of the *EAA*, the panel finds that the appellant's oral submissions relate to the documentation the ministry had requested in its January 22, February 5 and February 19, 2014 letters to the appellant. The panel therefore admits as evidence the appellant's oral testimony as being in support of the information and records that were before the ministry at reconsideration.

The panel makes the following findings of fact:

- The appellant had been a sole recipient of Income Assistance since January 2013 and the ministry discontinued his payments in February 2014 (March cheque issue).
- The ministry initiated a review of the appellant's Income Assistance file in January 2014.
- The ministry sent the appellant 3 letters between January 22 and February 19, 2014 requesting income, asset, and rental accommodation information, and each letter set out the date the information was due.
- The ministry had 2 telephone discussions with the appellant (February and March 2014) regarding the requested information and communicated that the appellant had until March 31, 2014 to submit any additional information.
- The appellant provided some information to the ministry including rent and shelter information at the time he applied for Income assistance, as well as documentation regarding his vehicles, and some previous 90-day bank statements. The appellant had not provided bank statements since the file review was undertaken in January 2014.
- The appellant requested his CRA records in April 2014 and had not received them as of the date of this hearing.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's reconsideration decision of March 31, 2014, which held that the appellant is not eligible for Income Assistance pursuant to section 10 of the *EAA* because he failed to supply the ministry with information and verification regarding his income and rental accommodations as requested, and he remains ineligible for Income Assistance pursuant to section 32 of the *EAR* until he supplies the ministry with the requested information.

The following sections of the legislation apply to the appellant's circumstances in this appeal:

***EAA* Information and verification:**

Section 10 states:

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.

***EAR* Consequences of failing to provide information or verification when directed:**

Pursuant to section 32:

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.

Appellant's Position

In his Notice of Appeal dated April 22, 2014, the appellant stated that when he asked the ministry for a time extension for supplying the requested documentation, "it would appear the social worker thought I was not intending to produce documentation which is clearly not the case". He argues that he was not given sufficient notice to provide additional evidence when contacted by the ministry on March 28th. He states "I was not afforded a reasonable amount of time to prepare or even given a reasonable opportunity to defend myself."

In his Request for Reconsideration and at the hearing, the appellant argued the following:

- He was only asking the ministry for more time; he never said he would not provide the information. He has provided the ministry with "a lot of information all along; I have nothing to hide and can show them my debts."
- The ministry was not reasonable in asking him for 4 years of bank statements which would cost him money when he is already in a deficit position. He felt that the ministry investigator "was contrite and abused their ultimate authority."
- The ministry did not offer to assist him to get the bank statements or pay for the information. He can only go back 90 days to get bank statements for free, and for some accounts he can query back 6 months. He is happy to provide the CRA records as they do not cost money and having requested his CRA records in mid-April, he is within the ministry's time frame for providing them.
- The legislation sets out no time frames for supplying information to the ministry; nor does it say what amount of time is reasonable, or that the ministry will assist in obtaining information that costs money; "and the ministry's word that their time frames were reasonable is not good enough; they need to base it on something, not just make them up."

Ministry's Position

The ministry's position as set out in its reconsideration decision is that the appellant remains ineligible for Income Assistance because he has failed to supply the requested documentation. The ministry argued that pursuant to section 10 of the *EAA* it may direct a recipient to supply information within the time and in the manner specified by the minister; seek verification of that information; and direct a recipient to verify any information he or she has already supplied. The ministry further submitted that pursuant to section 32 of the *EAR* it may declare a family unit ineligible for Income Assistance until the applicant or recipient complies with the direction to supply information.

The ministry's position is that it gave the appellant sufficient time to supply the information, sending him 3 letters and providing 2 verbal reminders since January 22nd, and giving him a further time extension on March 28th. The ministry argued that 5 weeks is "a reasonable amount of time to complete the request" and the appellant has now had "an additional 4 weeks to submit the documents, for a total of 9 weeks." Further, the appellant has not reported any circumstances beyond his control for failing to comply with the ministry's information requests.

At the hearing the ministry argued the following:

- It is the appellant's responsibility to provide accurate and complete information and he had read and understood his rights and responsibilities when he signed the Application for Income Assistance and knew that the ministry would verify the accuracy of the information.
- Income Assistance is an income and asset based program, and these issues require documentation. The ministry gave the appellant the option of supplying the information by various means including emailing the ministry or calling to discuss the requirements.
- The appellant has provided no verification that his small business is not generating any income, nor has he provided proof that he is getting loans from family and friends. Someone could be supporting him without being a common law spouse, and the ministry needs to know the details of his situation in order to assess his eligibility for Income Assistance.
- The appellant had plenty of time since the ministry initiated its file review in January 2014 to request his CRA records, but he did not request them until mid- April. The ministry prefers for clients to provide their own information, and in any event it requires detailed information from CRA that only the appellant can obtain.

Panel's Decision

EAA section 10: Information and verification

Subsection 10(1):

The panel notes that subsection 10(1) of the *EAA* allows the ministry to direct an Income Assistance recipient to supply the ministry with information for the purpose of determining or auditing whether the recipient is eligible for Income Assistance. In conducting its file review, the ministry can reasonably be said to have been "auditing eligibility for income assistance" pursuant to paragraph 10(1)(b) of the *EAA*. With regard to the methods the ministry may use in conducting its "auditing" function, paragraph 10(1)(e) is instructive as it gives the ministry the discretion to direct a recipient "to supply the minister with information within the time and in the manner specified by the minister".

Despite the appellant's argument that the ministry's time frame was not reasonable and that the *EAA* does not specifically indicate any time frame, or specify what time frame is reasonable, or direct that the ministry will assist a recipient in obtaining information, the panel reasons that the discretion conferred under paragraph 10(1)(e) as outlined above allows the ministry to specify its own time frames and determine what assistance it will provide in obtaining the requested information. The panel notes that the ministry provided the appellant with a time frame of 9 weeks from January 22 until March 31, 2014 to supply information regarding income, assets, and rental accommodations. Further, the ministry specified the "manner" in which the information was to be supplied by mailing the appellant requests with a list of documents to be provided, reminding the appellant via letter and telephone, and advising the appellant that he could drop off or mail his information to the ministry or call or email the ministry for further instruction or clarification.

Though the appellant argued that he was only asking for a time extension and that he did provide some information to the ministry, the panel notes that the appellant was given a time extension up until March 31, 2014 but did not provide recent information (obtained after the file review was initiated on January 22nd) that included bank statements, business records, and verification of loans from

family and friends as requested. The panel therefore finds that the ministry reasonably applied paragraph 10(1)(e) in light of the evidence and in the circumstances of the appellant.

Subsection 10(2):

Similarly, subsection 10(2) gives the ministry the discretion to direct a recipient to supply verification of information received by the ministry if that information relates to the family unit's eligibility for Income Assistance. In the appellant's circumstances, the ministry received information pertaining to his business income and living arrangements which could impact his eligibility if, for example, he had business income or an employed common law spouse. The panel therefore finds that the ministry was reasonable in directing the appellant to provide documentation that would either confirm or refute this information.

Subsection 10(4):

Subsection 10(4) of the *EAA* addresses the consequences of failing to comply with directions from the ministry given under section 10. This subsection gives the ministry the discretion to declare a family unit ineligible for Income Assistance where a recipient failed, for example, to supply the ministry with information regarding income and assets as requested. The panel notes that the appellant does not question the ministry's authority to find a recipient ineligible but does take issue with the amount of time the ministry gave him to supply the requested information as well as the cost of bank statements. The ministry noted that it gave the appellant various deadlines and time extensions encompassing a time frame of 9 weeks and that it offered to assist the appellant in obtaining information but still did not receive pertinent information to verify the appellant's business income, bank accounts, or the details of his CRA filings. The panel therefore finds that the ministry reasonably determined the appellant was ineligible for Income Assistance as of the March 2014 cheque issue.

EAR, section 32: Consequences of failing to provide information or verification when directed

Lastly, section 32 of the EAR affords the ministry the authority to declare a family unit ineligible for Income Assistance until the recipient complies with the ministry's direction pursuant to section 10 of the *EAA*. As the appellant had not supplied the ministry with the requested information as of the date of the hearing, the panel finds that the ministry reasonably determined that the appellant is to remain ineligible for Income Assistance until such time that he complies with the ministry's direction.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for Income Assistance was reasonably supported by the evidence and a reasonable interpretation of the applicable legislation in the circumstances of the appellant. Accordingly, the panel confirms the ministry's reconsideration decision.