

PART C – Decision under Appeal

The Decision under appeal is the Ministry of Social Development and Social Innovation, (ministry), Reconsideration Decision, dated May 20, 2014, which determined the appellant was ineligible for assistance until such time as the appellant provided information requested under sec. 10 of the Employment and Assistance for Persons with Disabilities Act.

PART D – Relevant Legislation

EAPWDA-Employment and Assistance for Persons with Disabilities Act. – Sec. 10
EAPWDR-Employment and Assistance for Persons with Disabilities Regulation –Sec. 28

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration showed that the appellant had been receiving assistance since 2002. In Feb. of 2014 a ministry Investigative Officer (IO) began a review of her file as the ministry became aware the appellant had appeared before a notary in Dec. 2012 and signed a document under oath that she had been receiving support payments since Jan. 2003 from her ex-husband thru Western Union. The document stated any support payments due had been made and her husband was not in arrears. Such payments had never been reported to the ministry. As a result of this the IO requested a large number of documents from the appellant, including a record of all maintenance payments received since Jan. of 2003. The IO was advised that the appellant could not provide a record of payments made since Jan. of 2003 because she had not received such payments.

The appellant subsequently provided a written statement in which she advised that the document taken under oath in Dec. 2012 was signed without the appellant understanding what the document stated. She advised that at the time the document was executed she had been advised by her son and her ex-husband that she needed to sign this document so that her son could get into college. The appellant's son and the ex-husband live out of province. In Dec of 2012 she was suffering from mental health issues, the side effects from medication, she did not have her glasses when the document was signed, and no one was with her to read it to her when she signed it. She further advised that most of the information in the document was false, including the address listed as hers, which is actually a drug store. She advised she had only received \$300 in 2003 and more recently in 2014 had received \$500. She included a letter from Western Union which advised that in the five years prior to May 2013 Western Union had not been used to supply funds to the appellant from her ex-husband.

The Reconsideration Decision determined that the material requested by the IO was necessary for the purpose of determining and auditing the appellant's eligibility for assistance. The decision was based on two reasons for denying the appellant's reconsideration request:

- 1-The appellant had only provided information from Western Union for the past five years. But the ministry had requested information to 2003 and the ministry was unable to determine why the records were not produced back to 2003; and
- 2-The ministry considered that the appellant's written statement alone was insufficient to counter the appellant's statement made under oath.

The ministry determined that the appellant continued to be ineligible for assistance until such time as the information back to 2003 had been supplied.

The appellant appealed to the Tribunal stating she thought she had provided the necessary information and that she wished an opportunity to provide further evidence.

Prior to the hearing the appellant provided further information.

- 1- A document signed under oath confirming that she had not received the maintenance payments from her husband and confirming the other details she had previously provided to the ministry in her written statement.
- 2-Two letters from Western Union confirming she had not received any payments through them from Jan. 2008 to June 30 2014, for the six years prior.

- 3-Several medical reports showing a history of mental health issues and also one confirming that in the three months after Dec. 2012 she had significant mental health issues including a suicide attempt after a family member's passing.

Section 22(4)(b) of the *Employment and Assistance Act* states a panel may admit as evidence only the information and records that were before the minister when the decision being appealed was made, and oral or written testimony in support of the information and records referred to in the decision. At the hearing of this matter the ministry did not object to the admissibility of the new documents. The panel determined that the new material augmented the evidence on appeal and was consistent with the evidence in the record of the ministry decision. As such, the panel determined that the new documents were admissible in the hearing.

At the hearing the appellant confirmed her prior statements to the ministry about what had occurred around the signing of the document in Dec. 2012. In essence, she did not know what she was signing and she thought she was simply signing a document that made it possible for her ex-husband to get a small loan so her son could go to college. She was in such a bad mental state at the time and she was taken advantage of. The document she signed was sent to the notary, presumably for her ex-husband, and she simply went there and signed it. She had not seen it before she went to the notary. She had supplied all the information she could from Western Union and was told the only thing she could do would be to hire a lawyer and get a subpoena. She could not afford a lawyer. She had begged Western Union enough that they gave her another letter to say they had gone back six years and could go no further.

The ministry representative at the hearing advised that she was also an IO. She advised that at the time the reconsideration decision was made they did not have all the information that was currently before the panel. Based on the information available at the time of the decision it was reasonable. The ministry had received no explanation for why records were not available prior to 2009 and they only had a written statement denying the truth of the notarized document, as opposed to the document that was now available which was also under oath. The appellant had supplied all of the other documents they had requested; only this issue remained. When asked the ministry representative indicated that in her view the material that was now provided would satisfy the request for information that was outstanding, however, she could not speak for the IO who was ultimately responsible for the file.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably denied the appellant assistance, as the Ministry determined that the Appellant was non-compliant with the request for information required under Sec. 10 of the EAPWDA and the EAPWDR Sec. 28.

The Legislation states the following;

Employment and Assistance for Persons with Disabilities Act

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability 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 disability 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 disability 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 disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the

prescribed period.

Employment and Assistance for Persons with Disabilities Regulation

Consequences of failing to provide information or verification when directed

28 (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.

(2) For the purposes of section 10 (5) [*information and verification*] of the Act,

(a) the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit is \$100 for each calendar month, and

(b) the period for which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction.

Under Sec. 10 the ministry can direct a recipient to supply information to determine eligibility for and the audit of the recipient of assistance. Under subsection 4, the ministry can declare the person ineligible if they do not provide the information. Sec. 28 of the regulation allows the ministry to declare the recipient ineligible until the information is provided.

The appellant argues that she has now complied with the request and the information that is required has been provided. She has stated under oath that the Dec. 2012 document was untrue, and further she has explained why she cannot provide information prior to 2009. The ministry argues that at the time the decision was made it was reasonable based on the available information.

The reconsideration decision was based on two points; no explanation for documents not being provided from 2003-2009, and a statement made under oath versus a statement that was not under oath. The reconsideration decision accepted the initial information from Western Union that from 2009 until the time of the letter no monies had been received by the appellant through Western Union from the ex-husband. But there was no explanation for the time frame prior to this. That information was now provided, found admissible by the panel, and it confirmed that Western Union did not keep records back to the time requested by the ministry. It is noteworthy, but not decisive, that the ministry representative present at the hearing indicated this would satisfy her as an IO. Based on the evidence available at the time of the reconsideration, the ministry decision would have been reasonable. However, as new admissible evidence shows that the appellant could not provide what was requested, and Western Union has confirmed they cannot provide records back that far, the finding on this issue is not reasonable and the panel overturns it.

The other point made by the reconsideration decision is that the appellant had simply provided a signed written statement denying what she had stated under oath, and that this did not satisfy the ministry. Again, based on the available evidence at the reconsideration level, this was probably a reasonable decision, but there is new admissible evidence. The appellant has since attended another notary and under oath confirmed that she had not received these payments.

It is noteworthy that the first notarized document states that all payments were received through Western Union and it has been confirmed that since 2009 no such payments were made. This gives some credence to the appellant's story. This panel makes no finding as to which of the documents made under oath is or may be true.

The reconsideration decision was concerned that the ministry simply had a written account by the appellant versus a document under oath. The appellant has now provided an explanation under oath that the first document was untrue. Again, although not binding on the panel, the ministry representative stated this would satisfy her. Based on the new evidence now available to the tribunal, the panel finds that the decision on this issue was not reasonable and overturns it.

As such, the panel finds that the Ministry's reconsideration decision, based on all of the evidence now available, is not reasonably supported by the evidence and is not a reasonable application of the legislation based on all the evidence. The panel rescinds the Reconsideration Decision.