

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated September 18, 2014 which held that the Appellant is no longer eligible for disability assistance pursuant to section 10 of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)* because she failed to comply with the minister's direction to supply verification of information received by the Ministry. Specifically, the Ministry found that the Appellant did not supply bank statements for the period of May 1 to May 27, 2014 and she did not supply verification from a lawyer to establish whether she received \$15,300.00 under the terms of a separation agreement. The Ministry further held that the Appellant's ineligibility will continue until she complies with the minister's direction as prescribed by section 28 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act - section 10
Employment and Assistance for Persons with Disabilities Regulation - section 28

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following

Appellant's bank records:

- The Appellant's bank profile dated August 6, 2014, signed and stamped by a bank teller and indicating one account in the Appellant's name with a balance of \$1.62.
- Two "Account Activity – Details" print outs:
 1. September 5, 2014 indicating transactions for the "last 10 days" and showing transactions on August 27th and 29th, and September 3rd and 5th. The balance as of September 5th was \$1.62.
 2. July 25, 2014 indicating transactions for the "last 31 days" and showing transactions on June 25th, 27th, and 30th and July 2nd, 4th, and 8th. The balance as of July 25th was \$0.52.
- Four "Account Activity – Historical Details" print outs:
 1. August 2014 showing transactions on August 5th, 8th, 21st, 27th, and 29th. The balance as of September 5, 2014 was \$1.62.
 2. July 2014 showing transactions on July 2nd, 4th, 8th, 30th, and 31st. The balance as of September 5, 2014 was \$1.62.
 3. June 2014 showing transactions on June 2nd, 4th, 25th, 27th, and 30th. The balance as of July 25, 2014 was \$0.52.
 4. May 2014 showing transactions on May 28th and 30th. The balance as of July 25, 2014 was \$0.52.
- A "Deposit Account History Financial Enquiry" for the Appellant's account for the dates July 1, 2014 to August 4, 2014 showing transactions on July 2nd, 4th, 8th, 30th, and 31st.

Other documents

• An undated 3-page submission from the Appellant in which she stated she moved out of the home of the individual named in the separation agreement (former landlord) because she could not afford the rent and was getting tired of his "sexual advances and his selling weed and growing it." The Appellant found a nice apartment and went to see her dad who was passing away. When she got back she had to deal with not receiving her August or September disability cheques and her former landlord has been harassing her, causing her panic attacks and a near breakdown. Her family members sent her money for rent and food on the promise to pay it back and her landlord is ready to kick her out.

She stated that she has not been able to get a letter from a lawyer confirming he did not write a \$15,000.00 cheque to her because her former landlord "told him not to" and the separation agreement was not signed by her in front of the lawyer, but was witnessed by her former landlord's close friend. She further stated that her signature on the separation agreement is missing the "d" and she does not misspell her name.

The Appellant further stated that she is scared of becoming homeless due to a false accusation. Her former landlord has several assets, but she has nothing and gets cut off welfare even though the

Ministry investigators could not find anything against her. She would like the disability money owed to her and is willing to sign a "pay back letter" as she needs money for rent and food.

- The Appellant's Request for Reconsideration dated September 2, 2014 in which she stated that she never had a separation agreement with her former landlord. She stated that he signed receipts for the Ministry when she moved in and he gets help from the Ministry "even though that would mean he defrauded disability too". The Ministry investigators found no evidence of a \$15,000.00 cheque in the Appellant's name and the legal separation paper does not state that she signed it in front of a lawyer, but in front of her former landlord's best friend who was apparently a witness to her signature.
- Three Ministry Employment and Assistance Review forms: All are signed by the Appellant on August 7, 2014 and distinguished as follows:
 1. The Marital Status box is crossed out and the word "single" entered with the notation: "Didn't say this when signed."
 2. The Appellant check marked her family type as "single person" and indicated her marital status as "common law - separated". In the box that asks the client to describe "any changes to your circumstances or income that have caused you to apply for income assistance" the following comment is written: "August rent was paid by her mother, client states she has never lived common law with (her former landlord), just rented the upstairs of the house he owned and receives no spousal support or any other lump sum money from the client. States she is not entitled to any money from him."
 3. The Appellant acknowledges her rights and responsibilities including the responsibility to provide accurate and complete information, report all money and assets she receives each month, pursue income and assets from other sources, and report all changes in her circumstances that might affect her eligibility for assistance.
- The Ministry's Promise to Repay form signed by the Appellant on September 9, 2014 in which she acknowledges receiving \$906.42 while awaiting the outcome of a reconsideration.
- A separation agreement dated May 15, 2014 between the Appellant's former landlord and the Appellant. The agreement states that the parties began living in a common law relationship in 2007 and separated on or about May 12, 2014. The agreement further states that "when this agreement is signed" the Appellant's former landlord will pay her \$15,000.00 and will make a further payment of \$300.00 to her "upon (her) signing the agreement" to assist with her moving expenses. The agreement contains the former landlord's name and signature witnessed by a lawyer, and the Appellant's name and signature witnessed by a third party. The Appellant's signature dated May 14, 2014 also appears under the heading "Independent Legal Advice Declined".
- A faxed note from the Appellant addressed "to whom it may concern" and dated July 25, 2014. The Appellant stated that she is providing her bank statements and that her son transferred \$2,000.00 to her account on May 30, 2014 so that she could pay his damage deposit and rent, and food for him to move to her community. The Appellant stated that it was his money, not hers and he moved on June 1, 2014. She also named an individual "that bragged about causing (her) trouble" and stated that she needs her cheque in order to pay her rent and eat.

- The Ministry's Information/ Documentation Checklist requesting the Appellant to submit the following Items by August 12, 2014: client identification; Income/Asset information including a bank profile and "TDCT" from July 8th; shelter documents, and legal documentation indicating "No Common Law Settlement received and no monthly spousal amount awarded."

Appellant's additional information

Subsequent to the reconsideration decision, the Appellant submitted a Notice of Appeal dated October 1, 2014 in which she stated that she has been on disability for years and never did anything wrong. Her former landlord has been harassing and stalking her. She did not receive \$15,000.00 from him and there is no record anywhere that she did.

With her Notice of Appeal the Appellant provided two additional "Account Activity – Historical Details" print outs:

1. May 2014 showing transactions on May 28th and 30th. The balance as of October 2, 2014 was \$12.40.
2. June 2014 showing transactions on June 2nd, 4th, 25th, 27th, and 30th. The balance as of October 2, 2014 was \$12.40.

The panel finds that the information in the Notice of Appeal and additional bank print outs relate to the Ministry's request for verification of information. The print outs are copies of the same bank statements that were before the Ministry at reconsideration. The Panel therefore admits them pursuant to section 22(4)(b) of the *Employment and Assistance Act (EAA)* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

Appellant's oral submission

The Appellant brought an additional advocate to the hearing and gave her verbal consent for this person to participate.

The Appellant stated that the Ministry was rude and hung up on her when she tried to call for an explanation about the separation agreement which she didn't sign. She needs her disability assistance for medications and to get food plus she got an eviction notice for the end of October. She is taking 6 different medications and her doctor wanted to increase the ones for panic attacks. She stated that she could not get a letter from the lawyer who made the separation agreement because the lawyer would not know if she had received any money. Her advocate also contacted the lawyer but was told that the lawyer cannot breach confidentiality.

The Appellant stated that she submitted her bank statements for all of May on July 26th and that she had no transactions before May 28th. She stated that she re-submitted the exact same bank statements in October and all of the transactions are there. The Appellant added that her daughter told her that her "ex-landlord was hurt when I moved out because he was in love with me but I didn't know it". Her daughter had been telling her that "for years" but she would not believe it because he'd knock on her door when he was drunk.

In response to a question from the panel regarding her bank statements, the Appellant stated that she had only four transactions in May and that is why it looks like the earlier part of May is missing but it's not.

In response to questions from the panel regarding the separation agreement, the Appellant stated that she never once told the Ministry that it was her signature on the agreement and that it isn't her signature because her name is spelled wrong: "the 'd' is not there and I don't miss letters when I write my name." She stated that she and her advocate both asked the lawyer for a letter to say she did not sign the agreement in front of him and did not receive a cheque but she cannot do anything without hiring a lawyer which she can't afford when she has no money to even eat.

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. The panel therefore admits the oral testimony as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

The Ministry did not attend the hearing. The panel confirmed that the Ministry had been notified of the hearing date and time and proceeded with the hearing under section 86(b) of the *Employment and Assistance Regulation*.

In its reconsideration decision the Ministry reported the following:

- The Appellant is in receipt of disability assistance as a single person. Her file was opened in April 2007.
- On July 11, 2014 it received a copy of the separation agreement dated May 15, 2014.
- On July 24th, the Ministry advised the Appellant to submit bank statements for the period May 1, 2014 to July 1, 2014. The Appellant reported that she had just broken up with her boyfriend and they did not live together and there was no legal separation.
- On July 25th, the Appellant submitted bank statements from May 28 - July 8, 2014.
- On July 28th, the Appellant spoke with the Ministry and stated she did not sign the separation agreement and no such document existed.
- On July 29th, the Appellant attended the Ministry office and stated it was her signature on the separation agreement. She later stated that it looked like her signature but she did not sign the document. The Ministry gave her a copy of the document and the phone number of the lawyer involved and told her she had 10 business days to submit documentation to support her position that the separation agreement is not valid.
- On August 6th, the Appellant completed an eligibility review with the Ministry by phone and stated that she rented the top floor of a house from the person named in the separation agreement but they were not a common law couple. She stated that the agreement was falsified and signed by an imposter; and the Appellant had not received any money. The Ministry reported that the Appellant stated she could not get any information from the lawyer because of privacy issues and her former landlord would not consent to the release of any information from the lawyer's office. The Ministry advised the Appellant to make a formal complaint to the Law Society regarding the validity of the separation agreement and suggested that the Appellant seek legal advice from a non-profit law clinic or courthouse duty counsel.

- On August 7th, the Ministry requested documentation from the Appellant including a letter from the lawyer involved in the separation agreement to verify whether she was paid any funds. On August 14th and 20th the Appellant advised that she was unable to get the requested documents from the lawyer and on each occasion the Ministry informed her that the documents were required to determine eligibility for assistance.
- On August 25, 2014 it advised the Appellant that she was no longer eligible for assistance.
- The Ministry noted that the Appellant has not indicated that she is taking any action with regard to the allegedly forged separation agreement.
- The Ministry noted that the Appellant has provided some of the requested verification including identity, income, and shelter documents.

The panel makes the following findings of fact:

- The Appellant provided bank statements showing transactions from May 28 – September 5, 2014.
- The Appellant has not submitted verification regarding the separation agreement as requested by the Ministry on July 29th and August 7, 2014.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's reconsideration decision of September 18, 2014, which held that the Appellant is no longer eligible for disability assistance pursuant to section 10 of the *EAPWDA* because she did not comply with the minister's direction to supply verification of information by providing bank statements for the period of May 1 - May 27, 2014 and verification from a lawyer to establish whether she received \$15,300.00 under the terms of a separation agreement.

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

***EAPWDA* Information and verification:**

Section 10 states:

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.

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

Pursuant to section 28:

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.

Appellant's Position

In her Notice of Appeal, the Appellant argued that she has never done anything wrong in all her years on disability. Her former landlord has been harassing and stalking her and she did not receive \$15,000.00 from him and the Ministry has no record that she did. In her request for reconsideration, the Appellant submitted that she never signed the separation agreement and the agreement does not say that she signed it in front of a lawyer (the witness to her signature is her former landlord's close friend). She argued that she cannot get a letter from the lawyer involved to verify that she did not receive a cheque because her former landlord told the lawyer not to write a letter and the lawyer told her the document was not signed in his presence and he cannot breach confidentiality and has no knowledge of whether or not she received the money.

The Appellant argued that she has no way to prove that she did not receive any money. She cannot afford legal assistance to help her verify that she did not receive money because without her disability cheques she cannot even pay for rent, food or medications, and she is being evicted at the end of October. The Advocate submitted that if the Appellant had received \$15,000.00 she would not be here today advocating for the reconsideration decision to be reversed. They are concerned that the Ministry's reconsideration decision contains "inconsistencies in fact" because the Appellant never told the Ministry that it was her signature on the separation agreement but the Ministry stated that she did.

With regard to the bank statements that were submitted, the Appellant argued that she did provide statements for the requested dates and that she only had four transactions for May 2014, all of them at the end of the month, and that is why no transactions are showing for the rest of May.

Ministry's Position

The Ministry argued that the Appellant has not complied with the minister's direction to provide verification of information relating to her eligibility for disability assistance as required by section 10 of the *EAPWDA*. With regard to the separation agreement, the Ministry acknowledged the Appellant's submissions questioning the agreement's validity; however, without evidence to the contrary the Ministry considers the agreement to be a credible source of information.

The Ministry noted in its reconsideration decision that if the Appellant was entitled to receive \$15,300.00 under the terms of the separation agreement, she would be required to report income pursuant to section 11 of the *EAPWDA* and to pursue claiming the funds as set out in section 13 of the *EAPWDA*. In addition, under sections 9 and 10 of the *EAPWDR*, the Appellant would not be eligible to receive disability assistance if she had income or assets in excess of the legislated limits.

With regard to the Appellant's submission that the lawyer who made the separation agreement was not willing to provide the Appellant with verification due to a concern for the privacy of the other party involved, the Ministry questioned whether the other party's personal information would need to be divulged in order to confirm whether the Appellant received the funds in question.

With regard to the Appellant's bank statements, the Ministry argued that the Appellant only provided her bank statements for the period of May 28 - August 6, 2014 and not from May 1st, 2014 as requested.

Panel's Decision

EAPWDA section 10: Information and verification

Subsection 10(1):

The panel notes that subsection 10(1) of the *EAPWDA* allows the minister to direct a disability assistance recipient to supply information for the purpose of determining or auditing whether the recipient is eligible for disability assistance. In conducting its eligibility review with the Appellant, the Ministry can reasonably be said to have been "auditing eligibility for disability assistance" pursuant to paragraph 10(1)(b) of the *EAPWDA*. The panel notes that the Ministry provided the Appellant with Employment/Assistance review forms which the Appellant signed acknowledging her responsibility to provide complete information. The Ministry also gave the Appellant an Information/Documentation checklist requesting specific documentation by a specified date. 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".

Subsection 10(2):

Similarly, subsection 10(2) gives the minister the discretion to direct a recipient to supply verification of information received by the minister if that information relates to the family unit's eligibility for disability assistance. In the Appellant's circumstances, the Ministry received a separation agreement which stated that the Appellant was entitled to \$15,300.00 under the terms of the agreement, and directed her to provide documentation that would either confirm or refute this information.

Separation agreement

The Ministry requested verification from the lawyer involved, stating that the Appellant had not received any money. It did not accept the Appellant's argument that she could not obtain the requested verification due to the privacy concerns of the other party to the agreement (her former landlord). At the hearing, the Appellant stated that the lawyer would not provide the verification because the Appellant had not signed the agreement in front of him and he would not know whether she had received any money.

While the panel acknowledges the Appellant's unsuccessful attempts to obtain verification from the lawyer on her own and with the help of an advocate, it notes that the Ministry provided the Appellant with the names of legal resources. The Appellant reported that she contacted the Law Society but they would not do anything because the lawyer had not witnessed her signature. However, there is no evidence to indicate that she approached the non-profit law clinic or duty counsel as suggested by the Ministry.

The Ministry noted that there is no indication that the Appellant was taking any action with regard to the allegedly fraudulent document. This is surprising given that she is claiming the separation agreement was forged, and she has been cut off of disability assistance for not providing the requested verification. Despite her position that she can't afford a lawyer when she has no money to even eat, it would make sense to seek out and contact non-profit legal resources to show the Ministry that she was making every attempt to provide the requested verification.

The panel acknowledges the Appellant's submission that the Ministry has no record of her receiving any money under the terms of the separation agreement. However, the issue is whether she provided verification that she hadn't received anything. Given that there is no evidence indicating the Appellant exhausted every avenue (including pursuing non-profit legal assistance) to verify that she did not receive funds in accordance with the separation agreement, the panel finds that the Ministry reasonably determined that the Appellant did not comply with the requirements in section 10 of the *EAPWDA*.

Bank statements

The Ministry's position is that the Appellant did not include transactions for the period of May 1 - May 27, 2014. The Appellant, on the other hand, argued that she did provide transaction information for all of the requested dates but on the May statement there are no transactions listed before May 28th because she did not have any transactions prior to that date.

The panel notes that the Appellant provided three types of bank statements. 1) "Account Activity - Historical Details" printouts, 2) "Account Activity - Details" print outs, and 3) "Deposit Account History Financial Enquiry".

The four "Historical Details" print outs are for May, June, July, and August. The June, July, and August print outs show transactions early in the month (June 2nd and July 2nd, and August 5th) but the print out for May does not show any transactions until May 28th. While the Appellant stated that she did not have any transactions earlier in May, she did not explain why she had transactions earlier in the other months but not May.

With regard to this type of print out, the panel also notes that the Appellant's balance as of June 2nd was \$791.46 (June 2014 print out) and on May 30th the balance was \$884.18 (May 2014 print out). There is no explanation as to why the balances changed between the end of May and beginning of June. The print outs therefore suggest that there were transactions between May 30th and June 2nd that are not shown in the documents provided.

By contrast, the two “Details” printouts indicate account activity over a period of days. For example, the print out with a balance date of September 5, 2014 indicates “Last 10 days” but shows transactions from August 27 - September 5, 2014. Similarly, the one with a balance date of July 25, 2014 indicates “Last 31 days” but shows transactions from June 25th – July 8th. Although all dates in the 10 day or 31 day range are not recorded on the printouts provided, this type of print out suggests that it is possible to request a print out for an entire month long period that overlaps different months (e.g., August 27th – September 5th). This type of print out is helpful in showing that there are no transactions in the earlier part of a month. The Appellant did not provide a print out that overlaps April and May.

The “Deposit Account History Financial Enquiry” is the most complete printout as it provides a full month of transactions and overlaps two different months. The Appellant provided this type of print out for July 1 - August 4, 2014. The Appellant did not provide such a printout for April into May.

Given the above analysis, the panel is not satisfied that the print outs provided by the Appellant verify her position that she supplied the Ministry with the requested information for May with all of the dates from May 1 - 27, 2014 accounted for. The panel therefore finds that the Ministry reasonably determined the Appellant did not comply with section 10 of the *EAPWDA* with regard to the bank statements.

EAPWDR, section 28: Consequences of failing to provide information or verification when directed

Lastly, section 28 of the *EAPWDR* affords the minister authority to declare a family unit ineligible for disability assistance until the recipient complies with the minister’s direction pursuant to section 10 of the *EAPWDA*. As the Appellant had not supplied the minister with the requested information as of the date of the hearing, the panel finds that the Ministry reasonably determined that the Appellant is ineligible for disability assistance until such time that she complies with the minister’s direction.

Conclusion

The panel finds that the Ministry’s determination that the Appellant is not eligible for disability assistance was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the Ministry’s reconsideration decision.