

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 29, 2014 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:

- Phone bill;
- Pay statement or pay stubs for all income for the period of September 2010 to June 2014;
- Records of employment from all employers for September 2010 to June 2014;
- Documents pertaining to any claims settled from September 2010 to June 2014;
- Bank profiles for November 2013 to June 2014;
- Income tax Notices of Assessment for 2010, 2011, 2012 and 2013;
- Statement of all investments and assets;
- Confirmation of the date when his child was no longer in his care;
- Confirmation that the appellant had his child in his care (such as school registration);
- Money Mart account statement for the last 6 months;
- Explanation of bank deposits; and,
- Optionally, a document stating that some of these documents do not apply to his situation.

## PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), Section 32

*Employment and Assistance Act* (EAA), Section 10

### 3PART E – Summary of Facts

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

- 1) Letter dated May 30, 2014 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 June 13, 2014:
  - Identification;
  - Current rent receipts and bills for all utilities;
  - Pay statement or pay stubs for all income for the period of September 17, 2010 to May 30, 2014;
  - Record of employment from all employers during the period of September 17, 2010 to May 30, 2014;
  - Documents to confirm the status of any claims in his name, either settled or unresolved;
  - Profiles and statements for all bank accounts, sole or joint, for the period of November 29, 2013 to May 30, 2014;
  - Statements for all investments, RRSP's, pension funds and any other assets;
  - Income tax Notices of Assessment for 2010, 2011, 2012 and 2013;
  - Money Mart account statement for the last 6 months;
  - Confirmation of the date from when his child has not been in his care;
  - Confirmation that he had custody of his child;
  - Proof of receiving Child Tax Benefit and Family Bonus for his child;
  - School registration for his child; and,
  - Vehicle registration for vehicles owned by him.
- 2) Letter dated June 18, 2014 from the ministry to the appellant that 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 information requested in the May 30, 2014 letter has not been provided and is required by July 2, 2014;
- 3) Letter dated July 8, 2014 from the ministry to the appellant that states in part that the appellant was required to provide information by way of letters dated May 30 and June 18, 2014 and the ministry has not yet received all of the requested information. The outstanding information is:
  - Current rent receipts and bills for all utilities;
  - Pay statement or pay stubs for all income for the period of September 17, 2010 to May 30, 2014;
  - Record of employment from all employers during the period of September 17, 2010 to June 17, 2014;
  - Documents to confirm the status of any claims in his name during the period of September 17, 2010 to June 17, 2014;
  - Profiles and statements for all bank accounts, sole or joint, for the period of November 19, 2013 to June 18, 2014 (statements for one bank account were submitted for May and June 2014);
  - Statements for all investments, RRSP's, pension funds and any other assets;
  - Income tax Notices of Assessment for 2010, 2011, 2012 and 2013;
  - Money Mart account statement for the last 6 months;
  - Confirmation of the date from when his child has not been in his care;
  - Confirmation that he had custody of his child;
  - Proof of receiving Child Tax Benefit and Family Bonus for his child;

- School registration for his child; and,
- Vehicle registration for vehicles owned by him.

The ministry wrote in the letter that, as the appellant's eligibility cannot be determined, he is no longer eligible for assistance and his file will be closed on August 8, 2014;

- 4) Receipt dated June 13, 2014 issued to the appellant for \$300 for a damage deposit;
- 5) ICBC Vehicle Registration and Insurance for the period July 21, 2014 to September 25, 2014; and,
- 6) Requests for Reconsideration dated July 30, 2014 and July 31, 2014.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Record of Employment dated January 27, 2010;
- 2) T4E from the Canada Revenue Agency (CRA) for the years 2010 and 2012;
- 3) Income Tax Return Information for the years 2010, 2011, and 2013;
- 4) Bank account statement for June, July and August 2014;
- 5) Receipts dated June 1, 2014 in the amounts of \$600, with no reference line, and \$300 for a damage deposit;
- 6) Personal assessment bank statement as at August 25, 2014;
- 7) Deposit account history- financial enquiry from January 1, 2010 to August 25, 2014;
- 8) Transaction History indicating a balance in a bank account as of September 2, 2014;
- 9) Letter dated September 15, 2014 from the Ministry of Children and Family Development (MCFD) indicating the time that the appellant's child was residing with him;
- 10) Statutory Declaration dated September 19, 2014 in which the appellant declared that:
  - He has never used Money Mart or any such cheque cashing agency,
  - He does not have a custody order for his child,
  - He does not receive child tax or family bonus benefits for his child,
  - His child has been in his care since January 2014,
  - He has provided his identification to the ministry,
  - He does not have a phone bill as he purchases pay-as-you-go phone minutes,
  - The ministry has his Record of Employment from his previous employer,
  - He does not have any investments such as RRSP, pension fund or any other assets and,
  - He did not receive any claims in his name settled during the period of September 17, 2010 to June 17, 2014.
- 11) Letter dated September 19, 2014 from the appellant in which he wrote in part:
  - Due to the limitations of depression and anxiety, he has experienced difficulty in gathering the requested documents. He is unable to execute tasks that are asked of him without support or guidance;
  - It was unreasonable for the ministry to expect him to gather all of the documents in the time frame that was imposed on him.
  - He has been making reasonable efforts to gather the documents requested to the best of his ability.

In his Request for Reconsideration dated July 30, 2014, the appellant wrote that:

- He feels he has done nothing wrong. He is waiting for advocacy to phone back.
- He gave the documents he had to solve this problem.
- He is waiting for a response to help him with this problem.

In his Request for Reconsideration dated July 31, 2014, the appellant wrote that:

- He requests additional time to gather the following documents: employment pay stubs for the last 4 years, CPP stubs, EI stubs, to request information from CRA [Canada Revenue Agency], bank profile statements, rent receipts and security deposit.

In his Notice of Appeal dated September 19, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- The ministry unreasonably applied Section 10 (of the EAA);
- The ministry failed to give consideration to his disability and limitations;
- The ministry placed unreasonable demands on him and set him up for failure.

At the hearing, the appellant and his advocate stated that:

- The appellant had difficulty obtaining the documents required as a result of refusal by third parties to provide the necessary information. The duty counsel refused to release a letter from MCFD confirming the time that the appellant had his child in his care. The appellant has contact with the social worker all the time regarding seeing his children but when he questioned whether information could be provided to the ministry, he was "brushed off."
- Given the difficulty the advocate experienced with obtaining the letter from MCFD, it was unreasonable for the ministry to expect that the appellant could obtain this letter. The appellant provided the information verbally and it was unreasonable for the ministry to require that the information be provided in a document.
- The ministry could obtain much of the information requested of the appellant from another source. At no point was the appellant advised by the ministry that he could provide a letter to state that some of the requested information did not apply to his situation and he only became aware of that through the statement in the reconsideration decision.
- The advocate was able to assist the appellant in dealing with the third parties and "got the ball rolling", but it still takes time to obtain documents, especially from CRA.
- The appellant did not know the process for obtaining information from the CRA and release of information was initially refused because the appellant could not provide his previous two addresses. He was overwhelmed due to anxiety and the advocate had to intervene.
- The appellant does not have a phone bill since he purchases pay-as-you-go cards each month. The appellant confirmed in his Statutory Declaration dated September 19, 2014 ("the Stat Dec") that he does not have a phone bill.
- The last employment that the appellant had is covered by the Record of Employment (ROE) dated January 27, 2010. The appellant has not been employed since 2010. The appellant confirmed in the Stat Dec that the ministry has the ROE from the appellant's previous employer.
- The appellant does not have any claims with ICBC and the appellant stated in the Stat Dec that he did not receive any claims during the period September 2010 to June 2014.
- The appellant provided bank statements for June through August 2014 for his new bank account and the balance as of September 2, 2014. He provided the deposit account history of his previous bank account and confirmation that the account closed in 2010 and there are currently no funds with this bank. The appellant has no other bank accounts.
- The appellant provided information from CRA for the taxation years 2010, 2011 and 2013. He does not have information for 2012 because he did not file his taxes for this year. They were having issues with the care of their children at the time, it was "a tough time" and he was

overwhelmed. The advocate overlooked including a statement to cover this in the Stat Dec.

- The appellant does not have any investments or assets and the appellant has confirmed this in his Stat Dec.
- Even though it was difficult to get the letter released, the MCFD wrote a letter confirming the times that the appellant's child was in his care. The appellant confirmed in the Stat Dec that his child has not been in his care since January 2014 and he does not have a custody order or school registration or receive child tax or family bonus benefits for his child.
- The appellant has never used Money Mart, or at least not for about 10 or 15 years. The appellant confirmed in the Stat Dec that he has never used Money Mart.
- The ministry wanted an explanation for the deposit to his bank account of \$350 in June 2014 and the appellant provided a receipt for the sum of \$300 for a damage deposit. The appellant borrowed money from a friend to pay the damage deposit at his residence and, when the deposit of \$350 was returned by cheque, the appellant deposited it into his account and paid his friend back \$300.

The ministry relied on its reconsideration decision as summarized at the hearing. The information provided by the ministry included that:

- The appellant previously received income assistance as a single parent with one dependent child; he is now a sole recipient of income assistance who is considered "expected to work".
- At the hearing, the ministry stated that an investigation was commenced since a third party allegation had been received that the appellant's child was no longer in his care and this had not been reported by the appellant to the ministry as required on the monthly reporting stubs.
- When an allegation of fraud is received, it is normal practice for the ministry to go back and review the entire file, or at least the period of time over which the file was consistently open.
- The ministry requires statements regarding the requested information to be in writing.
- The ministry stated at the hearing that it is normal practice for the ministry to request information from the client directly before approaching third parties. The ministry is able to determine that there has been contact by MCFD but not whether a child has been removed.
- Although additional documents have been provided by the appellant on the appeal, the ministry is still not satisfied that all of the items requested have been sufficiently addressed.

#### *Admissibility*

The ministry did not object to the admissibility of the additional documents and did not raise an objection to the additional oral evidence on behalf of the appellant. The panel admitted the additional documents and oral testimony relating to the ministry's specific requests, namely: 'statements of all investments and assets' and 'an explanation of bank deposits', as the appellant had presented an ICBC vehicle registration and a receipt for \$300 at reconsideration and this additional information is, therefore, considered in support of information and records that were before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act* (EAA).

The panel did not admit the remaining documents or the oral testimony relating to them as the appellant had not addressed these other required items, or stated they did not apply to him, so that his responses to the particular items would be before the ministry at reconsideration and, therefore, the additional information is neither information and records that were before the ministry at reconsideration [Section 22(4)(a) of the EAA] or oral or written testimony in support of information and records before the ministry on reconsideration [Section 22(4)(b) of the EAA].

## 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, 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 within the time specified and is, therefore, ineligible for income assistance. The ministry stated at the hearing that the normal procedures were followed for a situation where an allegation of fraud has been made, as was the case with the appellant, since he did not report to the ministry that his child was no longer in his care. The ministry typically sends two letters requesting information, requires written confirmation of required information and will not accept verbal confirmation. The ministry argued that not all of the required information has been provided by the appellant to the date of the reconsideration 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(1) of the EAA either does not apply to him or has been applied unreasonably by the ministry and, alternatively, that the appellant has now complied with the ministry's direction to provide information. The advocate argued that Section 10(1)(a) of the EAA does not apply to him because he is not "wanting to apply for income assistance" and, therefore, the ministry cannot direct him to supply information pursuant to Section 10(1)(e) of the EAA. The advocate argued that Section 10 is written in the present tense, only relates to present eligibility and does not include a request for past information. The advocate argued that the ministry had discretion to not request the information from the appellant or to allow more time for him to provide the information, could have obtained the information from third parties, should have known of the appellant's limitations and was setting him up for failure and was, thereby, unreasonable in requiring the information from the appellant. The advocate argued that the appellant has now provided the information with the assistance of the advocate or has stated in the Stat Dec that the information does not apply to him, as required by the ministry, and the appellant has verbally explained the missing information from CRA for 2012.

#### *Panel decision*

Pursuant to Section 10(1)(b) and (e) 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. The panel finds that Section 10(e) applies to a number of categories of people, as set out in the list, namely: "a person referred to in paragraph (a)" [which is a person wanting to apply for income assistance] as well as to an "applicant" [a person who has applied for income assistance] and to a "recipient" [a person in receipt of income assistance], and, therefore, applies to the appellant as a recipient of income assistance. The panel finds that Section 10 applies to both assessing current eligibility as well as auditing ongoing and past eligibility for income assistance, given the reference to a "recipient" of income assistance and that one of the purposes for seeking information is to "audit" eligibility. The ordinary dictionary definition of the word "audit" is 'an official inspection of an individual's accounts' and includes a review of present as well as past records and transactions. Given that the ministry followed its normal procedures where an allegation of fraud was made, i.e. that the appellant had not reported that his child was no longer in his care, and had allowed a period of over a month for the appellant to provide the requested information, the panel finds that the ministry was reasonable in requiring information from the appellant and in applying Section 10 of the EAA.

The panel finds that the letters forwarded by the ministry to the appellant dated May 30, 2014 and



June 18, 2014 required specific information from the appellant, pursuant to Section 10(1) of the EAA, by the deadlines of June 13, 2014 and July 2, 2014 respectively. The appellant did not dispute that he received these letters nor that he was aware of the information that was being requested by the ministry, and he acknowledged that he did not provide all of the required information by the July 2, 2014 deadline set out in the ministry's letter. While the appellant argued that he should have been given more time to provide the information given his limitations, the panel finds that the ministry followed the normal procedures in the appellant's situation, sending two letters listing the required information, and allowing over a month for the appellant to provide the required information or to provide an explanation why the information does not apply to him. The panel finds that the ministry reasonably concluded 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 July 2, 2014.

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. With the advocate's assistance, the appellant has provided a number of additional documents as well as a Stat Dec stating that some of the requested documents would not be provided as they do not apply to his situation. The ministry maintained the position on the appeal that the ministry is still not satisfied that all of the items requested have been sufficiently addressed by the appellant, and the panel determined that some of the additional information is not admissible on the appeal pursuant to Section 22(4) of the EAA.

The panel considered the appellant's explanation for the deposit to his bank account of \$350 in June 2014 as he provided a receipt for the sum of \$300 for a damage deposit and stated that he borrowed money from a friend to pay the damage deposit at his residence and, when the deposit of \$350 was returned by cheque, the appellant deposited it into his account and paid his friend back \$300. The panel also considered the ICBC vehicle registration as information regarding the appellant's assets. Therefore, the panel finds that the information outstanding to comply with the direction by the ministry consists of: a phone bill, paystubs or pay statements from all income from September 2010 to June 2014, Records of Employment from September 2010 to June 2014, documents pertaining to any claims he may have settled from September 2010 to June 2014, bank profile forms for November 2013 to June 2014, income tax Notices of Assessments from 2010 to 2013, statements of all investments, confirmation of the date his child was no longer in his care, confirmation that he had his child in his care, a Money Mart account statement for the past 6 months, or, optionally, a document stating that some of these documents would not be provided as they do not apply to his situation. 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 to the ministry.

#### *Conclusion*

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