

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 19, 2015 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 she has not fully complied with the direction since requested information remains outstanding, namely:

- Confirmation of where she lived for the past 2 years;
- Bank records from all accounts for the past 2 years;
- Record of entries from Canada Border Agency and US Customs and Border Protection for the past 2 years; or,
- Alternatively, a detailed explanation of the information she could not get and why.

PART D – Relevant Legislation

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

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

## PART E – Summary of Facts

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

- 1) Statements of Account History for two accounts, one closed May 2, 2014 and the other July 8, 2014;
- 2) Assignment of Maintenance Rights dated February 10, 2015;
- 3) Information Return dated April 22, 2015 indicating residence #1 as the appellant's mailing address;
- 4) Tax Return Summary for 2014 taxation year;
- 5) Tax Notice dated July 3, 2015 describing GST and climate action tax credits paid to the appellant;
- 6) Tax Notice dated July 20, 2015 describing various child tax benefits paid to the appellant;
- 7) Letter dated August 12, 2015 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 listed information or documentation is required by September 1, 2015;
- 8) Note dated August 26, 2015 which states that the appellant has lived in residence #2 for "over 7 months;"
- 9) Letter dated September 10, 2015 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 August 12, 2015 letter has not been provided and is required by September 23, 2015;
- 10) Letter dated September 30, 2015 from the ministry to the appellant that states in part that the appellant was required to provide information by way of letters dated August 12, 2015 and September 10, 2015 and the ministry has not yet received all of the requested information.

The outstanding information is:

- Copy of this letter;
- Identification: Social Security Number;
- Rent receipts and utility bills for last two years. Documents need to be completed by the legal owner and list all persons living in the unit;
- Home owner shelter costs: mortgage documents, proof of mortgage payments, house insurance, property taxes and all utilities;
- Records of all income received from all sources for the period of the last two years;
- Records of employment from all employers during the period of the last two years;
- Statements for all bank accounts, sole or joint, for the period of last two years. Provide an explanation for all deposits. If cheque cashing facilities are used, provide a transaction record for the same period of time;
- Banking profiles from CIBC and any other bank accounts either here or in the United States;
- Statements for all investments, RRSP's, pension funds, and any other assets;
- Income Tax Notice of Assessment for 2014;
- Tax slips (T4's, T5's, etc.) for 2014; and,
- Other: Record of entry and exits to and from Canada from Canada Border Agency and US Customs and Border Protection. An Access to Information and Privacy request must be made to obtain the Canadian information. A freedom of Information Act request must be made to obtain the American information.

The ministry wrote in the letter that, as the appellant's eligibility cannot be determined, she is

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- no longer eligible for assistance and her file will be closed on October 29, 2015;
- 11) Note dated October 6, 2015 regarding residence #1 in which the appellant's father wrote that his trailer was rented by the appellant "until 2014" and then he needed to move back in for medical reasons and the appellant moved into residence #2 where she has lived since; and,
- 12) Request for Reconsideration dated October 6, 2015.

In her Request for Reconsideration dated October 6, 2015, the appellant wrote that:

- She has not been living in another country with her "ex" and her two children.
- She and her ex were separated due to a domestic violence incident and he had a court order to stay away from her.
- She took her children to another province to start a new, safe life and she was not in receipt of income assistance from the ministry during that time.
- This move did not go well and she returned to a community in British Columbia, to residence #1 that she rented from her father until he fell ill and needed to move back in. She then moved into residence #2 and she is "on the rental lease at this home."
- She is currently pregnant. She frequently crosses the border to be with friends and family and to shop for herself and her children. Her "ex" sees his children sometimes but she is not together with him and she will not live with him ever again.

In her Notice of Appeal dated October 26, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She is not living in another country with her ex spouse and claiming income assistance [in Canada].
- She has always lived in Canada since she was born.
- She is in the final trimester of pregnancy and the mother of 2 children.

At the hearing, the appellant stated that she had copies of years of statements from CIBC and Money Mart available and that they were "in the trunk of her car." The panel called a short recess to allow the appellant to retrieve the documents. The appellant returned and said she did not have the documents as she discovered they were not in her car after all.

At the hearing, the appellant's father stated that:

- The appellant was assaulted by a gang member and sustained significant injuries, and their family is under trauma.
- He owns a house in the United States and the appellant has stayed there. The appellant will spend a week or two at a time staying in his house in the United States.
- His house in British Columbia has been the appellant's primary residence. He and the appellant are dual citizens. He has advised her to always use his address as her main address since he will be providing for her in his Will.
- When he was diagnosed with cancer, he realized he needed to move back to Canada for his medical treatments and, therefore, the appellant had to move in with her friend.
- He came back to Canada to start his treatments in about March 2015.
- He cannot currently afford to take care of the appellant and her children because of his own health issues.
- The appellant moved to another province for a couple of months, approximately November and December 2014, because she was afraid to live in the community in British Columbia but, with

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the downturn in the economy, the jobs dried up and she had to come back. She stayed with him for a while in his house in the community in British Columbia (residence #1) and then moved in with a friend (residence #2).

At the hearing, the appellant stated that:

- She had lived at her father's house (at residence #1) for many years. She and one child lived there when she first applied for income assistance in 2011. She paid some rent to her father but not even \$650 was anywhere near enough to maintain his property which includes 10 acres and a large renovated trailer.
- She constantly travels back and forth between the local community in British Columbia and the United States. She shops all the time in the United States.
- Even though the father of her children was abusive, she ended up marrying him on bad advice. He is an American. She never lived in the United States with him. There were incidents of domestic violence and she was assaulted.
- She has always maintained a home in the local community in British Columbia, except for when she moved to another province to live with her brothers. She was there for "a month or two" and tried to get onto income assistance from that province but was not able to so she came back. She had email correspondence with a prosecuting attorney during that time and could provide copies.
- She lived with her father for a week or two upon her return to British Columbia and then moved in with a girlfriend and rented rooms from her (residence #2). She moved in with her "friend of the family" about "8 or 9 months ago." Her friend has several children of her own. The rent was \$650 and she always paid her girlfriend in cash. She would also spend \$200 to \$300 for groceries, and her father would buy groceries for her and her children, and the groceries would disappear.
- She started to wonder if the money for rent was going to the landlord and then found out that they were all being evicted for non-payment of rent. She did not approach the property manager for information because she was not on the lease and they were being evicted.
- She was also not put on the utilities accounts since she just paid cash from withdrawals from her account, or she would buy groceries in return for rent and utilities.
- She could not get lease information for this residence because her friend was "running away" from the landlord.
- She has been staying at her father's house for the past couple of weeks and would like to get into second-stage housing. She wants live somewhere safe and drug-free for when her third child is born.
- She submitted an application for information from the Canada Border Agency and the US Customs "about a month ago" but does not have copies of any of these applications or confirmation of her application.
- She had all the bank information for her CIBC and Money Mart accounts available but the investigative officer offended the appellant and she did not want to deal with her and did not provide copies to her.
- She has never lived in the United States but she is often there to visit. She has many friends there and goes to stay with her friends and to allow the father of the children to visit with them.
- One time when she was in the United States the sheriff came to the house for a "well-being" check and the father of the children was not there at that time. Her father had requested that the sheriff attend at the residence because he had not heard from her.

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- She was just “getting her stuff out” of the place, which consisted of the children’s toys and belongings, since she mostly stays with her friends when the children are visiting their father. The father now has to come to Canada to see the children.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that ministry investigation started in August 2015 due to an allegation that the appellant was living in the United States with her spouse. A sheriff had attended at a residence in the United States to perform a “wellness check” on the appellant and her children and found the appellant at the residence in the United States with her children. The ministry clarified that the statements of the account history for two closed accounts provided by the appellant at reconsideration relate to accounts with the TD bank.

*Admissibility*

The ministry did not object to the admissibility of the oral evidence on behalf of the appellant. The panel admitted the oral testimony relating to the ministry’s specific requests as the appellant had presented some information at reconsideration regarding her residency for the past 2 years and some of her bank records 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)*.

## 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 she 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.<sup>10</sup>

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 had been made, in the appellant's case that she had not reported to the ministry that she was living in the United States. The ministry sent two letters requesting the information and also advised of the request for information several times over the telephone and in person. 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 she complies with the direction, pursuant to Section 32 of the EAR.

#### *Appellant's position*

The appellant's position is that she has been going through difficult circumstances, with domestic violence and a high risk pregnancy, she has not "lived" in the United States, and she has tried to comply with the ministry's direction to provide information. The appellant argued that she and her father have provided information about where she lived for the past 2 years. The appellant argued that she had obtained the bank records from CIBC and Money Mart, as requested by the ministry, but did not provide them because she did not want to interact with investigative officer because she was offended by a comment made. The appellant argued that she has the bank records and thought they were in her car but discovered, after checking, that the copies were not there. The appellant argued that she has applied "about a month ago" for the requested information from Canada Border Agency and the US Customs and Border Protection recording her entries for the past 2 years.

#### *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 the letters forwarded by the ministry to the appellant dated August 12, 2015 and September 10, 2015 required specific information from the appellant, pursuant to Section 10(1) of the EAA, by the deadlines of September 1, 2015 and September 23, 2015 respectively. The appellant did not dispute that she received these letters addressed to residence #2, and she acknowledged that she did not provide all of the required information by the final deadline of September 23, 2015 set out in the ministry's letter. While the appellant argued that she was experiencing difficulty because of domestic violence and a high risk pregnancy, there was no further information about how these circumstances impacted her ability to respond and the appellant admitted that she did not provide the required bank records she claimed to have in her possession because she was offended. 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 a detailed explanation of what she could not get and why. 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 September 23, 2015.

In accordance with 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. At reconsideration, the appellant provided handwritten notes from her father and her friend regarding her residence at different times and account statements for two closed bank accounts with the TD bank and, at the hearing, she provided verbal testimony regarding her residence at different times, the claim

that she has, somewhere in her possession, copies of the detailed account statements for CIBC and Money Mart, and the claim that she has applied for information “about a month ago” from the Canada Border Agency and US Customs regarding her entries for the past 2 years. The ministry maintained the position that the ministry is still not satisfied that all of the items requested have been sufficiently addressed by the appellant.

Given the inconsistencies and unreliability of the information provided, the panel finds that the ministry reasonably required written confirmation from a reliable third party of the information claimed by the appellant, particularly with respect to her travel between Canada and the United States as this relates to her residency for the past two years. The appellant wrote in her Request for Reconsideration dated October 6, 2015 that she was on the rental lease at residence #2 and, at the hearing, stated that she could not obtain further information to show when she was residing at residence #2 because she was not on the lease, was not on the utility account and paid her rent in cash. The appellant stated that her friend had not paid the rent for residence #2 as obliged and they had all been evicted for non-payment of rent and it is this friend’s note dated August 26, 2015 upon which the appellant relies to establish her residency in Canada for the period from about January to August 2015. In his note dated October 6, 2015, the appellant’s father wrote that the appellant rented residence #1 from him “until 2014” and he had to move back into the residence for medical reasons and, at the hearing, he stated that he moved back to Canada to start his medical treatments in about March 2015.

Therefore, the panel finds that the information outstanding to comply with the direction by the ministry consists of:

- confirmation of where she lived for the past 2 years, i.e. from August 2013 through August 2015,
- bank records from all accounts for the past 2 years, including copies of the detailed accounts for the CIBC and Money Mart accounts that the appellant stated she already obtained and are somewhere in her possession,
- a record of entries from Canada Border Agency and US Customs and Border Protection for the past 2 years, or from August 2013 through August 2015.

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 she 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.