

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated July 4, 2016 in which the ministry found the appellant ineligible for income assistance (“IA”) for failing to pursue all sources of income, specifically Canada Pension Plan/ Quebec Pension Plan (“CPP/ QPP”) benefits. The ministry determined the appellant is ineligible for IA pursuant to section 14 of the Employment and Assistance Act (“EAA”) for failing to accept or pursue income that would enable him to be completely or partly independent of assistance. The ministry further determined that his ineligibility will continue pursuant to section 31 of the Employment and Assistance Regulation (“EAR”).until the failure to pursue income is remedied.

PART D – Relevant Legislation

Employment and Assistance Act - EAA, sections 2 and 14

Employment and Assistance Regulation - EAR, sections 9 and 31

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant is a sole, employable, 61 year old recipient of IA. His file was opened on September 9, 2008.
2. On June 9, 2016, the ministry advised him that he is not eligible for IA. The ministry's record indicates that a series of letters to and from the appellant, as well as in-office contacts, preceded the ministry's decision. The record includes copies of the letters and provides the following information:
 - On February 26, 2016, the ministry advised the appellant of the requirement to make an application for CPP early retirement benefits ("CPPE") as he may be eligible for those benefits if he had made at least one valid contribution during his working history. The ministry noted that section 14 of the EAA and section 9 of the EAR require him to seek out all sources of available income including CPPE.
 - The ministry asked him to complete and sign an application form (CPP1613) and a *Consent to Payment and Deductions* form (ISP1613 – copy of this form included in the ministry record). The ministry noted that the consent under CPP is required pursuant to section 9 of the EAR. The ministry explained that the CPP application or a *Statement of Contributions* indicating he is not eligible for CPP, is required to determine his ongoing eligibility for IA. The ministry requested the information by April 8, 2016 and warned that the appellant's IA cheque for April 20th would be held until the ministry is able to determine his ongoing eligibility.
 - On March 30 and April 1, 2016 the appellant stated he did not want to submit the form and would not sign the application as he was still working and trying to find full-time employment. The ministry advised that he was required to access any other available income.
 - The appellant was sent reminder letters on March 18, 2016 and April 13, 2016, to submit the forms and the ministry advised that his IA cheque for the next month would be held at the ministry office until the information was submitted. On April 5, the appellant stated that his work history was in Quebec and he would need to speak to QPP before making a decision on making the application. The ministry therefore extended the deadline for the CPP forms by one month.
 - On April 15, 2016, the appellant submitted information indicating he was working 4 hours per week in BC and on April 19th he provided information regarding barriers to his job search and advised the ministry that he was refusing to apply for CPPE as it would affect his pension income for the rest of his life.
 - On April 20, 2016, the ministry requested that he supply proof by May 13, 2016 that he had applied for CPPE. The ministry warned that he may be declared ineligible for IA if he did not comply.
 - Between April 22 and June 8, 2016 the appellant sent 8 letters to the ministry and attended the ministry office twice in person. He requested travel expenses from the ministry to leave BC so that he could pursue work overseas, or for the ministry to pay for his housing in BC until he found a stable job. He explained that it was "out of the question" to complete the CPP forms prior to age 65 as it would result in a lower CPP income. He stated on May 9th that he had only made contributions to QPP and it would take time to obtain information and he would contact QPP "when the time was appropriate." The ministry noted that he did not submit confirmation of no contributions being made to CPP and that he had sporadically declared income from a variety of sources ever since his IA file was opened in 2008.
 - At the end of May, the appellant reported he had talked to QPP and Service Canada and that he needed to open a bank account in order to enter banking information on the QPP

application and he would then submit the application to the office. The ministry advised that IA would not be issued until the CPPE application was submitted. The ministry noted on June 6, 2016, that the appellant had yet to make the application for CPPE.

3. On June 17, 2016, the appellant signed a Request for Reconsideration ("RFR") in which he provided the following information:

- His move to BC in 2008 was intended to be temporary as he was in the process of obtaining a visa to work overseas. That objective fell through and he was "stuck in (BC)" and had to "start all over here."
- He was unsuccessful in finding full-time employment and has been working part-time for various employers while receiving support from the ministry. However, he is still pursuing further employment opportunities and he is also applying for international jobs "just in case they pay airfare" [he indicated in his letters that he could not afford the airfare and visa fees to work overseas]. He states that it is premature for him to go on CPP.
- In his reconsideration submission dated June 24, 2016 he summarizes his efforts to look for work and his past circumstances of working overseas. He provides his argument against the ministry decision [the panel will consider the arguments of both parties in *Part F - Reasons for Panel Decision*]. He states that he will not go on CPP and QPP as an "early retirement push" would reduce his income by "\$135 less a month."

Additional submissions

In his Notice of Appeal dated August 10, 2016, the appellant provides his argument on appeal indicating that he will elaborate on "other matters" at the hearing due to confidentiality/ privacy concerns.

At the hearing, the appellant submitted a document titled *Agenda*, dated August 29, 2016, a local newspaper, and two brochures from employers with pages circled indicating work that he is scheduled for. The agenda provides background information regarding his employment history, work search, and his current situation of waiting for updates on his job applications for international positions and for further contracts with his local, part-time employers. The appellant requests the ministry to provide him with IA for housing only (\$375 per month), to consider his reasons for refusing to apply for CPP/ QPP, and to also consider funding a one-way ticket for him to leave Canada for international employment. The agenda further provides the appellant's argument on appeal. The ministry had no objections to the agenda, the newspaper, or the brochures from the appellant's employers and the panel finds that they contain the same/ very similar information as his submissions in the reconsideration record and provide an update on his situation as described at reconsideration.

The panel admits the documents under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. The panel notes that although the documents are admissible, the panel will only give weight to information that is relevant to the legislative criteria that apply in the circumstances of the appellant.

At the hearing, the appellant discussed the documents and answered questions regarding his communications with CPP/ QPP. He explained that he would not qualify for CPP because he has only contributed \$5 altogether; however, if he receives QPP today, the amount would be \$503 per

month; whereas, if he waits until age 65 he will receive \$635 per month which is \$135 more. He stated that he does not know how his contributions and payments would be affected if he works while collecting QPP. He wants to work today and is urgently awaiting confirmation of employment, especially international positions. He confirmed that he is confused about how employment in BC would affect QPP and he does not know the relationship between CPP and QPP. When asked if he obtained information from QPP to clarify his entitlement in consideration of his employment situation, the appellant explained that he spoke to QPP via phone only, and they told him that his current entitlement is \$503 per month. He acknowledges that he did not send an application to QPP and he added that QPP will not send him information unless he submits an application; however, his time is better spent focusing on his job search than clarifying the CPP/ QPP programs.

The ministry stated that it is relying on the reconsideration decision and has no information to add. In response to questions, the ministry explained that it has no authority to change the legislation and while it empathizes with the appellant's situation, the ministry is required to "comply with laws as they are written for the people." The ministry explained that it cannot pay the appellant a shelter allowance only, or travel costs, or any other benefit without going through the whole process of assessing his eligibility for a specific benefit against legislative and program requirements.

The panel finds that the oral testimony re-summarizes the appellant's employment history and his current situation and confirms his entitlement for QPP and the status of his application [no application has been filed], thereby substantiating the information in the reconsideration record that indicates the appellant has a work history in Quebec, that he told the ministry he had contacted QPP, and that he has not submitted an application. The panel therefore admits the appellant's testimony under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the reconsideration decision of July 4, 2016 in which the ministry found the appellant ineligible for IA for failing to pursue all sources of income, specifically CPP/ QPP benefits, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined the appellant is ineligible for IA pursuant to section 14 of the EAA for failing to accept or pursue income that would enable him to be completely or partly independent of assistance. The ministry further determined that his ineligibility will continue pursuant to section 31 of the EAR until the failure to pursue income is remedied.

The relevant sections of the legislation are as follows:

Employment and Assistance Act

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;
- (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) disposed of real or personal property to reduce assets;
- (b) [Not in force.]

(3) In the circumstances described in subsection (1), the minister may

- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

Employment and Assistance Regulation

Requirement to apply for CPP benefits

9 If a family unit includes a recipient who may be eligible for a benefit under the Canada Pension Plan (Canada), for the family unit to continue to be eligible for income assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the Canada Pension Plan (Canada) directing that

(a) an amount up to the amount of income assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and

(b) the amount deducted be paid to the minister.

Effect of failing to pursue or accept income or assets or of disposing of assets

31 (1) For the purposes of section 14 (3) (a) [consequences of not accepting or disposing of property] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

(a) if the income, assets or other means of support are still available, until the failure is remedied, and
(b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 14 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,

(a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and

(b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.

(4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2 000 of the value of the forgone consideration.

(5) For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce assets.

In his RFR, the appellant argues that it is premature for the ministry to ask him to go on CPP as “things can change tomorrow” in regard to his employment situation. He is pushing to find work every single day and his situation is unacceptable, he needs a job as soon as possible. He never wanted to return to Canada from overseas; the decision was made by others during his medical crisis in another country. Being on IA is not his fault, nor are the roadblocks he faces in finding stable employment including the ministry’s refusal to pay for his visa application for international employment.

The appellant submits that he will not make a decision that he will potentially regret in 10 or 15 years when he is receiving \$135 less per month due to the ministry “forcing him” to take an early retirement pension. He states in his letters that it is “against my views” to go on CPP/ QPP as he will “suffer for lower pension revenues for the rest of my life.” At the hearing, he added that while he respects the ministry, he prefers to have no money from the ministry than to apply for CPP/ QPP as it is “against his soul” to be forced to apply for benefits that could negatively impact his financial situation long term. He states that he understands the law, but at this point, he would like to “open the ministry door to change things just a little to help people.”

The ministry’s position is that the appellant is not eligible for IA because he failed to pursue all sources of income as required under section 14 of the EAA that would reduce his reliance on IA, and that he remains ineligible for IA under section 31 of the EAR until the failure to accept or pursue CPP or QPP is remedied. In its letters to the appellant, the ministry notes that it did not receive copies of the appellant’s CPP application or other proof that he applied for CPP, the Consent to Deductions and Payment form, and a Statement of Contributions to show that he was not eligible for CPP, or confirmation of an application for QPP.

Panel’s decision

Under the general eligibility provisions of section 2 of the EAA, a family unit must satisfy the initial and continuing conditions to receive IA and the family unit must not have been declared ineligible for assistance. Section 9 of the EAR sets out the requirement to apply for CPP benefits and submit a *Consent to Deduction and Payment* form when requested by the minister so that IA may be deducted from the benefit. The ministry requested this form in its letters to the appellant and also requested a copy of the CPP application. The appellant acknowledges that he did not submit these to the ministry. Sections 14(1)(a) and 14(3)(b) of the EAA set out the consequences of failing to accept or pursue income, assets or other means of support, that would in the opinion of the minister, enable the recipient to be completely or partly independent of IA. Specifically, the ministry is authorized under section 14(3)(b) to declare the family unit ineligible for assistance where such income is not pursued.

The ministry’s evidence is that the appellant worked sporadically in BC and for a longer period in Quebec. The panel therefore finds that the ministry reasonably determined the appellant may be eligible for CPP/ QPP to reduce his reliance on IA, and that the ministry was reasonable in requesting documentation to confirm that he had applied for these benefits. The appellant argues that he wants to work and that the evidence he submitted proves that he has been looking for employment and it is

not his fault that he has not found a full time job. He further argues that the ministry failed to

reimburse him for his visa application for work assignments in the past and he is hoping his appeal changes the ministry's legislation.

While the appellant argues that he is not eligible for CPP as he "only contributed \$5", he did not provide a Statement of Contributions as requested by the ministry to confirm that he is not entitled to benefits. Furthermore, while the appellant confirmed that he is eligible for QPP, he did not provide a copy of his application as requested by the ministry and he acknowledges that he did not and will not apply for QPP due to the consequences of reduced future income, and because the application for early retirement benefits is premature as he could be offered a job any day. Despite the appellant's arguments, the panel notes that the legislation does not set out any exceptions for not accepting or pursuing income, in this case QPP. The panel therefore finds that the ministry reasonably determined the appellant is not eligible for IA pursuant to section 14(3)(b) of the EAA.

Finally, section 31(2)(a) of the EAR states that where the family unit is declared ineligible for IA under section 14(3)(b) of the EAA for failing to accept or pursue income referred to in section 14(1)(a), the period of ineligibility continues until the failure to pursue income is remedied. Again, the legislation contains no exceptions and as noted by the ministry at the hearing, the ministry is required to follow the legislation "and serve clients according to the rules." As neither the ministry nor the panel have the authority to overturn or rewrite the legislation, and the appellant acknowledges that he still has not applied for CPP or QPP, the panel finds that the ministry reasonably determined that he continues to be ineligible for IA in accordance with section 31(2)(a) of the EAR.

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant is ineligible for IA for failing to pursue or accept CPP/ QPP benefits was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the decision pursuant to sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.