



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 20, 2016 which found that the appellant is not eligible for disability assistance pursuant to section 10 of the *Employment and Assistance For Persons with Disabilities Act* because she failed to provide information and verification of information necessary to determine eligibility as set out in section 28 of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 10
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 28

PART E – Summary of Facts

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

1. A Request for Reconsideration (RFR) signed by the appellant and dated July 5, 2016 in which she states that:
 - She had no income in 2015 and the Canada Revenue Agency is willing to provide confirmation to the ministry by telephone that the appellant has filed her 2015 income tax return and identify the amount of her reported income for that year;
 - She had recently asked an individual who was the owner of a motel in her community to send a facsimile (fax) of certain unspecified documents to the ministry;
 - She had previously submitted a letter describing her relationship with a third party and a letter from the owner of the motel referred to above;
 - She has no income other than the \$906.42 per month she receives in disability assistance;
 - She has provided the ministry with a copy of a probation order stating that she is not allowed to enter any bank or cheque cashing facility except for one specific bank branch in her community; and
 - She has submitted all of the documents that the ministry asked for to the best of her ability.
2. A letter from the ministry to the appellant dated April 25, 2016 requesting that the appellant submit several documents by May 17, 2016 that would enable the ministry to confirm the appellant's current eligibility of income assistance (referred to in the RFR as the "1st Request for Information Letter");
3. A letter from the ministry to the appellant dated May 17, 2016 referring to the 1st Request for Information Letter and requesting by June 6, 2016 most of the documents requested in the 1st Request for Information Letter (and apparently not provided by the appellant in response to the 1st Request for Information Letter) that would enable the ministry to confirm the appellant's current eligibility of income assistance and indicating that the appellant's next income assistance payment will be held by the ministry until the information has been provided (referred to in the RFR as the "2nd Request for Information Letter"); and
4. A letter from the ministry to the appellant dated June 6, 2016 referring to the 1st Request for Information Letter and the 2nd Request for Information Letter, identifying most of the documents requested in the previous two letters, and indicating that, as the ministry has not received all of the requested information, the appellant's eligibility cannot be determined and that her file will be closed effective July 4, 2016.

Prior to July 2016, the appellant had been receiving disability assistance as a sole recipient.

The appellant attended the hearing but the ministry did not. After confirming that the ministry was notified of the hearing, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Additional Information

In her Notice of Appeal dated July 28, 2016, the appellant stated that she disagreed with the ministry's reconsideration and that she needed more information.

At the hearing, the appellant provided the following additional documents:

1. Hand-written signed statement by the appellant saying that she felt the decision was unfair, that she feels that "... all my evidence was not fairly reviewed before the decision was made", and a summary of all documents provided to the ministry by the appellant including the date the each document was provided;
2. Rent receipts for the months of March and April 2016 indicating that rent had been received from the appellant in the amount of \$475 for each month;
3. Canada Revenue Agency (CRA) statement dated August 9, 2016 indicating that the appellant had filed income tax returns for 2012, 2013, 2014 and 2015 and that she had a balance of taxes owing from the 2010 tax year totalling \$3,905.18 (including \$910.84 in interest);
4. CRA T5007 statements of benefits in the appellant's name for the years 2013, 2014 and 2015 and T1 General tax returns in the appellant's name for the years 2009, 2011, 2012, 2013, 2014 and 2015
5. Letter to the appellant from CRA dated March 19, 2015 written in response to an enquiry made by the appellant on March 6, 2015 regarding a 2010 tax return filed in the appellant's name, which the appellant says that she did not file, requesting additional personal information required to confirm her identity;
6. Undated probation order issued by the Province of British Columbia in the appellant's name identifying probation conditions including one which prohibits the appellant from being inside the premises of any of four Canadian financial institutions for any reason, not to use any of their automated teller machines, and not to do any business with them whatsoever except in the case of a specific branch of one of those financial institutions in the appellant's community, and in that case only for the purpose of cashing her disability cheque;
7. Hand-written letter in the appellant's name dated June 24, 2016 confirming that the appellant has not received any income from 2012 to date and that all work she has done has been unpaid volunteer work on behalf of two individuals;
8. Hand-written letter in the appellant's name dated June 22, 2016 confirming the nature of the appellant's relationship with a third party;
9. Six page fax sent by the owner of a motel in the appellant's community dated April 25, 2016 asking that all forms be completed and faxed back to the ministry, and the owner's response dated June 30, 2016 wherein he has completed 5 of the ministry's confirmation of earnings forms, one for each of the calendar years 2012, 2013, 2014, 2015 and 2016, indicating that the appellant has not been paid by the motel and only does volunteer work there; and
10. Rent receipt for August 2016 indicating that rent had been received from the appellant in the amount of \$475 for that month.

The appellant also showed the panel photocopies of her identification, including a photocopy of her BC Identification (ID) card and her birth certificate, both of which bore the ministry's stamp dated May 27, 2016.

The appellant stated that she had provided the ministry with all of the information that they had asked for except for confirmation from CRA that she had filed her 2015 tax return before the reconsideration decision, and that she had let the ministry know that CRA was prepared to verbally confirm that she had filed her 2015 tax return if the ministry were to call the CRA with the appellant present so that the appellant could give CRA consent to share the appellant's tax information with the ministry.

The appellant stated that she had provided copies of all of the documents she had at the time to the receptionist in the ministry's office in her community on May 16, 2016. Specifically, the documents she provided on May 16, 2016 were: rent receipts for March and April 2016, T5007 slips for 2012, 2013, 2014 and 2015, T1 General forms for those years, recently completed and ready to file with CRA, the probation order prohibiting her from being inside specified financial institutions, a statement signed by the appellant confirming that she had no other sources of income, photocopies of her ID, a statement signed by the appellant confirming the nature of her relationship with a third party, and a letter from the owner of a motel in the community confirming that she only does volunteer work at the motel and is a friend of his two sons.

The appellant stated that when she received the 2nd request for information letter which was dated May 17, 2016 and received by her a day or two later, she assumed it had been prepared before she had provided the information on May 16, 2016 because it asked for documents she had provided the day before. The appellant stated that she did not submit these documents again because she assumed she would not have to provide them a second time.

The appellant also stated that she asked the ministry to return the documents she had provided but did not have them returned to her until about one week before the hearing, and when they were returned to her the following documents were not returned: copies of her ID and a copy of the letter from the owner of the motel.

The appellant said that she had provided the ministry with photocopies of her ID rather than the original plastic ID cards because her ID was stolen in 2010. The appellant also stated that the reason she could not provide confirmation that her 2010 Income Tax had been filed was that someone fraudulently submitted an income tax return in her name and as a result CRA's records show that she owes \$3,905 in back taxes and interest. She is currently working with the CRA to resolve this which is why she has submitted document #5 above.

Admissibility of Additional Information

As the ministry did not attend the hearing, the panel was not able to ask whether or not the ministry objected to the admissibility of any of the additional documents.

Section 22(4) of the *Employment and Assistance Act* states that a panel may admit as evidence only information and records that were before the minister when the decision under appeal was being made and oral and written testimony in support of the information and records that were before the minister when the decision under appeal was being made. If the evidence is in support of the information and records that were before the minister at the time of reconsideration decision, and if the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted. As the appellant had placed information before the ministry in the form of evidence in her request for reconsideration to the effect that she had submitted all of the information she could provide, and that a third party, the CRA, could provide the other information verbally, the additional documents submitted at the hearing meet the test of admissibility under section 22(4)(b) of the EAA.

Determining Weight and Findings of Fact

The panel must make findings of fact based on the evidence. In this case, some of the evidence is contradictory; specifically, in the final analysis, whether the appellant provided the ministry with identification and recent rent receipts. Therefore the panel must determine what evidence it accepts and state why it gives more weight to that evidence over the other evidence.

With respect to the identification, the ministry says that it remains outstanding, while the appellant says that she provided copies of her BC ID card and her birth certificate in May 16, 2016. The photocopies of the identification presented by the appellant at the hearing were stamped by the ministry bearing the date May 27, 2016. Therefore the panel gives full weight to the appellant's assertion that the identification had been provided to the ministry before the reconsideration decision.

With respect to the "recent rent receipts", the panel has no reason to believe that the appellant did not submit these receipts on May 16, 2016 along with her identification and the other documents, and the ministry was not in attendance at the hearing to dispute this claim. Therefore the panel gives full weight to the appellant's assertion that she submitted these rent receipts on May 16, 2016.

PART F – Reasons for Panel Decision

The issue under appeal is the ministry's reconsideration decision of July 20, 2016 wherein the ministry denied disability assistance to the appellant because the appellant failed to provide the information necessary for the ministry to determine whether she was eligible for income assistance under section 10 of the EAPWDA and that she will be ineligible for disability assistance until she complies with the Ministry's direction as set out in section 28 of the EAPWDR was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDA

Information and verification

10 (1) For the purposes of

... (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement ...

the minister may do one or more of the following:

... (g) direct ... 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 ...

(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 ...

EAPWDR

Consequences of failing to provide information or verification when directed

28 (1) For the purposes of section 10 (4) [information and verification] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction ...

Appellant's Position

The appellant's position is that she provided all of the documents in her possession that the ministry required before the deadline in its first request for information by the May 16, deadline, and took steps to collect the missing information at that time. She was able to provide all of the information to the ministry before the reconsideration decision except for the confirmation that she had filed her 2015 tax return, and that she had told the ministry that CRA was prepared to verbally confirm receipt

of her 2015 tax return by telephone.

Ministry's Position

The ministry's position is that section 10 of the EAPWDA and section 28 of the EAPWDR permit the minister to direct a PWD recipient to provide verification of any information relating to the eligibility of a family unit for disability assistance and that if a recipient fails to comply with a request to supply verification of information the minister may declare the recipient ineligible for assistance until such time as the recipient provides verification of the information.

In its reconsideration decision, the ministry argues that at the time of reconsideration on July 20, 2016, the appellant had not provided:

- Identification;
- Bank statements;
- Confirmation that taxes have been filed; and
- A current rent receipt

Because the appellant had not provided all of the information the ministry had requested, the appellant was not eligible for disability assistance under section 28 of the EAPWDR.

Panel Decision

Identification

The panel finds that the appellant provided the ministry with identification in the form of a photocopy of her BC ID card and a photocopy of her birth certificate on May 16, 2016. In addition, the panel finds that the appellant verbally provided the ministry with her social insurance number on the same date. Therefore the panel finds that the ministry's assertion that the appellant had not provided identification was not reasonably supported by the evidence.

Bank Statements

The panel finds that on May 16, 2016 the appellant provided the ministry with a probation order which prohibits the appellant from having a bank account. Therefore the panel finds that the ministry's requirement that the appellant provide a bank statement and/or a bank profile is not a reasonable application of the legislation in the circumstances of the appellant.

Confirmation that Taxes have been Filed

The appellant stated that she was not able to obtain written confirmation from CRA that her tax returns had been filed, so she had arranged a method by which the ministry could obtain verification verbally. Furthermore, the opportunity for the ministry to obtain verbal verification from the CRA that the appellant's tax returns had been filed was communicated to the ministry in writing by the appellant in her request for reconsideration. The panel finds that the appellant provided the ministry with the opportunity to confirm that the appellant's taxes had been filed with the CRA before the reconsideration decision was made. Therefore the panel finds that the ministry's assertion that the appellant did not provide information that would permit the ministry to verify that taxes had been filed

is not reasonably supported by the evidence and is not a reasonable application of the legislation in the circumstances of the appellant.

A Current Rent Receipt

The panel finds that the appellant provided the ministry with rent receipts for March and April 2016 on May 16, 2016. Therefore the panel finds that the ministry's assertion that the appellant had not provided a current rent receipt was not reasonably supported by the evidence.

Conclusion

The panel rescinds the reconsideration decision in accordance with sections 24(1) and 24(2)(b) of the EAA and therefore finds that the appellant is successful in her appeal.