

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) Reconsideration Decision of December 23, 2016 in which the ministry denied the appellant’s request for income assistance (IA) because he had an outstanding warrant for arrest for an indictable offence and according to the provision in Employment and Assistance Act Section 15.2 could not receive IA, and did not meet any of the exemption criteria set out in Employment and Assistance Appeal Regulation Section 38.1.

## PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sections 2, 15.2

Employment and Assistance Regulation (EAR) Section 38.1

## PART E – Summary of Facts

The appellant is a single person who applied for IA on October 3, 2016. The evidence before the ministry at the time of reconsideration included the following:

- appellant's application for IA dated November 3, 2016 in which he indicated that he is the subject of an outstanding warrant in relation to an offence for which a person may be prosecuted by indictment;
- appellant's request for reconsideration submitted to the ministry on December 13, 2016 with a 2-page handwritten note in which the appellant noted:
  - he received travel assistance in 2015 and because he was in dire circumstances did not use the funds for their intended purpose which was to return to the province in which the warrant was issued;
  - the charge which led to the outstanding warrant was based on false reports;
  - he will not return to the province in which the warrant was issued.
- documents relating to the extra-provincial warrant:
  - undated excerpt of a police report re breath demand and vehicle towing;
  - police continuation report dated May 2, 2012 indicating that the appellant had been charged with a criminal offence in 2004, and concluding: "*File remains SUI (Still Under Investigation) – Outstanding Warrant for [the appellant]*".

The ministry relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of December 23, 2016 in which the ministry denied the appellant's request for income assistance (IA) because he had an outstanding warrant for arrest for an indictable offence and according to the provision in Employment and Assistance Act Section 15.2 could not receive IA, and did not meet any of the exemption criteria set out in Employment and Assistance Appeal Regulation Section 38.1.

Relevant legislation:

**EAA:**

### **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 in relation to outstanding arrest warrants**

**15.2** (1) No income assistance, hardship assistance or supplement may be paid to or for a family unit on account of an applicant or recipient for whom a warrant for arrest has been issued under

- (a) the *Immigration and Refugee Protection Act* (Canada), or
- (b) any other enactment of Canada in relation to an indictable offence, and

on whom the warrant has not been executed.

(2) Despite section 5 and subsection (1) of this section, and subject to the regulations, the minister may provide

- (a) income assistance, hardship assistance or a supplement to or for the family unit on account of the person who is subject to the warrant, or
- (b) a supplement to
  - (i) the person who is the subject of the warrant, for the purpose of the person returning to the jurisdiction that issued the warrant, or
  - (ii) the family unit, for the purpose of the family unit returning to the jurisdiction that issued the warrant.

(3) If a family unit includes a person described in subsection (1), the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for income

assistance, hardship assistance or a supplement, except as otherwise provided in the regulations.

(4) In this section, "**indictable offence**" includes an offence that is deemed under section 34 (1) of the *Interpretation Act* (Canada) to be an indictable offence.

## **EAR:**

### **Consequences in relation to outstanding arrest warrants**

**38.1** Section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act does not apply to a family unit of an applicant or recipient for whom a warrant for arrest within the meaning of section 15.2 of the Act has been issued and who

- (a) is pregnant,
- (b) is in the end stage of a terminal illness, or
- (c) is under 18 years of age.

The appellant argues that the charge upon which the criminal warrant against him was issued is based on false reports, and that because his warrant was issued in 2004 the ministry is applying the legislation retroactively, which is an error in law. He also argues that he did not spend the transportation subsidy provided to him by the ministry in 2015 to return to the warrant-issuing province because he was in dire circumstances and did not want to plead guilty to the offence.

The ministry argues that EAA Section 15.2 (b) prohibits payment of IA to an applicant, and that the applicant does not meet any of the exemption criteria set out in EAR Section 38.1.

#### Panel Decision

The powers of a panel appointed by the Employment and Assistance Appeal Tribunal ("the tribunal") are limited to:

- conducting an appeal hearing according to the principles of administrative fairness and tribunal practices and procedures;
- determining whether the decision being appealed was reasonably supported by the evidence before the ministry at the time of reconsideration or a reasonable application of the applicable legislation in the appellant's circumstances;
- confirming or rescinding the decision under appeal; and
- writing and delivering the reasons for the panel's decision within the legislated time frame.

All other considerations, including the validity of the legislation upon which the ministry has relied in making its reconsideration decision, are beyond the scope of the powers conferred upon the tribunal in the legislation.

In this case the appellant has admitted that he is the subject of an outstanding warrant in relation to an offence for which a person may be prosecuted by indictment. The ministry has obtained confirmation from the issuing province that as of November 17, 2016 the warrant against the

appellant remains outstanding.

EAA Section 15.2 clearly states that the ministry cannot issue IA to a person against whom a warrant has been issued and remains outstanding. The only exception to this prohibition is found in EAR Section 38.1, which allows IA to be paid to a person with an outstanding warrant if he or she is pregnant, is in the end stage of a terminal illness, or is under 18 years of age. The appellant meets none of these 3 criteria. The panel therefore finds that the ministry reasonably determined that the appellant cannot receive IA because he is the subject of an outstanding warrant for an indictable offence and does not meet any of the exemption criteria set out in the legislation.

In conclusion the panel finds that the decision of the ministry denying IA to the appellant because he has an outstanding warrant is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision. The appellant is not successful in his appeal.