

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of April 11th, 2017, which denied the appellant Income Assistance (IA) because she failed to provide information and documentation as directed by the Ministry to determine her eligibility for IA pursuant to section 10 of the Employment and Assistance Act (EAA) and that she continues to be ineligible, pursuant to section 32(1) of the Employment and Assistance Regulation (EAR), as she has not complied with the direction. In particular, the appellant failed to provide rent receipts for the months; September, October and November 2016 as well as provide income records from January 1, 2016 to December 31st, 2016.

PART D – Relevant Legislation

EAA *Employment and Assistance Act, Section 10*
EAR *Employment and Assistance Regulation 32(1)*

PART E – Summary of Facts

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

- 1) A time line of when information letters were sent to the appellant:
 - *January 5th 2017: First request letter sent out with a due date of January 26th, 2017.
 - *January 26th 2017: Second request letter sent out with a due date of February 9th, 2017.
 - *February 9th, 2017: Section 10 letter sent out advising appellant that her file will be closed March 17th, 2017 if she did not provide all of the information requested.
- 2) Appellant submission March 10th, 2017;
 - *2016 tax slips
 - *Bank statement for the period of January 1, 2016 – March 8th, 2016 – and a note indicating the account was closed April 22, 2016.
- 3) A ministry prepared list of documents not received as of the date of reconsideration – April 11th, 2017;
 - *Income records; source of all e-transfers and cash deposits for May - December 31st, 2016.
 - *Rent receipts September – November 2016.

Additional Information

For the written hearing, the appellant submitted four additional documents which were accepted as admissible under section 22(4) of the Employment and Assistance Act. The panel agreed that the four pieces of evidence were in support of the decision made at the time of the reconsideration decision;

- 1) A copy of an email from an advocate summarizing a conversation she had with the investigative officer (I.O.) – which indicated that the I.O stated the missing rent receipts would be treated as an overpayment/repayable.
- 2) A copy of a fax sent to I.O by the advocate on March 7th 2017 referring to documents that had been sent on behalf of the appellant.
- 3) A copy of an email from the advocate to the ministry sent on March 7th which included the appellant's bank statements.
- 4) A copy of the appellant's bank statements (May – December 2016) that had been forwarded by the advocate to the ministry on March 7th, 2017 – with notes regarding the sources of the majority of the cash deposits.
- 5) An advocate letter – outlining the documents submitted on behalf of the appellant and a statement regarding the appellant having submitted documents that were missing from the reconsideration decision.

The ministry relied on the reconsideration decision and did not introduce any additional evidence for the written hearing.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of April 11th, 2017, which denied the appellant Income Assistance (IA) because she failed to provide information and documentation as directed by the Ministry to determine her eligibility for IA pursuant to section 10 of the Employment and Assistance Act (EAA) and that she continues to be ineligible, pursuant to section 32(1) of the Employment and Assistance Regulation (EAR), as she has not complied with the direction. In particular, the appellant failed to provide rent receipts for the months; September, October and November 2016 as well as failed to provide income records from January 1, 2016 to December 31st, 2016.

The relevant sections of the legislation are as follows:

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.

Consequences of failing to provide information or verification when directed

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.

(2) For the purposes of section 10 (5) [*information and verification*] of the Act,

(a) the amount by which the minister may reduce the income assistance or hardship assistance of the dependent

youth's family unit is \$100 for each calendar month, and

(b) the period for which the minister may reduce the income assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction.

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for income assistance due to failing to provide information as directed, pursuant to section 10 of the Employment and Assistance Act. In her Notice of Appeal dated April 19th, 2017 the appellant stated that she disagreed with the decision because she has provided all information she was asked to, with the exception of three months of rent receipts which she agreed to accept an overpayment.

The ministry notes that the appellant, on March 10th, 2017 had provided her 2016 tax slips and a bank statement for the period of January 1, 2016 to March 8th, 2016 and that the appellant's account indicated it had been closed April 22, 2016. The ministry further provides that since January 5th, 2017, the ministry has directed the appellant to provide information such as; rent receipts for September, October and November of 2016, as well as income records, and that the information has not been provided as directed. The appellant's position was that she was not able to provide the three months of rent receipts because the motel that she was staying at would not provide her any further receipts or information because she no longer lived there. The appellant's position; evidenced in an email from one of the advocates for the appellant to another advocate, dated March 7th, 2017 was that the investigative officer stated to the advocate in a phone conversation that the missing rent receipts would be treated as an overpayment/repayable.

The ministry notes that that purpose of the rent receipts is to ensure the appellant is eligible for the shelter allowance the appellant received over that period. The minister notes further, that the income records requested, are intended to be used to assess eligibility for income assistance, and that any income received could be considered unearned income. The appellant provides that her advocate did submit the necessary income records on March 7th, 2017 and that explanations regarding the source of the majority of the cash deposits were included. The appellant concedes that for any of the e-transfers or cash deposits over the twelve month period that she cannot recall the source of, she accepts will be treated as unearned income.

Section 10 of the Employment and Assistance Act states that the minister may direct a recipient to supply verification of any information he or she supplied or was received by the minister if that information relates to the eligibility of the family unit for income assistance and if the recipient fails to comply with the direction, the minister may declare the family unit ineligible for income assistance for the prescribed period. Section 32(1) of the Employment and Assistance Regulation states that the family unit is ineligible for assistance until the recipient complies with the direction to supply the information.

The panel finds that the additional bank records supplied from May 2016 to December 2016, on March 7th by the advocate, as requested by the ministry, indicate that the appellant did provide explanations for the majority of the deposits during that time. Moreover, the panel considers the appellant's statement that she is not able to account for all

of the e-transfers throughout that twelve month period in 2016, due to the fact that she could not reliably recall the basis for each one, reasonable.

The panel finds that the evidence establishes that on March 7th, 2017 the advocate had a phone conversation with the investigative officer – who at the time, indicated the appellant's missing rent receipts would be treated as an overpayment. As the ministry did not object to this submission, the panel accepts this as fact. The panel finds that the statement from the investigative officer to the advocate that the missing receipts would be treated as an overpayment, would have been reasonably interpreted as something that was not further necessary to obtain for the purposes of supplying all information originally requested, or said differently, that the appellant would reasonably have believed

that because she accepted the overpayment, that it was not necessary to provide any further documentation regarding the rent for that period.

Accordingly, the evidence establishes that the appellant did not fail to comply with the request to provide income records for the total period of January – December 31st, 2016 as was requested by the ministry. The evidence establishes that the appellant had provided income records in the form of transaction histories for the more recent period of May - December, 2016 on March 7th, 2017 and in addition, in the form of printed financial inquiries into her closed account's deposit history from January 1, 2016 to April 22, 2016 on March 10th, 2017. Further, the panel considers that the appellant provided an explanation for the majority of the e-transfers and cash deposits for the requested period of time, and that for those deposits not recalled by the appellant, the panel considers this reasonable – given that the appellant concedes the unexplained deposits will likely be treated as income for the period under review.

As such, the panel finds that the ministry was not reasonable when it determined that the appellant failed to comply with the request to provide; income records (explanation of all sources of e-transfers and cash deposits) for the period of January 1, 2016 to December, 31st 2016, as the appellant's advocate had forwarded the necessary information to the ministry on or before March 10th, 2017. The panel also finds that the ministry was not reasonable when it determined that the appellant failed to comply with the request to provide rent receipts for the months of September, October and November 2016 - due to the statement made to the advocate from the investigative officer pertaining to how the missing rent receipts would be treated as repayable/overpayment. The panel considers that the ministry did not object to this submission, and therefore considers it a fact. Finally, the panel considers that the information stated by the investigative officer would have reasonably implied to the appellant, that because she accepted the overpayment, that it was not necessary to provide any further documentation regarding the rent for that period.

Accordingly, the panel finds that the decision of the ministry to declare the appellant ineligible for income assistance for failing to comply with the direction of the minister to supply verification of information was not reasonably supported by the evidence. Therefore, the panel rescinds the ministry's decision pursuant to section 24(1)(a) and section 24(2)(b) of the Employment and Assistance Act. The appellant therefore is successful in her appeal.