

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated April 28, 2017, finding the Appellant is not eligible to continue to receive disability assistance for failing to provide information in accordance with section 10(4) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

## PART D – Relevant Legislation

The relevant legislation is section 10 of the EAPWDA and section 28 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

## PART E – Summary of Facts

The appellant was in receipt of disability assistance as a single person.

On January 27, 2017, the ministry began an investigation of the appellant's file based on information that she may be in a spousal relationship.

On January 31 the Investigative Officer (IO) called the appellant and inquired concerning her current relationship with her former spouse. The appellant told the IO that they had separated in 2000 but have not pursued a divorce and do not have a separation agreement. The appellant continues to live in the family home which was owned by her former spouse but she said was given to her. The mortgage remains in both the appellant's and the former spouse's names. The appellant and her former spouse split the utilities bills. The appellant's former spouse continues to drive her on errands. The appellant stated that she does not have a joint bank account with her former spouse but she does have joint accounts with her adult daughter who lives with the appellant's former spouse. The appellant stated that she took out a second mortgage of \$20,000 which was shared evenly between herself and her former spouse and paid back over 3 years.

The IO told the appellant that she needed to provide documentary proof that she was financially independent of her former spouse and provided a list of required documents to the appellant.

Over the next three months the IO contacted the appellant on a regular basis to insist that the documents be provided. The appellant provided some of the documents, but stated that she was having difficulty obtaining others. The appellant contacted her MLA's office for assistance and the IO kept in contact with the office over the period of the investigation.

In February, a hold was placed on the appellant's disability assistance cheque. However, when the IO discovered that the appellant had been admitted to hospital after experiencing a nervous breakdown that hold was moved out one month.

In March, the IO continued to contact the appellant asking for the remaining information to be provided. The appellant explained that some of the information was not available to her because it belonged to her former spouse. The IO pointed out that as her name was also on this information, she had a right to access it. The IO also explained that the ministry could obtain the information if the appellant gave her permission to do so. The appellant did not answer the phone or return calls on numerous occasions but did actively contact her MLA's office for advice and assistance.

On March 21, an Early Resolutions Officer at the Office of the Ombudsperson contacted the ministry in regards to the appellant's case stating that the appellant had called alleging that the review process is unfair and that she had been refused when asked to speak to a supervisor. After speaking with ministry staff, the ERP was satisfied that the review was being carried out properly and communicated this to the appellant.

After again being contacted by the ministry and reminded of what documents were outstanding on March 22, on March 24 the ministry received a fax from the appellant's advocate containing one of the outstanding documents. The appellant submitted her request for reconsideration on March 29 and requested an extension to April 28 to submit further information.

On April 26, the ministry received another fax from the appellant's advocate requesting a list of outstanding documents. The IO called the advocate and explained that the documents were listed in a number of communications from the ministry to the appellant. The advocate stated that the list was not clear or detailed enough. The IO responded that he had had many conversations with the appellant regarding these documents and that she knew what was required.

On April 27, the ministry received a fax from the advocate containing the reconsideration submission. In this submission the advocate argues the following:

1. The ministry has not properly accommodated the appellant's disability as it has continued to investigate her although she is suffering from an anxiety disorder.
2. The ministry did not give the appellant the legislatively-required time to prepare her reconsideration submission.
3. The appellant has attempted to provide the ministry with the requested documents and, in fact, the ministry likely has the requested documents.
4. The ministry has not acknowledged receipt of the documents that the appellant has submitted so that the appellant is confused as to what is outstanding.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated April 28, 2017, finding the Appellant is not eligible to continue to receive disability assistance for failing to provide information in accordance with section 10(4) of the EAPWDA.

The relevant legislation is section 10 of the EAPWDA and section 28 of the EAPWDR:

### Information and verification

**10** (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability 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 disability 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 disability 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 disability 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*

**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.

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

(a) the amount by which the minister may reduce the disability 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 disability assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction.

### The Appellant's Position

At the hearing the appellant stated that she has been trying to comply with the request for information but that a number of barriers have arisen:

1. Her mental health means that she has difficulty dealing with the stress of searching for and providing the requested documents;
2. Many of the documents are in the control of her former spouse who is not being co-operative and does not wish to provide the documents to the ministry.
3. She had been using the fax machine at her MLA's office to send documents to the ministry and that office closed when the election was called so that she does not have access to either the documents she has sent or the fax machine.
4. She is not clear about what documents are outstanding.
5. Some of the requested documents do not exist so that she cannot provide them. For instance, statements of income as she has not received any income other than disability assistance.

### The Ministry's Position

At the hearing the ministry stated that it has attempted to work with the appellant in good faith to help her deal with the issues listed above, including offering to collect the outstanding documents itself if she would simply give it her permission to do so. It has extended the time for her to submit the documents in recognition of her anxiety issues. It has set out in writing and explained a number of times verbally to the appellant what documents and information it requires. It is the responsibility of the appellant under the legislation to provide these documents to the ministry. If she does not, the ministry is required by the legislation to declare her ineligible for disability assistance.

### The Panel's Decision

The ministry has attempted to work with the appellant and help her obtain this information. The ministry has explained both in writing and verbally on a number of occasions what information is still required. The ministry has extended timeframes, worked with the appellant's MLA's office and advocate. The ministry has offered to obtain the information on the appellant's behalf and she has refused to provide her permission to do so.

The appellant has a responsibility under section 10(1) of the EAPWDA to provide the ministry with the requested information. The ministry has attempted to work with the appellant in obtaining the required information but the appellant is not co-operating. In these circumstances, section 10(4) of the EAPWDA allows the ministry to declare the appellant ineligible for disability assistance. In accordance with section 28(1) of the EAPWDR this ineligibility lasts until the appellant provides the requested information to the ministry.

Accordingly, the Panel finds that the ministry's decision that the appellant is not eligible to receive disability assistance was a reasonable interpretation of the legislation and confirms the ministry's decision.