

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 31, 2017 which found that the appellant is not eligible for disability assistance (DA) for failing to comply with the ministry's direction for information and verification of eligibility pursuant to sections 10(1) and (4) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), and remains ineligible until he complies with the ministry's direction pursuant to section 28(1) of the EAPWDR. In addition, the ministry found that the appellant's refusal to provide evidence of his eligibility for Canada Pension Plan (CPP) disability benefits is a failure to pursue income that affects current and ongoing eligibility for disability assistance under section 13 of the EAPWDA but the ministry did not make a determination under that section.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – Sections 10, 13

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Section 28

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated April 4, 2017 directing him to submit documents for the purpose of reviewing eligibility for assistance.
- A letter to the appellant from the ministry dated April 18, 2017 reminding the appellant of the requirement to submit documents.
- A letter to the appellant from the ministry dated May 2, 2017 reminding the appellant that all of the requested documents must be submitted.
- A letter to the appellant from the ministry dated May 31, 2017 reminding him that all of the requested information must be submitted.
- A letter to the appellant from the ministry dated June 16, 2017 asking him to submit the requested documents by June 28, 2017.
- A letter to the appellant from the ministry dated June 28, 2017 advising him that the ministry has not received all of the requested information therefore he is no longer eligible for assistance and his file will be closed on July 27, 2017.

Copies of two screen prints from a Government of Canada website in the appellant's name indicating that there are no CPP pensionable earnings for the year 2017 and currently no tax slips.

- A copy of the appellant's Application for Tenancy signed November 8, 2012, stating that the appellant had earnings of \$5,000 per month.
- The appellant's Request for Reconsideration, signed July 18, 2017, with a letter from the appellant stating that his privacy rights were violated when the ministry obtained a copy of his tenancy agreement without his consent, that he would have provided it if he had been asked, that he declined a 3-way call with Service Canada to obtain information because he asserted his right to freedom of association under the *Canadian Charter of Rights and Freedoms*, that his record from Service Canada states that he does not currently have any tax slips, therefore it is proven that he has no income for the current year, that his medical condition has deteriorated considerably and that it is unfair to hold someone's benefits over past eligibility questions.

At the hearing, the appellant stated that the review of his eligibility was triggered as a response to an email he sent to the media about the Premier. He stated that the ministry used counterfeit software to create a data match and he considered the process factually inaccurate. The appellant stated that he has supplied all of the required information because the ministry's request exceeds the bounds of the applicable legislation. The appellant stated that he has demonstrated reasonable compliance with the ministry's request.

The ministry responded that the appellant has not provided all of the required information. His CPP Statement of Contributions, tax slips from 2011 to the present and his records of income for the period he has been on assistance have not been provided. The ministry stated that health reasons do not exempt compliance.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry decision which found that the appellant is not eligible for disability assistance (DA) for failing to comply with the ministry's direction for information and verification of eligibility pursuant to sections 10(1) and (4) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), and remains ineligible until he complies with the ministry's direction pursuant to section 28(1) of the EAPWDR.

Legislation

EAPWDA

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 not accepting or disposing of property

13 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability 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 disability 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 disability assistance for the prescribed period if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has disposed of real or personal property to reduce assets.

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

(a) reduce the amount of disability 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 disability assistance or hardship assistance 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.

(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 is that he has complied with the requirement to provide information. The appellant argued that the ministry's case was triggered for vindictive reasons related to an email he wrote about the Premier and that counterfeit software was used to create a data match when there was no foundation to do so. He argued that the Reconsideration Officer was required to give her full name and failed to do so, undermining the reconsideration decision. The appellant argued that the ministry's case is based on unfounded half-truths and minutia.

The appellant argued that the EAPWDA section 10 does not say that all information must be provided, and seeking verification does not include approaching a building manager or other persons. He argued that section 10(2), EAPWDA means that the information should be obtained from an applicant or recipient, and all of the required information was provided by him. The appellant argued that there is no reasonable evidence of a failure to comply and that information was provided as directed. He argued that the legislation does not say that all information must be provided and it does not refer to the past, because the wording says "is", and that limits the ministry to the present. He argued that the ministry exceeded the bounds of the legislation. He stated that some information was provided, but the ministry's requirement exceeded the legislation, so some information was omitted.

With respect to tax slips, the appellant argued that no tax slips are available according to the inquiry he made online, which states that there are currently no tax slips. The appellant argued that in the information he provided to obtain an apartment, he exaggerated his income.

With respect to the ministry's offer to assist with a 3-way call to Service Canada, the appellant stated that he went to Service Canada personally, which demonstrates reasonable compliance regarding his current eligibility. He stated that there are no tax slips available and that a CPP Statement of Contributions would contradict the tax slips. He declined because he did not want to create a contradiction, and the onus is on the ministry. The appellant argued that sections 10 and 13, EAPWDA do not refer to CPP; therefore that requirement is not a reasonable application of the legislation. The appellant argued that the ministry has

sufficient information to establish current eligibility and that the ministry's decision was not reasonably supported by the evidence or a reasonable application of the legislation in his circumstances.

The ministry's position is that the appellant has not complied with the requirement to provide information to determine his eligibility. The appellant's statement of CPP contributions is required to determine if he is eligible for other income, such as CPP disability benefits. The ministry argued that the appellant signed a consent to release information when he applied for assistance in 2007, agreeing that persons having information about his eligibility may release it to the ministry, including, among others, employment insurance, other government departments, employers and landlords. The ministry noted that CPP contributions do not occur in only one year, but in any year in which there is employment.

Panel Decision

The Panel notes that the appellant stated that some of the information requested by the ministry was not provided by him. He agreed that he signed an authorization to release information which included his landlord. With respect to the appellant's assertion that section 10, EAPWDA does not apply to the past, the Panel notes the wording of section 10(1)(b), "determining or *auditing* eligibility for disability assistance...". An audit clearly indicates the past. The Panel finds that the ministry reasonably determined that the appellant was required to provide information related to the verification of his past and present eligibility for assistance.

The appellant's assertion that the Reconsideration Decision was "undermined" by the fact that the Reconsideration Officer did not sign the decision using her full name has no bearing on the issue under appeal. There is no evidence that the ministry's eligibility review was motivated by the appellant's correspondence with the media.

The Panel finds that the ministry reasonably determined that the appellant failed to fully comply with the request for information and documents to determine or audit his eligibility for assistance under section 10 of the EAPWDA and that in accordance with section 28 of the EAPWDR he remains ineligible until he complies with the direction. The Panel therefore confirms the ministry decision. The appellant is not successful on appeal.