

## **PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation, renamed the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated June 29, 2017 which held that the appellant was not eligible for income assistance prior to April, 2017 on the basis that eligibility for assistance was not established until April 2017 and pursuant to s.26 of the Employment and Assistance Regulation (“EAR”) a person is not eligible for income assistance or supplements prior to the date the Ministry determines that the family unit is eligible for income assistance or supplements.

## **PART D – Relevant Legislation**

s.26 Employment and Assistance Regulation (“EAR”)  
s. 10 and s.22(4) Employment and Assistance Act (“EAR”)

## PART E – Summary of Facts

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

- On May 29, 2016 the appellant applied for Income Assistance utilizing the Self Serve Application and Assessment online portal.
- On June 2, 2016 a Ministry worker attempted to contact the appellant to follow up on his application. The Ministry was unsuccessful. A voice mail message was left requesting that the appellant follow-up on his application prior to June 9, 2016 if he wished to continue his application.
- A second attempt was made to contact the appellant on June 3, 2016. A voice mail message was left requesting that the appellant follow-up on his application prior to June 10, 2016 if he wished to continue his application.
- On June 14, 2016 the Ministry closed the appellant's application due to no contact.
- The appellant followed up with the Ministry on June 14, 2016 and requested that his application be re-opened.
- The appellant was informed that in order for his application to be re-opened it would need to be approved by a supervisor and that it would likely be quicker to reapply for assistance instead. The appellant requested that a supervisor contact him. The appellant did not commence a new application for assistance at that time.
- On June 29, 2016 the appellant contacted the Ministry advising them that he was still waiting to be contacted by the supervisor.
- On February 28, 2017 the appellant applied for Income Assistance utilizing the Self Serve Application and Assessment online portal.
- On April 27, 2017 the appellant was deemed eligible for Income Assistance and his file was opened.
- On June 29, 2017 the appellant spoke with the acting assistant supervisor ("AAS") to request back pay for assistance to his original application date of May 29, 2016. The AAS advised that the Ministry cannot back date benefits and can only issue from the date a person is deemed eligible.
- A letter from the appellant to the Ministry dated July 23, 2017 outlining the appellant's argument as to why he should receive assistance retroactive to when he originally made his application on May 29, 2016.
- A letter from the appellant to the Ministry dated June 20, 2017 requesting various services from the Ministry and formally requesting the Ministry to commence retroactive payment of the appellant's benefits.

The appellant submitted additional documents after reconsideration:

- The appellant's submission contained eight pages of photographs. The photographs are difficult to see but they are a variety of photographs of a vehicle and a dwelling unit.
- A three-page written submission from the appellant.
- A receipt dated October 30, 2007 for rent and parking, a parking ticket from another Province, a police report from another Province, a body repairs and painting invoice, and an auto glass invoice.

At the hearing, the appellant provided evidence that:

- The Ministry imposed unreasonable barriers for him to apply for assistance. He applied online in May 2016. The online application process was arduous on him. He read that after he applied online there would be an office meeting. He submitted the online application and received two voicemail messages, one on June 2, 2016 and one on June 3, 2016. The appellant explained that on the June 3, 2016 voicemail a second person interjected into the voicemail and began telling the appellant why he needed to call back. The appellant was disturbed by the fact that a woman interjected into the voicemail. The appellant has a history of appeal and litigation battles and has had previous instances in dealing with harassing situations, which involved damage to his property.
- The appellant states that he did return the call on June 9, 2016 and that it was at that time that he left a voicemail. The appellant states that he did this even though he still found the voicemail he received to be off-putting. The appellant also states that he made repeated attempts to call the Ministry but no one answered the lines. He found out later that the worker that he was trying to call was away from her office during that period. She didn't believe him that he left a voicemail but if he had in fact left a voicemail, the worker told him that someone covering for her would have relayed the message to her. The appellant argued that he has a lot of stressors in his life and debilitating pain. He has a lot to deal with. He found it offensive and unlawful to deny his application. He put it on the back burner and lived off his resources until he commenced a new application for assistance in February, 2017.
- The appellant stated that the Ministry also attempted to cancel his second application for income assistance. He submits that they unlawfully blocked his access to funds. He says that his personal circumstances need to be taken into account. That is why he submitted documents about a lot of the harassment he has suffered. He

states he made a genuine effort to apply in May, 2016

- The appellant is frustrated because since his second application he has been asking for a review of the effective date. He notified the Ministry that he would be seeking review back in February 28, 2017. The appellant finds it physically painful to sit at his computer and gather documents. He finds it incomprehensible that the Ministry would take such a hard line approach to people applying for benefits.
- He has a history of frustrating experiences. He was in intense pain during that period and felt that it was unfair for the Ministry to ask him to resubmit the documentation. He said it is physically difficult for him to submit documents. Whenever he types it causes him pain. When he manipulates a keyboard or computer it causes him pain.

At the hearing the Ministry provided evidence that:

- The Ministry explained their internal process. When an application is done online it is picked up by an intake worker. The Ministry gives each person two call backs over two business days in order for them to respond. They are left a message if there is no answer. If someone doesn't call back, the Ministry has no way of knowing if that person is going to follow up or not. If the Ministry doesn't hear back within 5 business days of their call they consider the application to be abandoned. If someone does make contact, the Ministry looks that person up in their system.
- Every time the Ministry does anything on the file there is a record of it. The Ministry states that when an intake worker is away, there is another person who takes over for them and does their position until they return so that nobody is waiting on a worker to have a decision made.
- The Ministry explained that they occasionally re-open an abandoned application in specific circumstances but that the Ministry does not re-open applications routinely as it bogs down the Ministry process. After an application is abandoned it is a process to re-open it. The Ministry stated that if thirty days' pass, after the initial application a person has to re-apply and re-opening the application is not an option. Even with the ability to re-open an application within 30 days of it being abandoned the Ministry states that it is not something they routinely do.

The panel finds that at the time of reconsideration the appellant raised the concerns of his previous dealings with harassing incidents. The appellant's submission provides photographs and written evidence supporting his prior claims of harassment that he has experienced. The panel finds that this additional evidence is in support of the records before the minister at reconsideration and that the additional documentary evidence is admissible pursuant to s.22(4) of the EAA.

When asked if he brought telephone records to the hearing the appellant asked if telephone records could be submitted at a later date. The panel chair explained to the appellant that he would need to request an adjournment from the panel and the panel would rule on that adjournment request right away. The appellant decided not to request an adjournment to obtain telephone records.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision dated June 29, 2017 which held that the appellant was not eligible to receive income assistance prior to April, 2017 on the basis that eligibility for assistance was not established until April 2017 and pursuant to s.26 of the Employment and Assistance Regulation ("EAR") a person is not eligible for income assistance or supplements prior to the date the Ministry determines that the family unit is eligible for income assistance or supplements was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation provides:

### 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.

### Effective date of eligibility

26 (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (f).]

(2.01) If the minister decides, on a request made under section 17 (1) [reconsideration and appeal rights] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation.

(2.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (2.01).

(3) If a family unit includes a person who qualifies as a person who has persistent multiple barriers to employment, the family unit becomes eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month in which the minister determines that the person qualifies as a person who has persistent multiple barriers to employment.

(3.01) If the minister decides, on a request made under section 17 (1) of the Act, that a person qualifies as a person who

has persistent multiple barriers to employment, the person's family unit becomes eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person who has persistent multiple barriers to employment, the person's family unit is eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.01).

(4) If a family unit that includes a person who qualifies as a person who has persistent multiple barriers to employment does not receive income assistance at the applicable rate under Schedule A from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible under subsection (3) or (3.1), as applicable, for the applicable rate;

(b) 12 calendar months before the date of payment.

(5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

[am. B.C. Regs. 304/2005, s. 5; 400/2007, s. 4; 340/2008, s. 1; 48/2010, Sch. 1, s. 1 (f); 264/2013, s. 1.]

The appellant argues:

The appellant argues that he did return the Ministry's June 2, 2016 and June 3, 2016 voicemails. The appellant states that he called the Ministry numerous times and no one answered the telephone. He argues that he in fact contacted the Ministry on June 9, 2016 leaving a voicemail stating that he wished to continue with his application for income assistance. The appellant argues that his June 9, 2016 call could and should be verified by the Ministry. To support his argument that the June 9, 2016 call was missed he states that the Ministry confirmed to him that the worker he was dealing with was away from the office at the time of his call. The appellant states that the reason he waited until June 9, 2016 to call the Ministry in the first place was because of the harassment he received in the June 3, 2016 voicemail message: he explains that the specific harassment occurred when one worker on the phone was leaving a voicemail message and she was interrupted by another worker who completed the voicemail message. The appellant argues that the closing of his application was illegal and that he has had to deal with over 4000 instances of harassment and redundant issues over the last 14 years. The appellant argues that on June 14, 2016, the Ministry should have taken his situation into account. Further the appellant argues that the Ministry could have at that time just re-opened his application and that it was improper for the Ministry to make the request that the appellant re-apply for income assistance when the first time applying was already so challenging on him. He states that he informed the Ministry that completing the application caused him physical pain. He argues that the Ministry should have re-opened his application at that time instead of asking him to start a brand new application. He argues that he thought he was dealing with the situation by following up with a supervisor, but in fact no supervisor ever called him back until after his second application was approved. He states that there was no reason for his original application to be cancelled and that the Ministry should reimburse his missed payments from the date of his original application.

The Ministry argues:

Pursuant to s.26(2)(c) EAA, until Part 2 of the Form is signed there is no legislative authority for the Ministry to issue any funds to an applicant. The Ministry explained that after an application is abandoned it is a process to re-open it. The Ministry states that there is no record that the appellant tried to contact them within the timeline provided, being five-business days. The Ministry states that it was within their authority and they were following their policy by closing the appellant's application when he abandoned the application by not responding to the Ministry within the timeline provided. The Ministry argues that although they occasionally re-open an application, they are not required to and there was nothing in the file record warranting that the application should have been re-opened.

The panel finds:

With respect to the June 9, 2016 telephone call the appellant argues that he did make this call. The Ministry states that had there been a call made it would have shown up in Ministry records. The appellant asserts that it is the onus of the Ministry to bring call records to prove that a call was made by the appellant to the Ministry. The panel accepts the Ministry's evidence that they do not have additional notes of telephone calls that are not already before the panel. The panel also accepts the Ministry's evidence that telephone calls made to employees who are away from the office are

monitored by other employees, so that calls and voicemails do not go missed. The appellant did not provide his own personal telephone call records to show that a call was made to the Ministry. The Ministry would not be able to access the appellant's personal telephone call records without his prior consent to do so. The panel finds that it would be up to the appellant to access his own call records, and not the burden of the Ministry to do so. The panel heard evidence from the appellant that he wanted his telephone call records to be included in the hearing, but did not hear evidence of his efforts to obtain the telephone call records or if it was possible to obtain the telephone call records. When asked if he wanted to make an adjournment request of the panel to obtain the call logs, the appellant decided not to. The panel accepts the evidence of the Ministry that if a call was made to a worker that is not present, the Ministry has fill-in workers that used when a worker is not present. The panel finds it reasonable for the Ministry to have made the determination that no call was made from the appellant to the Ministry on June 9, 2016 or June 10, 2016.

The Ministry explained that their internal policy states that a person must return their phone call within 5 business days or the person's application for assistance is considered abandoned. Section 10 of the Employment and Assistance Act (EAA) provides the legislative authority with respect to the application process that the Ministry may direct an applicant or a recipient to supply the Ministry with information within the time and in the manner specified by the Ministry.

The Ministry nor the appellant brought in records of the written Ministry policy that was in place during June 2016. The panel accepts the Ministry's oral evidence that the policy in place was that a return call to the Ministry must be placed by the applicant within 5 business days. The appellant provides additional documentation evidencing harassment in other areas of his life and in his life and also that he founds the Ministry's telephone call to be harassing. The panel accepts that the appellant perceived the voicemail from the Ministry was harassing. However, the panel does not accept that the voicemail left by the Ministry on June 3, 2016 was meant to harass the appellant or meant to cause him not to qualify for income assistance.

The panel finds it reasonable that the Ministry determined that the appellant did not respond to them within 5 business days, given that the voicemail was left on June 3, 2016 and the appellant did not return the Ministry's phone call until June 14, 2016.

The Ministry argues that they can't re-open every file that is abandoned because that would bog down their process. The Ministry states that they will re-open an abandoned application on occasion in certain circumstances, and did so the second time the appellant applied for income assistance in February 2017, but that it is not in their policy to do so. The evidence from the appellant is that he did not wish to re-apply in June, 2016 because it caused him debilitating pain as the application process required him to sit at a desk for four days. The appellant instead requested to be contacted by a supervisor so that he could deal with the issue of the Ministry refusing to re-open his file. The appellant argues that he was waiting to hear from a supervisor to deal with this issue and never heard back from a supervisor even after he placed a follow up call on June 29, 2016. The Ministry did not have an explanation for this, except that even if a supervisor contacted him, it will still be easiest for the appellant to re-apply for assistance. The appellant was eventually able to complete an application for income assistance on February 28, 2017. The panel finds that although the appellant found the application process strenuous and difficult, the appellant did have the opportunity to re apply for income assistance and could have followed up on that opportunity when he was advised about it (instead of waiting to February 28, 2017). The panel finds that given that the evidence of the Ministry's policy in place at the time is that they consider an application abandoned when they don't hear contact from the applicant for 5 business days it was reasonable for the Ministry to come to that conclusion on June 14, 2016 in the case of the appellant. The Ministry's evidence surrounding re-opening applications was that it is not a common occurrence and is only done occasionally. The panel therefore finds it reasonable that the Ministry did not re-open the appellant's application on June 14, 2016 and instead requested that he re-apply for income assistance in accordance with the policy.

s. 26(1) of the EAA states that a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable. S.26(2) states that a family unit becomes eligible for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form. The panel finds that it was reasonable for the Ministry determine that the appellant was not eligible for income assistance in May, 2016 because the appellant had not completed the application process. Further, the panel finds that it was reasonable for the Ministry to determine that the eligibility date could not be May, 2016 because the appellant failed to complete the (part 2) form in May, 2016 and was not determined eligible for income assistance until April, 2017.

The panel therefore confirms the Ministry's decision and finds that it was a reasonable application of the applicable enactment in the circumstances of the appellant.