

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated October 4, 2017, which held that in accordance with section 15.2 of the Employment and Assistance Act (EAA), the appellant was not eligible for income assistance because he has an outstanding warrant and did not fall within the exempted classes of persons described in section 38.1 of the Employment and Assistance Regulation (EAR).

\*The panel notes that the summary of facts in the reconsideration decision references materials and dates of contact occurring after October 4, 2017, and states that on November 24, 2017, the ministry completed its review of the appellant's request for reconsideration. Accordingly, the panel considers the references to the reconsideration decision being made on October 4, 2017, to be in error and accepts November 24, 2017, as the actual date of the reconsideration decision.

### **PART D – RELEVANT LEGISLATION**

EAA, sections 1, 2, 4, and 15.2

EAR, sections 38.1 and 77.4

## **PART E – SUMMARY OF FACTS**

On March 22, 2017, the ministry learned that the appellant, who was in receipt of income assistance as a one-person family unit, had an outstanding arrest warrant. A warrant check and eligibility review was conducted and on April 5, 2017, an outstanding warrant from February 2003 in another province (“province X”) was confirmed.

On May 1, 2017, the appellant was advised that his options were a repayable transportation supplement to the other province or the repayable Outstanding Warrant Supplement for 3 months to resolve the warrant, the latter of which may be provided for up to 6 months. The appellant chose the Outstanding Warrant Supplement, which was provided for May through July of 2017.

On June 29, 2017, the ministry reviewed two separate Request for Waiver forms, seeking to waive the charges to British Columbia (BC), which were submitted by the appellant. The ministry determined they were both incomplete, as the appellant’s signature was not witnessed on the one waiver request and the other waiver request had no information on charges other than uttering threats, and therefore failed to serve as valid confirmation that the appellant was attempting to resolve his warrant. On this basis, the ministry determined that the appellant was not eligible for a further Outstanding Warrant Supplement.

Upon submitting a letter dated July 11, 2017, in which the appellant’s legal counsel in BC confirmed that the appellant was in the process of having his charges moved to BC, the appellant was provided with an additional 3 months of the repayable Outstanding Warrant Supplement, from August through October of 2017.

Subsequently, but prior to reconsideration, the appellant submitted the following documents:

- October 23, 2017, letter from the appellant’s lawyer in BC who states that on October 17, 2017, instructions as to the steps needed to secure approval of the waiver from crown counsel in province X were received. He is presently working with the appellant to satisfy those requirements.
- 1-page note addressed to crown counsel in province X, signed by the appellant on October 26, 2017, agreeing to plead guilty to his charges once waived into BC.

On November 5, 2017, the appellant was denied income assistance because he has an outstanding warrant.

In his November 9, 2017, Request for Reconsideration, the appellant writes that on May 29, 2017, he filed for a waiver to have his warrant brought to BC to be executed. The appellant writes that he has been pro-active in trying to resolve the warrant. The appellant also describes an accident that occurred in April 2017 and his efforts to stay sober and get his child out of foster care.

### *Information provided on appeal*

The appellant’s Notice of Appeal (NOA) dated December 12, 2017, was received by the tribunal on December 14, 2017, as part of a 19-page submission which included documents already before the ministry, as well as the following new documents:

- November 25, 2017, letter from a social worker stating that the appellant will resume full-time care of his child as of December 6, 2017.
- December 7, 2017, letter from a recovery centre describing the appellant’s participation.
- December 14, 2017, 1-page letter from the appellant who reiterates that as of May 29, 2017, he has been actively working to have the warrant waived to BC, a matter he hopes to have resolved within the next 3 months. The appellant also states that as of December 6, 2017, he has had custody of his child.

On December 21, 2017, the Tribunal received a 16-page submission from the appellant which comprised information respecting denial and reconsideration of a reconsideration supplement, which is not a matter before this panel, and additional copies of documents that were either before the ministry at reconsideration or were provided in the 19-page December 14, 2017, appeal submission.

At the hearing, the appellant stated that he had done everything possible to resolve the outstanding warrant, though he acknowledged that his behaviour which he attributed to his addiction had prevented the warrant from being waived. He explained that a couple of weeks after providing the ministry with the unwitnessed waiver, he took the waiver with a witness signature to the ministry office, and that is why both appear in the appeal record. At this time, he is still attempting to obtain legal counsel in province X, which is a requirement under the arrangement with crown counsel in province X.

At the hearing, in response to a question, the ministry stated that ministry policy is a working frame but that the ministry goes by the legislation in making its decision.

Both the appellant and the ministry confirmed that as of December 2017, the appellant was in receipt of income assistance as his child had been returned to his custody in that month.

#### Admissibility of Information Provided on Appeal

Section 22(4) of the *Employment and Assistance Act (EAA)* provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the *EAA* – to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The ministry did not object to the admission of the new information provided on appeal.

The panel determined that the additional oral and written testimony respecting the circumstances of the waiver requests provided additional corroborating detail of the information at reconsideration and therefore admitted that testimony in accordance with section 22(4) of the *EAA*. The panel did not admit the information regarding the reconsideration supplement as it relates to a matter not before the panel. The panel also did not admit the information confirming changes to the appellant’s family unit composition, namely the return of his daughter to his custody, which represents a different set of circumstances than those existing at reconsideration.

The arguments of both parties are set out in Part F of this decision.

## **PART F – REASONS FOR PANEL DECISION**

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision that the appellant was not eligible for income assistance in accordance with section 15.2 of the EAA because he has an outstanding warrant and did not fall within the exempted classes of persons described in section 38.1 of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

### **Relevant Legislation**

#### **EAA**

Section 1(1)

**"income assistance"** means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

#### **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.

#### **Income assistance and supplements**

**4** Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

#### **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.

### **Supplement to prevent undue hardship while dealing with outstanding arrest warrant**

**77.4** (1) The minister may provide a supplement to or for a family unit of an applicant or recipient for whom a warrant for arrest within the meaning of section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act has been issued for the purposes of section 15.2(2)(a) of the Act, if the minister considers that undue hardship will otherwise occur.

(2) A supplement under this section may be provided only for the calendar month in which the supplement is requested.

(3) A supplement under this section may be provided for only three consecutive calendar months unless the minister authorizes up to three more monthly payments.

### **Panel Decision**

Section 15.2(1) of the EAA states that income assistance may not be provided to or for a family unit on account of an applicant or recipient for whom a warrant arrest has been issued under federal legislation in relation to an indictable offence, and on whom the warrant has not been executed.

Subsection (2)(a) provides exceptions to subsection (1) and section 38.1 of the EAR sets out those exceptions – the person subject to the warrant is pregnant, in the end stage of a terminal illness, or is under 18 years of age.

Additionally, the ministry has developed the following policy to clarify circumstances under which it considers that “the warrant has not been executed.”

*May 4, 2011*

*Unless exempt, adult warrant holders are ineligible for all assistance (except the repayable warrant supplements) until the outstanding arrest warrant(s) is resolved.*

*If any of the following documents noted below are provided by the warrant holder, the ministry will consider the outstanding arrest warrant(s) to be resolved for the purpose of providing income assistance, hardship assistance, disability assistance or supplementary assistance if all other eligibility requirements are met.*

*Promise to appear*

*Recognizance*

*Undertaking*

*Appearance notice*

*Copy of a Request for Waiver filed with the courts*

It is not in dispute that the appellant’s circumstances are not those described in section 38.1 of the EAR as he is not pregnant, in the end stage of a terminal illness, or under 18 years of age. Accordingly, the ministry was reasonable in concluding that those exemptions from the consequences set out in section 15.2(1) of the EAA do not apply to the appellant.

Respecting the application of the consequences set out in section 15.2(1) of the EAR, which in this case is ineligibility for income assistance, the appellant argues that he has done everything possible to resolve the matter and that the ministry is acting unfairly in denying him income assistance. The ministry acknowledges that the appellant is trying to transfer his warrant to BC and execute, but finds that this has not occurred and therefore the appellant is subject to the consequence of not being eligible for income assistance.

The panel notes that although the ministry acknowledges the appellant's efforts to deal with the outstanding warrant and attaches a copy of the relevant policy to the reconsideration decision, the ministry's decision does not reference or consider the application of the policy in the appellant's circumstances. Based on the reconsideration decision summary of facts, it appears that the sufficiency of the waiver request documents was considered under ministry policy on or about June 28, 2017, in relation to the provision of the Outstanding Warrant Supplement set out in section 77.4 of the EAR. Since that time, but prior to reconsideration, the appellant also submitted two letters from his legal counsel in BC and a copy of his promise to plead guilty to the charges once waived to BC. The panel makes no finding as to whether or not any of these documents is sufficient in order for the ministry to "*consider the outstanding arrest warrant(s) to be resolved for the purpose of providing income assistance*" in accordance with its policy respecting the application of section 15.2(1) of the EAR. However, the panel considers it unreasonable for the ministry to not assess the documentation provided by the appellant under its own policy when determining if the appellant was eligible for income assistance under section 15.2(1) of the EAR.

Accordingly, the panel finds that the ministry's reconsideration decision was not a reasonable application of the legislation in the circumstances of the appellant and rescinds the decision. The appellant is successful on appeal.