

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) January 25, 2018 reconsideration decision denying the appellant’s request for a backdated top up of his shelter allowance. Specifically the ministry determined that the appellant was ineligible for a top up to his shelter allowance for the months of August – November 2017 because he failed to submit information regarding his utility costs as directed by the ministry in July 2017 and pursuant Sections 26(1) and 32(1) of the Employment and Assistance Regulation (EAR) was ineligible for top up assistance until December 2017, the month in which he complied with the ministry’s request to supply information.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Act (EAA), Sections 2 and 10

Employment and Assistance Regulation (EAR) Sections 26 and 32

## **PART E – SUMMARY OF FACTS**

The appellant is a single recipient of income assistance at the applicable rate for Persons with Persistent Multiple Barriers to Employment (PPMB) with 2 dependent children.

Information before the ministry at reconsideration included the following:

- On July 5, 2018 the ministry received a tenancy agreement showing he had secured new accommodation at a rental rate of \$546, utilities not included, beginning August 1, 2017.
- The appellant's request for reconsideration submitted to the ministry on January 11, 2018 with appellant's reasons for requesting reconsideration (Section 3) summarized as follows:
  - in July 2017 he contacted the ministry to enquire about adding his utility costs in his shelter allowance;
  - a ministry worker told him that he qualified for a top up but had to [submit additional information confirming the cost of his utilities] within a certain time;
  - health issues associated with his PPMB designation cause him to lose sleep, and he has difficulty remembering and concentrating;
  - due to his memory problems he forgot to submit the requested utility costs information until December 2017;
  - currently he is attending a sleep program at a clinic;
  - he believes EAR Section (4) (*sic*) applies to his situation.
- Copies of hydro and telephone bills for the months of August, September, October and November 2017;
- January 23, 2018 letter from the appellant including the following information:
  - he forgot to inform the ministry that he applied for a deposit for hydro when he moved on August 1, 2017;
  - he could not have included his bills until September 2017 or later, so in any case his application would have been delayed;
  - he also forgot to apply for a damage deposit for his rental unit;
  - he failed to fill in his stub for February 2018.

In his Notice of Appeal dated February 9, 2018 the appellant wrote that the ministry did not tell him there was a deadline for submitting his utility bills. He also called [the ministry] in November-December 2017.

At the hearing the appellant reiterated the information before the ministry and repeated his argument that he had not been informed that there was a deadline by which he must submit information about his utility bills in order to receive a top up of shelter assistance.

The ministry relied on the reconsideration decision.

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

The issue in this appeal is whether the ministry decision of January 25, 2018 that denied the appellant's request for a top up of his shelter allowance for the months of August – November 2017 is reasonably supported by the evidence or is a reasonable application of the legislation in the appellant's circumstances. Specifically the ministry determined that the appellant was ineligible for a top up to his shelter allowance for the months of August – November 2017 because he failed to submit information regarding his utility costs as directed by the ministry in July 2017 and pursuant Sections 26(1) and 32(1) of the Employment and Assistance Regulation (EAR) was ineligible for top up assistance until December 2017, the month in which he complied with the request to supply information.

In this context, the term "top up" refers making up the difference between the maximum shelter allowance for the appellant's family unit size (3 persons, \$660/month) and his monthly rent (\$546), taking into account utility costs (hydro and telephone), as provide in sections 4(2) and 5(1) of Schedule A of the EAR.

Relevant legislation:

### **EAA:**

#### **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.

#### **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.

**EAR:**

**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.

(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.

**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.

The appellant argues that the ministry did not inform him that there was a deadline by which information concerning utility costs available for top up of his shelter allowance must be submitted and that pursuant to EAR Section 26 (4) he should be eligible for backdating of his eligibility for a top up. He also submits that memory difficulties associated with his PPMB designation caused him to forget to submit his utilities receipts until December 2017.

The ministry relied on the reconsideration decision, summarized as follows:

- pursuant to EAA Section 10 the ministry may direct a recipient of income assistance to supply verification of information relating to the eligibility of the family unit and if the recipient fails to comply with the direction the family unit may be declared ineligible for the prescribed period.
- pursuant to EAR Section 32 (1) a family unit is ineligible for assistance until the recipient complies with the ministry's direction to supply information. On July 10, 2017 the ministry directed the appellant submit verification of his utility costs in order to become eligible for a top up of his shelter allowance. The appellant did not comply with the ministry's direction for verification of utilities expenses until December 20, 2017.
- pursuant to EAR 26 (1) a family unit is not eligible for income assistance before the date that the ministry determines eligibility.
- EAR Section 26 (4) is not applicable to the appellant's circumstances because it relates to establishment of the effective date of eligibility for PPMB level of assistance which the appellant has been receiving since February 1, 2015.

### **Panel Decision**

The appellant acknowledges that in July 2017 a ministry worker told him that because his monthly rent of \$546 commencing August 1, 2017 was less than the maximum allowable monthly shelter allowance of \$660 for a PPMB recipient with 2 dependent children he might be eligible for a top up to his shelter allowance, and asked him to submit his utility receipts in order to verify his utility costs. The information before the ministry at reconsideration indicates that the appellant did not submit his utility receipts until December 20, 2017. He received shelter allowance at less than the maximum for the months of August, September, October and November 2017 and took no action to supply the requested information.

In the reconsideration decision the ministry referred to EAA Section 10, which reflects the general principle that applicants must submit information that relates to the eligibility of a family unit for income assistance or supplements if directed to do so. The appellant's circumstances are more specifically addressed in the EAR: Section 26 (1) 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 income assistance or supplements and Section 32 (1) states that the period for which the family unit is ineligible for assistance lasts until the applicant complies with the ministry's direction.

The appellant failed to comply with the ministry's July 10, 2017 request for information relating to his utility bills until December 20, 2017. Without this information the ministry was unable to determine his eligibility for a top up to the maximum allowable shelter allowance of \$660 per month. Accordingly the appellant's family unit remained ineligible for a top up to shelter allowance until December 2017, the month in which the ministry received the requested financial information relating to his utility bills.

In his request for reconsideration the appellant asked the ministry to consider EAR Subsection 26 (4) as legislative authority for the backdating of his top up eligibility because he is a recipient of assistance as a PPMB. During the hearing the appellant acknowledged that subsection 26 (4) was not applicable to his circumstances. Subsection 26 (4) allows the ministry to backdate payment of income assistance for a person who becomes eligible at the PPMB assistance rate set out in Schedule A to the date where the family unit became eligible or 12 months before the first payment at the PPMB level, whichever is the shorter period. Because the appellant has been in receipt of income assistance at the PPMB level since 2015 the panel finds that the ministry reasonably determined that Subsection 26 (4) is not applicable to the issue on appeal, namely the appellant's eligibility for top up to shelter allowance prior to the month in which he complied with the ministry's request for utility costs.

In conclusion the panel finds that the ministry reasonably determined that the appellant was ineligible for a top up to his shelter allowance for the months of August, September, October and November 2017 and confirms the decision. The appellant is not successful in his appeal.