

APPEAL NUMBER  
2020-00239

**PART C – DECISION UNDER APPEAL**

Under appeal is the ministry's October 9, 2020 decision that it is unable to reconsider its decision that the appellant is not eligible to receive the Emergency/Disaster Supplement for July through October 2020 because the supplement is provided under the *Supply Act* to which the reconsideration provisions of section 17 of the *Employment and Assistance Act* do not apply.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act*, section 17

**PART E – SUMMARY OF FACTS**

**Background Information**

The appellant is a recipient of income assistance who reports having been in receipt of the monthly provincial Emergency/Disaster Supplement of \$300 prior to July 2020. As described by the ministry, this supplement is provided under the *Supply Act* for recipients of income and disability assistance who were not eligible for emergency federal support programs related to the COVID-19 pandemic, including the Canada Emergency Response Benefit (CERB). Upon realizing that the appellant was receiving the CERB, the ministry ceased payment of the Emergency/Disaster Supplement and the appellant did not receive the supplement for assistance months July through October 2020.

On September 25, 2020, the appellant requested reconsideration of the discontinuation of the Emergency/Disaster Supplement. The ministry concluded that reconsideration could not be provided for denial of a benefit provided under the *Supply Act*. The appellant appealed to this tribunal.

**Information provided on appeal and admissibility**

At the hearing, the appellant reported feeling punished by the ministry for multiple reasons relating to a workplace dispute. The appellant stated that a Director within the ministry advised that the appellant could apply for reconsideration. The appellant also feels that the ministry made defamatory remarks when stating that the appellant is disabled, for which the appellant requests a letter of apology. The appellant was receiving the CERB, though not currently, and expects to receive Employment Insurance benefits in the future. When asked if the appellant had evidence that the *Emergencies Act* had been invoked, the appellant stated that the Governor General of Canada has confirmed emergency measures. As previously outlined in the appellant's request for reconsideration and October 17, 2020 Notice of Appeal, at the hearing the appellant maintained that the ministry cannot take away the Emergency/Disaster Supplement because the federal *Emergencies Act* supersedes the *Employment and Assistance Act*. Additionally, for the same reason, the application for reconsideration of the denial of the Emergency/Disaster Supplement cannot be denied by the ministry.

At the hearing, the ministry explained that the *Supply Act* allows for the provision of funds by the ministry for purposes consistent with the Employment and Assistance legislation. There is no legislation regarding the Emergency/Disaster Supplement. Instead ministry policy, which is available online, provides that recipients of income assistance who were not in receipt of the CERB or other federal benefits were to be provided with the monthly Emergency/Disaster Supplement. No application was required in order to receive this supplement. The ministry stated that although reconsideration cannot be provided for benefits provided under legislation other than the *Employment and Assistance Act*, such as the *Supply Act*, there is still "a process to be fair" when someone is denied. In response to the appellant's question, the ministry stated that it does not rely on the federal *Emergencies Act* when making its decisions and is obligated

to follow the *Employment and Assistance Act*.

The panel admitted the additional information provided by the appellant and the ministry respecting the appellant's receipt of various benefits and ministry policy and procedures as evidence required for the full and fair disclosure of all matters related to the appeal under section 22(4) of the *Employment and Assistance Act*. The panel accepted the balance of the parties' submissions as argument which is 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 it has no authority to reconsider its denial of the Emergency/Disaster Supplement because section 17 of the *Employment and Assistance Act* limits reconsideration to decisions made under that Act is reasonably supported by the evidence or a reasonable application of the legislation.

**Panel Decision**

*Positions of the Parties*

As expressed in the appellant's written and oral submissions, the appellant's position is that the federal *Emergencies Act*, specifically section 8(1)(f), which allows the Governor in Council to make orders or regulations with respect to the authorization and making of emergency payments while a declaration of a public welfare emergency is in effect, supersedes the *Employment and Assistance Act*. Therefore, as long as the emergency continues, the ministry cannot take away the Emergency/Disaster Supplement or deny the appellant's application for reconsideration of the denial of the Emergency/Disaster Supplement.

The ministry's position is that because the Emergency/Disaster Supplement is provided by the ministry under the authority of the *Supply Act*, the reconsideration rights provided by section 17 of the *Employment and Assistance Act* do not apply to the Emergency/Disaster Supplement. Therefore, reconsideration of the denial cannot be provided to the appellant.

*Panel Analysis*

The panel notes that the decision under appeal is the ministry's determination that reconsideration cannot be provided regarding the denial of the Emergency/Disaster Supplement. Accordingly, the panel is not considering whether or not the appellant is eligible for that supplement.

The appellant argues that the right to the supplement and the right to reconsideration of denial of the supplement is provided by the federal *Emergencies Act*, which supersedes the *Employment and Assistance Act*. However, there is no evidence before the panel that the *Emergencies Act* has been invoked by proclamation by the Governor General of a national emergency. Federal emergency legislation with the Governor General's assent has been passed and provinces have declared states of emergency, but those actions are not the same as invoking the *Emergencies Act*. The panel also notes that whether federal legislation supersedes provincial legislation is a constitutional question the panel cannot address because section 44 of the *Administrative Tribunals Act*, which applies to this tribunal pursuant to section

19.1 of the *Employment and Assistance Act*, states that the tribunal does not have jurisdiction over constitutional questions.

Respecting the ministry's decision that the reconsideration provisions of section 17 of the *Employment and Assistance Act* do not apply to a benefit provided under the *Supply Act*, the panel finds that the ministry was reasonable. Section 17 limits the right to reconsideration to decisions made under the *Employment and Assistance Act*. Although the ministry stated that the supplement in question is administered under the *Supply Act*, which provides funds to be administered for purposes consistent with the *Employment and Assistance Act*, the panel finds that the ministry reasonably applied section 17 of the *Employment and Assistance Act* when determining that the decision in question was not made under the *Employment and Assistance Act*. In reaching this conclusion, the panel notes that although the language of the ministry's decision, set out as Appendix A – Decision, clearly states and explains why reconsideration cannot occur, use of the Reconsideration Decision form to deliver the decision may result in confusion.

### Conclusion

The panel finds that the ministry's decision that the appellant was not eligible for reconsideration of the denial of the Emergency/Disaster benefit provided under the *Supply Act* was a reasonable application of section 17 of the *Employment and Assistance Act*. The ministry's decision is confirmed and the appellant is not successful on appeal.

**Relevant Legislation**

**Employment and Assistance Act**

**Section 1 (Interpretation)**

"hardship assistance" means an amount for shelter and support provided under section 5 (1) [*hardship assistance*];

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

"supplement" means any form of assistance specified by regulation, other than income assistance, hardship assistance or financial assistance provided under section 6 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded 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.

**Reconsideration and appeal rights**

**17** (1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of

- (i) the maximum amount of the supplement under the regulations, and
  - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 18 and 27 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in this Act and the regulations.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal.

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**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister  
for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/11/05

PRINT NAME

Jennifer Armstrong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/11/05

PRINT NAME

Trevor Morley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/11/05