

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated November 20, 2023 (the Decision), which determined that the Appellant was not eligible for disability assistance because he had failed to submit information requested by the Ministry. Specifically the Ministry found the Appellant had failed to submit a bank Profile from CIBC showing his name, list of accounts and bank balances, and also a HSBC bank statement from a specific account from June 17 to August 17, 2023.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), sections 5 and 10.

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), section 28.

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below.

Part E – Summary of Facts**Procedural Matters**

Over 18 weeks passed from the initial scheduled date to the completion of the hearing, with a number of adjournments. The panel will comment on the details.

A telephone hearing was held on 16 January 2024, following a first adjournment, at the Appellant's request, to allow him to secure the services of a new advocate. The January hearing was then adjourned for a second time during Appellant testimony to allow the Appellant further opportunity to secure the services of an advocate, to submit more evidence he claimed he had, and for the Ministry to consider evidence submitted by the Appellant on the day of this hearing.

A reconvened hearing was held by telephone on 2 February 2024. The Appellant did not join the hearing directly but contacted the tribunal office at the appointed time, stating he was unable to attend, did not receive formal notification as his email address and phone have changed and he now wished an in-person hearing. The hearing was adjourned for a third time and rescheduled, initially as an in-person hearing, subsequently changed to a telephone hearing.

This hearing was conducted by telephone on 17 April 2024. The Appellant was not in attendance; however, the Appellant's advocate was present. The panel had received a Release of Information form, signed by the Appellant, giving authorization for the advocate to make decisions on the Appellant's behalf. The panel confirmed that the Appellant had been properly notified of the hearing and with the agreement of the advocate proceeded in his absence in accordance with section 86(b) of the Regulation.

After 35 minutes the Appellant called the tribunal office to explain his absence. The panel was advised by staff during the hearing that the Appellant stated he was camping out of town, did not have a telephone or email address, and had not been notified of the change to the format and location of the hearing. He was at the location previously booked for the in-person hearing. The Appellant stated that he was refusing to partake in a telephone hearing, preferring an in-person hearing.

The hearing was recessed to allow the advocate and Appellant to connect. The hearing reconvened after 45 minutes after which the advocate stated he had been unable to speak with the Appellant. The hearing resumed and was paused moments later when the advocate advised he had just received a telephone message from the Appellant stating he

is now homeless and without a cellular phone and that is why he is camping. There was no further information presented on whether the Appellant would join the hearing. The advocate requested an adjournment, stating he could not proceed as advocate without further instructions from his client.

The panel asked the Ministry to comment on an adjournment. The Ministry was opposed to the request, citing numerous delays already. Additionally, the Ministry indicated that it had received the information from the applicant related to the reconsideration decision and stated that the Appellant's benefits would be re-instated.

The panel was aware that the Appellant had requested a video conference in the notice of appeal, had subsequently agreed to and attended a telephone hearing, had then made a request for an in-person hearing and was now refusing to take part in any telephone hearing. The panel considered that the hearing had already been delayed a number of times at the Appellant's request, and that the Appellant had adequate time to obtain an advocate and to provide evidence prior to the hearing (as evidenced by the multiple submissions). The panel considered the Appellant's apparent failure to advise of his change of circumstance to either the tribunal or his advocate at any time before the beginning of the hearing and noted the intention of the legislation is for timely appeal hearings.

The panel found the Appellant had been notified of the change in format by both the tribunal (by email) and the advocate, who stated he had left multiple voice and email messages for the Appellant with no indication the messages had not been received.

The panel disallowed the request for an adjournment and the hearing proceeded with the advocate present but not taking any further action in the process.

Evidence before the Ministry at Reconsideration

The Appellant has a Persons with Disabilities designation.

The information available to the Ministry at reconsideration included;

- an HSBC bank statement dated 15 September 2023, showing bank activity for the Appellant for the period 16 August to 15 September 2023,
- On 10 October 2023 the Appellant's original advocate office submitted a CIBC bank account statement *****█6, dated 14 September 2023 showing activity from November 2022 to 12 January 2023. The panel notes the bank account number

matches the bank account number on a separate submission from the Appellant that shows that account number being closed on 24 January 2023.

- The Appellant had been requested on the 25th of October of 2023 to provide banking information, specifically:
 - CIBC bank profile showing his name, list of accounts and current balances.
 - A HSBC bank statement from account *****4 from June 17 to August 17, 2023, or
 - To provide authorisation for the Ministry to contact the banks on the Appellant's behalf,
- On October 30, 2023, the Ministry had sent a letter advising the Appellant that on May 26, 2023, June 21, 2023, July 26, 2023, and August 31, 2023, letters had been sent to him asking for information for their review of his file. These letters included the request for the CIBC bank profile and an HSBC bank statement for one of his accounts.
- As part of the Request for Reconsideration, the Appellant noted in part:
 - *Submitted documents.*
 - *HSBC – electronically.*
 - *CIBC Submitted.*
 - *Both Accounts have my name on it.*

New Evidence Provided on Appeal

Documents Submitted

In the notice of appeal, the Appellant states that there is no reason to deny him assistance. In addition to this comment, the Appellant had submitted a series of documents. These included a copy of the reconsideration decision with his own cover emails submitted to the tribunal. The second document was a 586-page copy of what appears to be the Appellant's own Ministry file, obtained under an access to information request.

The Ministry submitted a 'clear' two-page copy of an HSBC bank statement dated 15 September 2023, showing bank activity for the Appellant for the period 16 August to 15 September 2023. The statement shows transactions for a High Interest Savings account and a TFSA High Rate savings account, number *****3 and *****4. This document was a copy of a document contained in the reconsideration decision. Although that document was repeated several times within the decision, some copies were not clear.

Immediately prior to the adjourned January hearing, the Appellant had submitted electronic versions of several documents to the Tribunal office. These were shared with the Ministry at hearing.

The documents included a copy of one of the letters sent by the Ministry, dated 31 August 2023, to the Appellant requesting information, and a letter from the HSBC financial company advising the Appellant they would be closing his accounts by 21 September 2023. This letter required the Appellant to provide instructions on paying out the account or transfer instructions.

The package also included copies of two bank profile and consent forms. The forms bore the Appellant's name typed on them. They were addressed to the HSBC and the CIBC. The remainder of the forms had not been completed and authorization was unsigned by the Appellant.

Several days prior to the April hearing, the Appellant's advocate submitted a 13-page package of additional evidence. It included a:

- Bank Profile from CIBC showing the Appellant's list of accounts and bank balances; and
- HSBC bank statement from the Appellant's account *****4 from June 17 to August 17, 2023; and
- Letter from RBC indicating that the Appellant's HSBC bank accounts are closed and are no longer active, with an explanatory note that on April 1st, 2024, RBC acquired HSBC, which is why the HSBC documents are stamped with RBC's signature.

Oral Submissions at Hearing

Appellant

The Appellant appeared before the panel at the January hearing by telephone and provided oral testimony. The Appellant stated that he has had problems dealing with the Ministry front counter staff. He has been told he is only able to deal with certain individuals or supervisors and over the last two years he has had several problems with the Ministry.

The Appellant stated that this is the second time he has gone through the appeal process due to the Ministry's actions. He has also struggled to find an advocate or a lawyer to assist him. The most recent advocate he had, and with whom he had a good relationship,

has since retired. He has had cause to appeal to the provincial ombudsman, to the local police and to the human Rights Commission.

In answer to questions, the Appellant stated that the documents he uploaded demonstrated that the Ministry was not following privacy legislation nor the Employment and Assistance Act. Although the Ministry states they state they do not have access to his information, the file demonstrates they do.

The Appellant stated that the Ministry is supposed to render a decision; however they keep asking him on MYServe for the same information. They are simply wasting his time.

The Appellant stated that the Ministry has asked him for the same information five times, and they already have the information. He stated that the Ministry keeps asking for banking information and yet they forced him to close his bank account, which is illegal. Therefore, he cannot provide information if the account is closed.

The Appellant stated he was asked to receive his payments via direct deposit rather than by cheque and then he was forced to close the account. If he has a cheque and deposit requires two pieces of identification, then the Ministry knows when a cheque has been deposited.

The panel notes the Appellant showed very strong emotion when attempting to answer questions and provide testimony. He stated that the Ministry required direct deposit and then asked him to come in and pick up a cheque. He has screen shots to show that he was eligible to receive benefits in December 2023 but on the day, he did not receive monies. The Ministry was not upfront. The Appellant stated that he went in person to the Ministry on the 19th of December, and was told not to worry, that he would receive benefits. Now he must contest not receiving any benefit.

The Appellant stated that he had been instructed to only deal with the Ministry via the Elizabeth Fry society. He is very angry with the situation and stated that when the panel makes a decision, the Ministry makes a new decision. His advocate at a local church has retired and he is banned from going to Victoria to speak directly with the Ministry, being told he has to speak with others.

The Appellant stated that he did not receive his benefit on 20 December 2023, yet the IT department said he received the benefit.

The Appellant stated he had gone to the bank over ten times to obtain the requested information and they wanted to charge him for the documents. He wanted the fee waived.

At this point with the Appellant becoming more agitated, prior to the opportunity to hear from the Ministry, the hearing was adjourned to allow the Appellant to access an advocate.

At the hearing in February the Appellant did not appear. However, he contacted the tribunal staff at the appointed time and explained that he was in court and could not attend. He stated that he had not received any notification and had no information to present. He wanted future information sent by mail to his address. That hearing was adjourned.

At the April hearing the Appellant phoned the tribunal office and advised he would not take part in a telephone hearing and also left a telephone message for his advocate to the effect he was now homeless and had been camping. He has no telephone. As neither the Appellant nor his advocate took any further part in the hearing process there was no opportunity for the Ministry or panel to hear further from, or ask questions of, the Appellant or his advocate.

Ministry

The Ministry at the April hearing summarised the reconsideration decision stating that the Appellant had been denied eligibility for disability benefits because he failed to provide information to the Ministry when requested. The information was bank account data from two banks and for several accounts.

The Ministry needed the information to conduct a review of the Appellant's file. It appeared to them that the Appellant was not withdrawing money from his account and the Ministry wished to clarify how the Appellant was paying for bills.

The Ministry commented on the most recent information provided by the advocate on behalf of the Appellant, the two bank statements from HSBC and CIBC, and stated that they will be accepted as the requested information. As such, the Ministry stated the Appellant has now complied with the request and will be immediately eligible for resumed benefit payments.

In answer to questions, the Ministry stated that although the CIBC statement covered the last six months and not the actual last 90-day period originally requested, it provides the necessary information. The Appellant is therefore eligible and will receive resumption of payments without the need to reapply to the Ministry.

Admissibility of new information

The panel finds that much of the oral testimony of the Appellant and the Ministry summarized evidence already before the Ministry at reconsideration and is information in support of the Appellant's appeal.

However, where the information provided further detail, including the latest banking information, the panel finds that it was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel admits all the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Decision, which determined that the Appellant was not eligible for disability assistance at the time of reconsideration because he had failed to submit the information requested by the Ministry was reasonable. Specifically, was the Ministry's determination that the Appellant had failed to submit a bank Profile from CIBC showing his name, list of accounts and bank balances, and an HSBC bank statement from a specific account from June 17 to August 17, 2023, reasonably supported by the evidence, or a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that the Ministry erred on a number of fronts. According to the information contained in the file, the Appellant states the information had been provided to the Ministry where possible and in circumstances where accounts had been closed, it was not possible for it to be provided.

The Appellant also reported that the Ministry had accessed his accounts as evidenced by his 'ATIP' request.

The Appellant argues that he responded to the letters from the Ministry on 4 July 2023 and completed the boxes of information and wrote that he cashes his income assistance each month. He believes this satisfies the Ministry request.

Ministry's Position

The Ministry's position is that for the purpose of auditing eligibility for disability assistance, the Ministry may direct a recipient to supply information.

From 26 May 2023 until 25 October 2023 the Ministry requested a number of pieces of information from the Appellant and agrees that much of that information was then provided. This included verification of a Social Insurance Number, confirmation of shelter arrangements, address and rental agreement, and some banking information.

The Ministry argues that the CIBC document indicating closure of account number ****[REDACTED]6 on the 24 January 2023 does not contain the Appellant's name and is not acceptable to them. Further the Appellant has provided banking information for only one of his accounts at HSBC.

As the Appellant did not provide all the requested banking information, the Ministry sought authorisation from the Appellant to contact the CIBC and HSBC financial institutions on his behalf to obtain the necessary information, but the Appellant did not give his permission.

As the Appellant did not provide (specific documents...), in accordance with section 10 of the Act the Appellant was not eligible for disability assistance for the prescribed period set out in section 28 of the Regulation, which is until the required information is provided.

Panel Decision

The Panel notes that the appropriate legislation is contained within section 10 of the Employment and Assistance for Persons with Disabilities Act and section 28 of the Regulation. Section 5 of the Act says that subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Section 10 (1) of the Act says that for the purposes of determining or auditing eligibility for disability assistance, the minister may:

- direct a recipient to supply the minister with information within the time and in the manner specified by the minister;

Section 10 (4)(b) of the Act goes on to say that if a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance for a period.

Section 28 of the Regulation provides the consequences of failing to provide information or verification when directed. The period for which the minister may declare the family unit ineligible for assistance is provided in Section 28(1) which states the period lasts until the recipient complies with the direction.

The focus of this appeal is to determine whether the Ministry had a right to request the information, whether the way the information was requested was reasonable and indeed, whether the information had been provided in that format.

The panel notes the Ministry information, contained in the reconsideration decision, diarized as summary of contact between the Ministry and the Appellant, records a QCS call back to an advocate who states she spoke to the Appellant who refused to give permission for the Ministry to contact the banks on their behalf. The Ministry explained to the

advocate that the Ministry would have to proceed under Section 10 of The Act to close the client's file unless the client provides the information.

The panel, upon reviewing the evidence, notes the repeated letters to the Appellant advising that his file is under review, in order to verify his information is correct and that he is receiving the correct amount of assistance. The letters detail the need for the submittal of documents and lists the specific information required. The panel finds the requests for information were for “determining or auditing eligibility” under section 10(1)(b) of the Act, and therefore that the Ministry was reasonable in its request for information.

Further, Section 10(1)(e) of the Act expressly gives the Ministry the right to direct the Appellant to “supply the minister with information within the time and in the manner specified by the minister”.

Letters from the Ministry to the Appellant, beginning 26 May 2023 through August 2023, seek 90-day bank statements on all accounts. While the letters changed in demand as time progressed as the Appellant submitted pieces of information, the panel notes the request for the banking information remains consistent. Also, on 25 October 2023, the Ministry again by QCS MYSS messaged the Appellant asking for the missing banking information. It refers to pre-printed forms supplied to the Appellant that could be used for obtaining a bank profile supplying the information in an acceptable format.

The panel therefore finds the Ministry was acting reasonably in its consistent requests that the specific documents be in the format stated for the bank statements, including containing the Appellant’s name and covering specific periods of time.

In the recorded interactions, on the 25th of October 2023, the Appellant states that he wants to make a request by himself to a legal department / privacy officer, stating that he has already given the Ministry all the documents about his bank accounts with both profiles.

The recordings also show that on October 25, 2023, an HSBC document submitted in the Appellant’s name lists 2 accounts with current balances. It appears from his oral and written testimony that the Appellant feels that this satisfies the request for a HSBC bank profile. The document included a statement from both of his accounts from August 17, 2023, to September 15, 2023, only.

The Panel expresses empathy for the Appellant's health circumstances, his PWD status and his financial situation, noting his stated difficulty in dealing with Ministry front counter staff and dealing with the Ministry in general. Each has likely slowed, and made more difficult, compliance with the Ministry requests for information. However, a period of 5 months, from May to October 2023 is, in the Panel's view, a reasonable time in the circumstances for the Appellant to have provided the documents sought, and in the manner requested by the Ministry.

The Appellant's oral and written testimony indicates that he withdraws his benefits from the bank monthly. However, the written evidence from the 4 August 2023 HSBC bank statements shows income assistance payments for April, May and June 2023 being deposited to the Appellant's HSBC account without any withdrawals. These bank documents are ordinarily in possession or obtainable by the account holder, such as the Appellant, and the failure to provide them reasonably prompts greater scrutiny or verification of evidence to support a file review decision.

Based on the evidence, the panel finds the Appellant failed to supply the CIBC banking profile for the previous 90-day period, the banking information for the HSBC account *****(b) (4) for the period June 17 to August 17, 2023, and, failed to provide it in the manner specified by the Ministry.

The Ministry provided forms to the Appellant and requested he authorise the Ministry to obtain the information direct from the financial institutions. This was not done. The most recent Appellant submission, dated 11 April 2024, includes the signed authorisation forms signed by the Appellant on 10 April 2024. The forms have then apparently been provided directly to the financial institutions who have provided the information directly to the office of the advocate who submitted them on behalf of the Appellant. Although the Ministry was not afforded the opportunity to complete its portion of the form, which provides directions to the financial institution on the information to be provided, they have accepted both forms as now meeting the original requested information.

The CIBC form states that the Appellant has no accounts opened or closed within the last six months. The panel notes this would be for the period 10 October 2023 until 10 April 2024.

Section 28 (1.1) states that the minister cannot declare the Appellant ineligible under Section 10 (4) (b) of the Act if the minister is satisfied that the Appellant is homeless or at imminent risk of becoming homeless. The reconsideration decision contains evidence from both the Appellant and the Ministry by way of confirmation of his shelter address

and discussion with his landlord to confirm the Appellant was neither homeless nor in imminent risk of becoming homeless at the time of the reconsideration decision.

Section 10(4)(b) of the Act allows the Ministry to declare the Appellant ineligible for disability assistance for failing to comply with a direction under this section. As the panel found the Appellant failed to supply the requested banking information and failed to provide it in the manner specified by the Ministry, the panel finds the Ministry was reasonable in finding the Appellant ineligible for disability assistance at the time of the reconsideration decision.

Section 28(1) of the Regulation states the period of ineligibility lasts until the applicant or recipient complies with the direction. Although the ministry states that the information provided on 11 April 2024 satisfies its previous request and confirms the Appellant to now be eligible for benefits, the Panel finds on the evidence that the Ministry was reasonable to find the Appellant ineligible for disability assistance for the period of non-compliance.

The Panel finds that the Reconsideration Decision was reasonably supported by the evidence showing that the Appellant failed to supply the information required, and in the manner specified.

Conclusion

The panel has found that the Ministry acted reasonably in requesting the information for audit purposes, in a manner that was reasonable with regards to the need, and that the Appellant failed to submit the information.

Given that failure to submit information the panel found the Ministry reasonable in declaring the Appellant ineligible for disability.

Based on the totality of the evidence and in the circumstances of the Appellant the panel, finds the Reconsideration Decision was a reasonable application of the applicable enactments; specifically, the application of section 10(1) of the Act and Regulation section 28(1) under which the Appellant is ineligible for assistance ... until the ... [the Appellant] complies with the direction” of the Ministry as described above.

The Ministry’s reconsideration decision is confirmed. The Appellant is not successful on appeal.

Schedule of Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Part 2 — Assistance

Disability assistance and supplements

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

Information and verification

10 (1) For the purposes of

(b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,

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;

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

(b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Consequences of failing to provide information or verification when directed

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(1) For the purposes of section 10 (4) (b) [*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.

(1.1) Section 10 (4) (b) of the Act does not apply if the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

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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)

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

Part H – Signatures

Print Name

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2024/04/25

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2024/04/25

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2024/04/25