

[]

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

Under appeal is the ministry's reconsideration decision dated December 2, 2009 discontinuing the appellant's Community Volunteer Supplement, on the basis that he is no longer eligible for the program as he has changed volunteer positions and has not provided sufficient confirmation of the placement from the new volunteer agency.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 47(1)

PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the ministry at reconsideration was comprised of:

- The reconsideration request dated November 4, 2009 (it contains a letter from a mental health agency where he lives, dated November 4, 2009)
- A letter from the appellant's original volunteer placement agency dated November 3, 2009
- A letter from the appellant dated November 4, 2009 (two pages)

At the hearing, the appellant submitted a letter from the volunteer agency that manages the second volunteer placement the appellant attended. The ministry submitted into evidence the Community Volunteer Supplement Application form. Both of these documents were accepted into evidence under Section 22(4) of the Employment and Assistance Act.

The appellant is a single recipient of disability assistance who suffers from schizophrenia. He has been in receipt of the Community Volunteer Supplement (CVS) since November 2008 when he submitted a CVS application form and began volunteering at a nature sanctuary doing miscellaneous gardening projects three hours per week. In August 2009, the appellant informed staff there that he was leaving to volunteer as a gardener at a second site, in order to learn more about invasive species. He did not inform the ministry that he was changing placements. He began volunteering at the second site immediately, and has since doubled his volunteer commitment from one to two days per week. A letter from the nature sanctuary staff indicates that the appellant at no time stopped volunteering, and confirms that his volunteer hours increased, but at another site. A letter, dated October 23, 2009, from the society that administers the appellant's new volunteer placement, confirms that the appellant volunteers approximately 16 hours per month (on average two mornings per week). At the hearing, the appellant stated that he plans to return to the nature sanctuary in the new year.

At the hearing, two staff from the institution in which the appellant resides (and which helps its residents with the CVS application process) stated that they have worked with the CVS program for many years and have applied for many supplements on behalf of their residents. They stated that many of their residents had switched volunteer placements over the years, and that at no point had the ministry ever requested that a new CVS application form be submitted. The appellant, his mother, and his two advocates from his residential institution indicated that they had not received any information from the ministry regarding its administrative policy requiring that all clients submit a new application form if they change volunteer placements. Nor had they ever been told that a client's CVS will be discontinued if the client leaves a position to start a new placement. They stated that in their history of working with the CVS, they had never known anyone to be discontinued for changing a placement.

At the hearing, the ministry stated that in September 2009, a ministry worker contacted the appellant's initial volunteer placement site and was informed that the appellant had left in order to return to school. At that point, the ministry discontinued the appellant's CVS cheque. The ministry was later informed that it had been misinformed, that in fact the appellant had left the nature sanctuary to take up a volunteer placement elsewhere, and that at no time had he stopped volunteering. The appellant was placed on a waiting list to receive the supplement in the future. The ministry stated that its internal administrative policy dictates that when a client moves placements, his CVS is automatically discontinued, and he must reapply for the supplement. Clients are then placed on a waiting list which can extend up to several years. The ministry stated that its clients are not informed in writing that their CVS will be terminated if they change their volunteer

placement, and that they must reapply for the CVS.

The appellant noted that he would not have left his original placement if he had realized that his supplement would be discontinued.

The panel makes the following findings of fact: (a) the appellant has letters confirming that his volunteer hours have not diminished over the past year; in fact they have increased;(b) the appellant is eligible for disability assistance under the EAPWDR, has reached the age of 15, and was not in receipt of a supplement under section 48, 49 or 54(2) of the EAPWDR.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue to be determined is the reasonableness of the ministry's decision to discontinue the appellant's CVS on the basis that the appellant changed volunteer placements and failed to apply for a new community volunteer supplement.

Section 47(1) of the EAPWDR states that the minister may provide to or for a family unit that is eligible for disability assistance a supplement of up to \$100 for each calendar month for each recipient of dependent child who has reached 15 years of age for clothing, transportation or other expenses that are needed for that recipient or dependent child to participate in a community volunteer program.

The ministry's position is that the appellant left one volunteer placement for another and must make a new application for the CVS, which the appellant failed to do. He has been placed on a waiting list.

The appellant's position is that he is eligible to continue to receive the CVS because: (i) he continues to be eligible as a persons with disabilities, (ii) there was no period in time when his volunteer commitment fell below the three hours per week he was doing; in fact his volunteer hours increased; (iii) he was not informed of the administrative requirement that he fill in a new application form when he changed placements, or of the fact that his CVS would be terminated if he changed placements.

With respect to Section 47(1), the panel notes that the appellant meets all the legislative criteria necessary for him to receive the supplement – he is eligible for disability assistance, and is more than 15 years of age. He has volunteered steadily at three hours a week for most of the past year, and doubled his volunteer commitment upon switching placements. At no time have his volunteer hours fallen below this three-hour weekly commitment.

The panel finds that though the ministry's policy requiring applicants to notify the ministry when an applicant begins a new volunteer placement is reasonable given the ministry's need to adequately administer the CVS, there is no requirement in the Act or Regulation to do so. Moreover, the ministry's requirement that its clients submit a new CVS application form upon a change in volunteer placements is part of an administrative process and is therefore not regulatory; that is, there is no requirement in the Act or Regulation that the application for the supplement be submitted. The panel further finds that it is not reasonable for the ministry to expect that its clients are aware of its policy, and thus to comply with it, when no effort has been made to inform them of this policy. Nor is there any evidence that the ministry informs its clients that their supplement will be discontinued if they change placements. The panel thus finds that to discontinue a client's CVS on the basis of a failure to comply with ministry policy when the client clearly meets all the legislative requirements is both unreasonable and unfair. The panel also finds that, by placing the appellant on an indefinite waitlist, his eligibility is being determined by ministerial policy rather than by ministerial legislation. In short, the panel finds that in developing a waiting list and placing the appellant's name on that list, the ministry has created an additional criterion for eligibility to the CVS, one that is not reflected in the legislation, and one, therefore, that cannot stand.

The panel finds that the ministry's reconsideration decision was not a reasonable application of section 47 of the EAPWDR in the circumstances of the appellant and rescinds the decision.