
PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

Under appeal is the ministry's reconsideration decision dated January 14, 2010 to deny the appellant's request for a Community Volunteer Supplement on the basis that the ministry is not placing any new applicants in the program as the maximum number of participants to the program in the city of the appellant's residence has been allotted. The appellant's name has been placed on a ministry wait list and her application and eligibility will be determined at that time.

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:

- A letter from the appellant's advocate to the ministry dated September 17, 2009 (three pages) (attached to the request for reconsideration)
- The reconsideration request dated September 10, 2009
- A letter from the appellant's advocate to the ministry dated September 2, 2009
- A letter from the appellant to the ministry dated August 19, 2009
- The Consent to Divulge, dated September 2, 2009

The ministry did not attend the hearing. After confirming that the ministry had been informed, the hearing proceeded as per Section 86(b) of the Employment and Assistance Regulation.

The appellant is a single recipient of disability assistance who submitted a request for a Community Volunteer Supplement of \$100 per month in a written letter dated August 19, 2009.

In the appeal record, the appellant states that she has been volunteering for 12 to 15 hours per week for more than a year. Her advocate states that the appellant contacted a ministry office on September 1, 2009 to request the supplement, and was advised by the worker that she would not be able to receive the supplement, and that she would not be given an application form as the funding for the program had been frozen. In the appellant's Request for Reconsideration, the ministry notes that "at this time the Ministry is not accepting recipients into the Community Volunteer Program. Those recipients who are wishing to participate in the program but not accepted have been placed on a wait list. Your name has been added to the wait list and you will be contacted when there is an opportunity for you to join the program."

At the hearing, the appellant's advocate noted that the appellant meets the criteria set out in the legislation for receipt of the benefit. The advocate stated that the ministry's refusal to accept and assess the appellant's application for the CVS, and instead to automatically waitlist her without considering her individual circumstances, constitutes a de facto denial of the supplement. The advocate submitted a six-page written submission comprised of her arguments and supporting case law. The panel accepted the submission as per Section 22(4) of the Employment and Assistance Act. The appellant's advocate argued as follows:

- The legislation should be interpreted in a large and liberal manner, and with a benevolent purpose in mind, and any ambiguity in the legislative language should be resolved in the appellant's favour
- The ministry must be open to departing from policies and must not rigidly adhere to a policy without regard to the individual circumstances of the appellant, and that a failure to do so constitutes an improper fettering of the minister's discretion
- Placing the appellant on a waitlist establishes an additional criterion for eligibility to the program, and one not specified in the legislation; this results in a de facto denial or refusal of the appellant's request for a supplement on the basis of ministry policy not legislative criteria
- Where there is a conflict between policy and legislation, the legislation must be followed

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 deny the appellant's request for a Community Volunteer Supplement on the basis that the ministry is not placing new applicants in the program as the maximum number of participants to the program in the city of the appellant's residence has been allotted. The appellant's name has been placed on a ministry wait list and her application and eligibility will be determined at that time.

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 or 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 it has no ability to approve the appellant's request for the CVS as the program is capped, having reached its maximum capacity. The ministry further argues that the minister has the discretion to determine who is accepted into a program, to apply standards, protocol and practices for issuing the supplement. The ministry argues it has been a long-standing practice to wait list applicants to the program, and that the appellant's name is now on the waiting list. The ministry argues that it will consider her application once the ministry resumes accepting new recipients into the program, or once a vacant space opens up.

The appellant's position is that she should receive the CVS because: (i) she meets all the criteria set out in the legislation; (ii) being placed on a waitlist constitutes a de facto denial of her application without consideration of her individual circumstances; (iii) in automatically wait listing her without considering her individual circumstances, the minister's discretion has been fettered; (iv) in establishing a waitlist, the ministry has created an additional eligibility criterion, one based in policy rather than in legislation, and that, in so doing, has placed ministry policy ahead of legislation.

With respect to Section 47(1), the panel notes that the appellant meets all the legislative criteria necessary for her to receive the supplement – she is eligible for disability assistance, and is more than 15 years of age. The panel also notes that the appellant has been volunteering for between 12 and 15 hours per month for a year.

The panel acknowledges that the ministry has the authority to develop policies and procedures to govern and administer its programs. These policies and practices, however, are meant to serve as extensions of the legislation, that is, as tools to help ensure its fair and equitable implementation. In placing budgetary restraints on the program, however, the ministry has created an additional eligibility criterion that serves as a de facto denial of benefits, one that runs counter to the intent of the legislation. Its effects are manifold:

- it creates an inequity in terms of access to the program – those who live in communities where the number of participants entering the program is at a maximum will be placed on a waiting list; those who live in communities with fewer applicants will be accepted;
- it undermines the benevolent intent of the legislation
- it places ministerial policy ahead of the legislation

The panel finds no legislative authority for the creation of a wait list whose intent is clearly to restrict access to the program, rather than to enhance its implementation. The panel thus finds that the ministry's reconsideration decision does not reflect a reasonable application of the legislation, and rescinds the decision.