

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry's reconsideration decision dated January 28, 2010 which found that the Appellant was issued a Community Volunteer Supplement ("CVS") for his volunteer work over the period June 2008 to January 2010 in error.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), Section 47.

## PART E – SUMMARY OF FACTS

The evidence before the Ministry on Reconsideration included the following documents:

- 1) An open letter from a principal of a recovery organization dated January 6, 2008,
- 2) The Appellant's written statement in his Request for Reconsideration,
- 3) A Community Volunteer Supplement (CVS) Eligibility Review form dated June 20, 2008, and
- 4) A blank Request for CVS Supplement form.

The Appellant's evidence was that, as a recovered drug addict himself, he has volunteered for many years to help others trying to deal with their addictions as he finds that by helping others he also helps himself to stay clean. He began to volunteer with a recovery organization in January 2008 by assisting the residents in giving them support, guidance and resources and, for example, helping them to replace lost ID. He states that he has also helped residents apply for disability assistance and with budgeting their money. In May 2008, a Ministry worker advised the Appellant that he would be entitled to a CVS payment of \$100 per month to compensate him for some of his expenses for volunteering if he were to apply to the Ministry. The Appellant completed the form provided to him by the Ministry and submitted it in application for the CVS. The Appellant maintains that the Ministry worker who provided him with the form and encouraged him to apply did not advise him of a requirement that the volunteer work must be conducted for an agency with the status of a "non-profit" community agency.

In conducting his volunteer work during the period of January 2008 to December 2008 for the recovery organization, the Appellant states that he dealt primarily with principal #1 who signed the CVS application form to confirm the Appellant's participation by a volunteer agency. However, in December 2008, the Appellant admitted that principal #1 had some personal difficulties and, at the beginning of 2009, two brothers began operating the recovery organization and the Appellant began reporting to a new person, principal #2. At this time, the Appellant admits that a new name was used for the recovery organization but he states that he was still volunteering his time, helping many of the same residents in the same ways that he had under the supervision of principal #1 and that he also helped residents at other recovery organizations. The Appellant described his disappointment when he was advised by the Ministry in December 2009 that he was not eligible for the CVS and that, as a result, he must reimburse the Ministry for the overpayment made to him for 20 months, in the total amount of \$2,000. The Appellant acknowledged that now that he is aware of this restriction that the organization needs to qualify as a non-profit, and that as the subject recovery organizations are operated for profit, he may not be entitled for the CVS going forward if he continues to volunteer for the same places.

The Ministry admits that the Appellant is eligible for and has been receipt of disability assistance since on or about December 1, 2004 and also that he has performed volunteer services for the period June 2008 through to January 2010. However, the Ministry points to its own internal policy that also specifies that the "...CVS is for certain categories of recipients who have no employment-related obligations, but who wish to pursue a volunteer placement with a *non-profit community agency* in a designated volunteer position." (emphasis added) The Ministry stated that it is fairly common knowledge that the recovery organizations for which the Appellant has volunteered are not community-run agencies but, in fact, rooming houses run for a profit. The Ministry does not provide funding for the subject recovery organization although some of its residents may be in receipt of income or disability assistance in which case the Ministry would possibly have dealings with it solely as a landlord. The Ministry admits that it accepted the application form of the Appellant and that it paid him the CVS of \$100 per month for a period of 20 months, from June 2008 through January 2010 for a total amount of \$2,000. The Ministry had no evidence regarding any due diligence conducted by the Ministry at the time of application, including further inquiries of the Appellant or possibly contacting the recovery organization or performing any corporate search investigations. The Ministry does not take issue with the Appellant's assertion that he was never notified of the requirement that the organization to which he volunteers must be non-profit. In December 2009, the Ministry became aware that there had been a change in the name of the recovery organization to which the Appellant was volunteering and that neither it nor the previous recovery organization were operated as a "non-profit" community agency during the time that the Appellant volunteered.

## PART F – REASONS FOR PANEL DECISION

The issues on this appeal is whether the decision by the Ministry to find the Appellant was issued the CVS in error is reasonable.

The relevant legislative criteria to be considered eligible for the CVS are set out in Section 47(1) of the EAPWDR as follows:

### **"Community volunteer supplement**

47 (1) 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 Appellant meets the first legislative criteria of being eligible for disability assistance as the Ministry admits that he is a person with disability status and has been a single recipient since on or about December 1, 2004. Section 47(1) also sets out that the CVS is for a particular purpose, namely to alleviate some of the costs for providing volunteer services, in particular for "...clothing, transportation or other expenses that are needed for that recipient... to participate in a community volunteer program." The Ministry points out that the word "may" in the section makes the payment of the supplement a matter of discretion for the Ministry. The Ministry also argues that the meaning of "community volunteer program" is further defined by the Ministry's internal policy which sets out that the recipient's volunteer placement must be with a "non-profit community agency". The Ministry provided the Panel with a copy of the relevant paragraph from its policy in support of its argument. The Ministry advises that there is no discretion in applying this internal policy requirement. The Panel finds as fact that the Ministry's internal policy stipulates that the subject volunteer placement must be with a "non-profit community agency".

The Appellant counters that he has been an active volunteer with a recovery organization from the period January 2008 until December 2008 and that he continued these same services throughout 2009 and into 2010 to the same and other recovery organizations, albeit under the supervision of a new principal. The Appellant states that he was not knowledgeable about how the recovery organizations were established and whether they would be considered a "non-profit community agency". The Appellant further claims that he incurred additional expenses for performing his volunteer services and that he at all times considered himself to be participating in a "community volunteer program", as he was volunteering his skills and experience to help some of the least fortunate in the community. The Ministry did not dispute the Appellant's assertions and the Panel finds as fact that the Appellant provided volunteer services during the relevant period of June 2008 through January 2010, and that he incurred additional expenses in this regard.

The Appellant states that at no time was he made aware of the Ministry's internal policy requirement. The Ministry worker who provided the Appellant with the application form did not clarify this requirement. In referring to the CVS Eligibility Review form dated June 20, 2008, the Appellant points out that there is no written statement on the form of any restrictions to the status of the agency. The Appellant made a comparison between the application form that he submitted in June 2008 and the blank form which was provided to him by the Ministry when he was advised the CVS benefit would be discontinued. On both forms, the organization to which an applicant provides volunteer services is referred to only as the "agency" or "volunteer agency". The Ministry did not dispute the Appellant's assertions and the Panel finds as fact that the Appellant was not aware of the Ministry's internal policy requirement that the organization must be a "non-profit" organization.

The Ministry contends that when there was a change in the structure of the recovery organizations, in or about December 2009, it made inquiries and discovered that all of the recovery organizations to which the Appellant has volunteered his time have been established and operated as for profit companies. According to the Ministry's internal policy, the organization must be a "non-profit community agency" and, as this was not the case here, the Appellant was not eligible for the CVS for his volunteer services provided from June 2008 through January 2010. An administrative error had occurred in granting the Appellant the CVS for which he was not eligible under the policy.

According to Section 47 of the EAPWDR, the granting of the CVS is clearly in the discretion of the Ministry as the word "may" is used rather than directory language such as "shall" or "must". In exercising that discretion, however, there is a duty on the Ministry to act in accordance with principles of fairness, including procedural fairness, especially where an individual's rights and interests are affected. Where a policy is critical in that it is determinative of a person's eligibility and affects their interests or rights in a significant way, a minimum expectation is for notice to be provided to the applicant of that requirement. In this case, when the Appellant applied for the CVS in May 2008, on the face of the statutory requirements of Section 47 that he "...participate in a community volunteer program", he was eligible for the supplement. He was volunteering his skills and time for a program in the community assisting recovering addicts and although the organization was not qualified as a non-profit, there was no allegation made by the Ministry that the Appellant was being paid for his services or otherwise reimbursed for his expenses. The Appellant was not given notice of the Ministry's internal policy requiring that applicants volunteer for a "non-profit" organization, and the Appellant was not aware of this important stipulation.

Since the Appellant was not given notice of this requirement, either by the Ministry worker who provided the form or by wording on the application form itself, it is unreasonable to put the onus on the Appellant to comply with an unpublished requirement, especially where this restriction is critical to his eligibility for the supplement. Rather, the onus rested with the Ministry to ensure that its policy requirement was met at the time of the application by its due diligence through making specific inquiries of the Appellant, contacting the organization named or conducting other corporate search investigations. The Ministry's evidence at the hearing was that it was fairly common knowledge within the Ministry that virtually all of the recovery organizations are operated as rooming houses and likely for a profit and this could have alerted the Ministry to this potentially being an issue. However, by making a decision to grant the CVS, the Appellant was entitled to conclude that he had met the statutory eligibility requirements and that, in any event, the Ministry had exercised its discretion in his favour. Although there was a change in December 2008 with the named recovery organization to which he volunteered and the supervisor to whom he reported, the legal status of the organizations did not change as they were run as profit companies throughout.

Therefore, the Panel finds that the Ministry's decision was not a reasonable application of the legislation in the circumstances of the Appellant and rescinds the Ministry's decision.