

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration decision dated March 14, 2008 which declared that the appellant is not eligible for disability assistance as a result of failing to supply the Ministry with certain requested information by February 27, 2008. Specifically, the Ministry requested copies of bank statements for all accounts held by the appellant's common law partner.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act:
Interpretation: "disability assistance", "family unit"
Section 3 and 10

Employment and Assistance for Persons with Disabilities Regulation
Section 41

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 was comprised of various pieces of correspondence from the Worker's Compensation Board and the Office of the Public Trustee which letters pertain to the inheritance received by the appellant's partner. The evidence before the Ministry was also comprised of four letters from the Ministry's Investigating Officer to the appellant. These letters are dated July 24, 2007, September 20, 2007, October 1, 2007, and December 28, 2007. In each of these letters, the Ministry requests the appellant to provide, among other things, bank statements from all accounts held by this family unit and, in each letter, the Ministry states: "... If this information is not received by (date specified), the Ministry will be unable to determine your eligibility. If the Ministry is unable to determine your eligibility, your family unit may be found to be ineligible and, as a result, your assistance will be discontinued."

Prior to commencing the hearing, the panel noted that the appellant did not have a copy of the appeal record before him. When questioned, the appellant stated that he had received it, but forgot it, and that he wanted to proceed without it.

At the hearing, the appellant stated:

- He was born in [redacted] and moved to [redacted] when he was about 6 years old.
- About four years ago he moved back to [redacted] from [redacted]. He had been on disability assistance (DA) while in [redacted] and remained eligible for DA upon his return to [redacted].
- For the first two years or so that he was back in [redacted], he resided on his own.
- About two years ago, he began a common law relationship with his partner. He had only been with her a short time (about 3 months) when she told him that she would be receiving an inheritance.
- In December 2006, on her 18th birthday, the appellant's partner received her inheritance. She and the appellant were still residing together at that time.
- He told his partner that she should disclose her inheritance to the Ministry.
- He was not aware that there was an obligation also on him to disclose her inheritance to the Ministry.
- He was incarcerated from approximately July 2007 to September 7, 2007, and did not receive DA during that time.
- Following his release from jail, and before his DA was reinstated, the Ministry required him and his partner to produce certain bank statements pertaining to accounts held by his partner.
- He tried to obtain the bank statements but was unable to because (1) the bank accounts were not in his name but in his partner's name only and as a result he did not have access to this information, and (2) his partner refused to cooperate and would not obtain the statements herself.
- He and his partner had a very "on again/off again" relationship. Her lack of cooperation regarding production of the bank statements as requested by the Ministry made him realize he "had enough".

- He and his partner broke up over 2 months ago. This is their longest break up. He does not intend to reconcile.
- He told the Ministry as soon as he and his partner broke up.
- He told the Ministry again, at the Reconsideration hearing, that he and his partner had broken up.
- His ex partner's whereabouts are unknown to him. He does not have contact with her.
- There is no way he can get the bank statements now, especially in light of their break up. He did not have access to them before (because the accounts were in her name only) and he does not have any access to them now.
- His disabilities include back pain, memory loss, and he cannot really read or write. As a result, it is very hard for him to find (and retain) employment.
- He requires DA to live.

At the hearing, the Ministry stated:

- there are asset limits to DA applicants.
- For a couple, the asset limit is \$5000.
- In order to determine if a client is within the asset limit, the Ministry requires certain information.
- Section 10 of the Employment and Assistance for Persons with Disabilities Act gives the Ministry the right to ask for certain information.
- If the information is not provided, the Ministry can find the client is no longer eligible for DA. That is what occurred in this case.
- The Ministry is not satisfied that the appellant and his partner are truly separated because they have separated on numerous occasions in the past and always reunite.
- They have no information (ie: legal addresses for either person) to confirm that the separation is legitimate.
- This separation may be a "separation of convenience". The Ministry sees this sort of thing happen all the time.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on this appeal is whether the Ministry reasonably concluded that the appellant was not eligible for disability assistance as a result of his failing to provide specific information (namely certain bank account statements for his family unit) as requested by the Ministry.

The relevant sections of the Employment and Assistance for Persons with Disabilities Act read as follows:

10(1) For the purposes of (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it, or (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 recipient to supply the minister with information within the time and in the manner specified by the minister, (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient; and (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(4) If an applicant or recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

On several occasions between September 2007 and February 2008, the Ministry made specific (verbal and written) requests of the appellant requesting that he provide specific bank statements in order that the Ministry could determine whether his family unit met the asset limit eligibility criteria. The Ministry made these requests during the periods of time when the appellant and his partner were residing together. Notwithstanding that the appellant did not produce this information, the Ministry, on more than one occasion, issued a DA cheque to the appellant's family unit to prevent hardship.

On February 19, 2008, approximately 5 months after the Ministry first requested certain bank statements from the appellant, the Ministry advised the appellant that his March 2008 cheque and any further assistance would be held pending the Ministry's receipt of the requested information.

The next day, on February 20, 2008, the appellant contacted the Ministry and advised that he and his partner had separated. The Ministry explained that they would not be issuing any further DA until the appellant provided the information previously requested of him.

ATTACH EXTRA PAGES IF NECESSARY

The panel accepts the appellant's evidence that he made attempts to get the bank statements but that he had difficulty because (1) the accounts were not in his name, and (2) his partner refused to cooperate and provide them herself. The panel further finds that at no time, either during the parties' relationship or after their separation, did the appellant have the ability to access bank statements for accounts that were not in his name.

However, the panel also accepts that the Ministry had a right to request this information because, at no time since the alleged separation, has the appellant provided any information to the Ministry, voluntary or otherwise, to confirm that his partner no longer lives with him. For instance, he has not provided the Ministry with a legal address for himself, nor has he provided a legal address for his partner. On this point, the panel notes that on March 3, 2004 (at the Reconsideration) the appellant told the Ministry that his ex partner is living with her mother. At this appeal, the appellant stated that he does not know if his ex partner is living with her mother. When questioned, he stated he has not even asked his ex partner's mother about this even though he just saw the mother last night during a supervised access visit with this daughter. The appellant has not explained this inconsistency.

In the circumstances, the panel finds that the Ministry had authority to request and verify certain banking information pertaining to the appellant's family unit. Since the information was not provided, and since no evidence has been provided to confirm that the family unit no longer includes his ex partner, the panel further finds that the Ministry was reasonable in concluding that the appellant was no longer eligible for DA.

The panel finds that the Ministry's decision was a reasonable application of the applicable enactment under section 24(2)(a) and confirms the Ministry's decision.