

Employment and Assistance Appeal Tribunal



Annual Report 2011/12

10th Anniversary

Our staff in Victoria





December 2012

Honourable Moira Stilwell
Minister of Social Development

Dear Minister:

It is my pleasure to present the annual report for the Employment and Assistance Appeal Tribunal of British Columbia covering the period October 1, 2011 to September 30, 2012. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.

A handwritten signature in green ink that reads "M. R. McNamara". The signature is fluid and cursive, with a large loop at the end.

Marilyn R. McNamara
Chair, Employment and Assistance Appeal Tribunal





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Our Mission

The mission of the Employment and Assistance Appeal Tribunal is to provide an independent and accessible appeal process that delivers timely and fair decisions reviewing Ministry of Social Development determinations in regards to the employment and assistance program, and Ministry of Children and Family Development determinations in regards to the child care subsidy program.





Message from the Chair

It is a pleasure to present the tenth annual report of the Employment and Assistance Appeal Tribunal of British Columbia. September 30, 2012 marked the 10th Anniversary of the Tribunal. We are proud of our accomplishments over the past decade.

The Tribunal reports to the Honourable Moira Stilwell, Minister of Social Development. In this reporting period, the Tribunal also reported to the Honourable Stephanie Cadieux, now Minister of Children and Family Development. The Tribunal hears appeals of decisions from both ministries.

Recruitment continues to be a strong focus. There were 148 members in this reporting period, however, currently there are 88 members: a 60% reduction. This reduction is primarily due to members who were not reappointed as they had served for six years. As a general rule, members serving six or more years are not reappointed so others may have an opportunity to serve. Recruitment is vital to the Tribunal as the appeal hearing must be held within 15 days of receiving the Notice of Appeal; and, although the Chair has the authority to determine the type of hearing, every effort is made to accommodate the appellant's choice of hearing type. This necessitates having skilled members throughout the province to attend hearings on short notice. Those interested in being members must demonstrate skills and knowledge of the legislation and principles of fairness through scenario-based testing.

The Tribunal has fulfilled its legislated obligation through the appointment of two vice chairs: Jane Nielsen and Dan Graham. The vice chairs are involved in daily operations by reviewing decisions to ensure they are clear and that legislative requirements are met,

developing decision writing training and coaching and mentoring members in hearing processes. In addition, the vice chairs are appointed to hear appeals.

Members are appointed from various communities and come from a variety of backgrounds. Decision writing is often a new skill which must be learned. The Tribunal supports this learning by mentoring panel chairs, through decision writing training, decision review and ongoing coaching. The results are demonstrated in the three decisions that were judicially reviewed by the British Columbia Supreme Court in 2012: *Garbutt v. B.C. (Minister of Social Development)*, 2012 BCSC 1276; *Sahyoun v. B.C. (Employment and Assistance Appeal Tribunal)*, 2012 BCSC 1306; and *Ntibarimungu v. B.C. (Minister of Social Development)* (unreported). The decisions addressed the standard of review, confirmed the panel's role as limited to looking at the reasonableness of the ministry's decision and determined that the panel considered the relevant facts and conducted a fair hearing. These decisions are discussed in greater detail further on in this report.

We are looking forward to implementing our web-based expense claim system for members: the system automatically inputs amounts based on the member's role, calculates allowable expenses for completion of their claim, tracks processing and provides historical information.

I would like to thank staff and members for continuing to pursue excellence in the work they do for the Tribunal; it is these efforts that support the provision of a fair, caring, ethical and accessible appeal process and ensure the Tribunal continues to meet its legislated timelines.

Our Vision

The Employment and Assistance Appeal Tribunal will be known for:

- Providing an accessible, independent, community-based, fair, timely, caring and ethical appeal process to hear appellants' disagreements with decisions of the Ministry of Social Development in regards to the employment and assistance program and the Ministry of Children and Family Development in regards to the child care subsidy program.
- Supporting members to provide quality service to promote public confidence in the integrity and competency of the Tribunal.
- Creating a healthy work environment that supports staff to provide quality service and to continually learn and develop knowledge, skills and expertise.



1. Who We Are and What We Do

The Employment and Assistance Appeal Tribunal

The Tribunal was established on September 30, 2002 to hear appeals of most types of decisions made by the Ministry of Social Development under the employment and assistance program. Since 2006, the Tribunal also hears appeals of decisions made by the Ministry of Children and Family Development under the child care subsidy program. The Tribunal provides a streamlined and efficient one-step appeal process, and is independent of both ministries.

The Employment and Assistance Appeal Tribunal's authority is established under section 19(1) of the *Employment and Assistance Act*.

The Tribunal hears appeals of reconsideration decisions that refuse, reduce or discontinue income, disability assistance or a supplement; decisions regarding the amount of a supplement; and decisions that refuse to grant hardship assistance under:

- Section 17 of the *Employment and Assistance Act*, and
- Section 16 of the *Employment and Assistance for Persons with Disabilities Act*.

The Tribunal also hears appeals of reconsideration decisions that refuse, reduce or discontinue a subsidy under:

- Section 6 of the *Child Care Subsidy Act*.

The Tribunal consists of a Chair, two Vice Chairs, 13 staff, and during this reporting period, 148 members located throughout the province. (See Appendix A for a list of staff and Appendix B for a list of members).

Tribunal Members

Members are appointed by the Minister of Social Development after a merit-based process and on consultation with the Chair. To be considered for appointment to the Tribunal, candidates must have:

- an understanding of the essential elements of the conduct of a fair and objective hearing
- an understanding of the key aspects of the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, the *Child Care Subsidy Act*, and the regulations relevant to these Acts
- an ability to interpret and apply legislation
- analytical, decision making and decision writing skills
- an ability to listen and communicate clearly and effectively
- conflict resolution skills and a proven ability to work well in group settings
- a commitment to respect diversity, and
- computer literacy.

In addition, to ensure independence and that hearings are fair and just, a member must not:

- be or have been an employee of the Ministry of Social Development or the Ministry of Children and Family Development for the past six months
- be an employee of the provincial government
- be a recipient of benefits under any of the acts for which the Tribunal has responsibility, or
- have any real or perceived interest in matters that come before the Tribunal.

Members are also required to abide by the Tribunal's Code of Conduct and Practices and Procedures and to maintain confidentiality.

NOTE: The Tribunal recruits new members from time to time. Anyone interested in being considered for appointment should refer to the Employment and Assistance Appeal Tribunal website, www.gov.bc.ca/eaat, or the Board Resourcing and Development Office website, www.fin.gov.bc.ca/BRDO, for information on how to apply.

The Appeal Process

The Tribunal hears appeals of reconsideration decisions made by the Ministry of Social Development in regards to the employment and assistance program, and the Ministry of Children and Family Development in regards to the child care subsidy program. A person must receive a reconsideration decision prior to requesting an appeal from the Tribunal. The appeal process, which is set out in the *Employment and Assistance Act* and Regulation, is the same regardless of which ministry made the reconsideration decision.

A person who applies for or receives assistance under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act* can request reconsideration of a decision that resulted in refusal, reduction or discontinuance of income or disability assistance, or a supplement; a decision regarding the amount of a supplement; or a decision that refuses to grant hardship assistance. More information about the Ministry of Social Development's reconsideration process is available from the ministry's offices and website.

“Those who are dissatisfied with the outcome of their request for reconsideration from either ministry can, in most cases, appeal to the Employment and Assistance Appeal Tribunal.”

A person who applies for or receives a child care subsidy can request reconsideration of a decision that resulted in the refusal, discontinuance or reduction of a child care subsidy. More information about the Ministry of Children and Family Development's reconsideration process can be obtained by calling 1-888-338-6622 and asking to speak with an adjudicator.

Those who are dissatisfied with the outcome of their request for reconsideration from either ministry can, in most cases, appeal to the Employment and Assistance Appeal Tribunal. They must submit a Notice of Appeal form to the Tribunal within seven business days of receiving their reconsideration decision.

Upon receipt of a completed Notice of Appeal, the Tribunal decides whether the matter can be appealed. Factors that are considered include whether the Notice of Appeal was submitted within the prescribed timelines and whether the issue is appealable under the legislation.

If the matter is eligible for appeal, a panel of up to three members is appointed and the hearing is commenced within 15 business days of the completed Notice of Appeal being delivered to the Tribunal. Most hearings are conducted in person, usually in or near the appellant's community. Hearings can also take place by teleconference or, if both parties consent, in writing.

The panel reviews the ministry's reconsideration decision and the appeal record, considers any supporting evidence provided by the appellant or the ministry, and renders a written decision, generally within five business days of the hearing. The Tribunal mails a copy of the decision to the appellant and the ministry within five business days of receiving it from the panel.

NOTE: Summaries of Tribunal decisions from 2011/12 are included in Section 4, "What Our Decisions Look Like." Complete decisions are available on the website: www.gov.bc.ca/eaat.



DAN
• DORES
GLENN
JANE
• KATHRYN
KYRSTIN
LORI
LYNDA
MARILYN
NICOLE

250 EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

Professional Information System (PIS) 1-800-848-8888
• Request information about companies and services: 1-800-848-8888
• Contact your office during regular business hours: 1-800-848-8888
• Request a copy of the PIS: 1-800-848-8888

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• Request a copy of the PIS: 1-800-848-8888

MINISTRY RECONSIDERATION PROCESS

The Ministry of Social Development refuses, discontinues or reduces a benefit or the Ministry of Children and Family Development refuses, discontinues or reduces a child care subsidy.

A person may request a reconsideration of the ministry's decision by delivering a request for reconsideration to the ministry within 20 business days of being informed of the original decision.

The ministry has 10 business days to mail a reconsideration decision.

TRIBUNAL APPEAL PROCESS

If a person is dissatisfied with the reconsideration decision, he or she may submit a Notice of Appeal to the Employment and Assistance Appeal Tribunal.

The person has 7 business days to submit the Notice of Appeal to the Tribunal and has a choice of oral or written hearing type.

ORAL HEARING

Within 15 business days of receipt of the completed Notice of Appeal, the Tribunal schedules an oral hearing in person or by teleconference.

The panel hears the appeal in person or by teleconference.

The panel renders a decision, either confirming or rescinding the ministry decision.

The panel has 5 business days to provide the Tribunal with a written decision.

The Tribunal has 5 business days to mail the decision to the parties.

WRITTEN HEARING

Within 15 business days of receipt of the completed Notice of Appeal, the parties receive a letter from the Tribunal commencing the written hearing.

The appellant has 7 business days to provide a submission.

The ministry has 7 business days to respond to the appellant's submission.

The panel convenes to render a decision, either confirming or rescinding the ministry decision.

The panel has 5 business days to provide the Tribunal with a written decision.

The Tribunal has 5 business days to mail the decision to the parties.

How to Appeal...

**You have
7 Business Days**

If you are dissatisfied with the Ministry's reconsideration decision:

1. Complete the Notice of Appeal form.
2. Send it to the TRIBUNAL within 7 business days of receiving the Ministry's reconsideration decision (or you will lose your right of appeal):

MAIL: PO Box 9994 Stn Prov Govt,
Victoria, BC V8W 9R7

FAX: Toll free: 1-877-356-9687,
in Victoria: 250-356-9687

EMAIL: eaat@gov.bc.ca

Notice of Appeal forms are available from the Tribunal and the Ministry

How to Contact the Employment and Assistance Appeal TRIBUNAL.

TELEPHONE: Toll free **1-866-557-0035**

In Victoria **250-356-6374**

EMAIL: eaat@gov.bc.ca

WEBSITE: www.gov.bc.ca/eaat

This Tribunal brochure is included with every reconsideration decision denying the request.

Employment and Assistance Appeal Tribunal

How to Prepare for Your Appeal



This Tribunal brochure is sent to every appellant on acceptance of their Notice of Appeal.

2. If You Want To Appeal

How to Appeal

If you are dissatisfied with the ministry's reconsideration decision, complete a Notice of Appeal form and send it to the Tribunal within seven business days of receiving your reconsideration decision.

Type of Hearing

The Tribunal will attempt to accommodate your request for the type of hearing indicated on your Notice of Appeal: oral (in person or by teleconference) or in writing.

Oral Hearing - In Person

If your hearing is proceeding as an oral hearing in person, the Tribunal will send you a Notice of Hearing, which you will receive at least two business days before the hearing is to take place, notifying you of the date, time and place of the hearing. Hearings will usually take place in or near your community. You have the right to call witnesses and present evidence in support of the information and records before the Minister at reconsideration. You also have the right to make arguments in support of your case, and to have a family member, friend or advocate assist you during the appeal process.

Oral Hearing - By Teleconference

If your hearing is proceeding as an oral hearing by teleconference, the Tribunal will send you a Notice of Hearing, which you will receive at least two business days before the hearing is to take place. The Notice of Hearing includes the date and time of the hearing, as well as instructions for accessing the teleconference. As in an oral hearing in person, you

have the right to call witnesses and present evidence in support of the information and records before the Minister at reconsideration. You also have the right to make arguments in support of your case, and to have a family member, friend or advocate assist you during the appeal process.

Written Hearing

If you request a written hearing, and the ministry agrees, the Tribunal will send you a letter establishing a schedule for the written submission process. You will be given seven business days to provide a submission to support your case. On receiving your submission, the Tribunal will forward it to the ministry, and give the ministry seven business days to provide a written response. The Tribunal will then forward the appeal record, including the submissions, to the panel for review.

After the Hearing

The panel will provide the Chair with a written decision within five business days of the conclusion of the hearing. Upon request of a panel chair, the Chair may extend the time limit by no more than 10 additional days if satisfied that the panel is making all reasonable efforts to provide its determination in a timely manner, and the best interests of the parties are served by the extension. The decision will either confirm or rescind the ministry reconsideration decision. The Tribunal will mail a copy of the decision to the parties within five business days of receiving it from the panel. Decisions will not be provided over the telephone. The Tribunal decision is final; however, you can commence a judicial review by filing a petition in the BC Supreme Court, contact the Ombudsperson if you feel you have been treated unfairly, or write to the Chair with any concern.

3. How We Did in 2011/12

One way of measuring the Tribunal's performance is whether the timelines established by the legislation have been met. The Tribunal must hear an appeal within 15 business days of receiving a Notice of Appeal. The Tribunal met the 15 business day timeline in all but one instance. In this case, at the hearing, the Panel Chair determined there were two separate issues with two reconsideration decisions. One appeal was heard as the record was complete. A new file was opened for the second appeal; the timeline was not met for this appeal.

The panel must mail a copy of its decision to the Tribunal within five business days of the conclusion of the hearing. The Tribunal Chair may extend the timeline by no more than 10 additional business days. The Tribunal must then mail a copy of the panel's decision within five business days of receipt. Of the 851 appeals heard, the Tribunal has been successful in ensuring that 100% of the decisions met the statutory timelines.

Here is a brief summary of the results of our work for the reporting period of October 1, 2011 to September 30, 2012.

Notices of Appeal Received

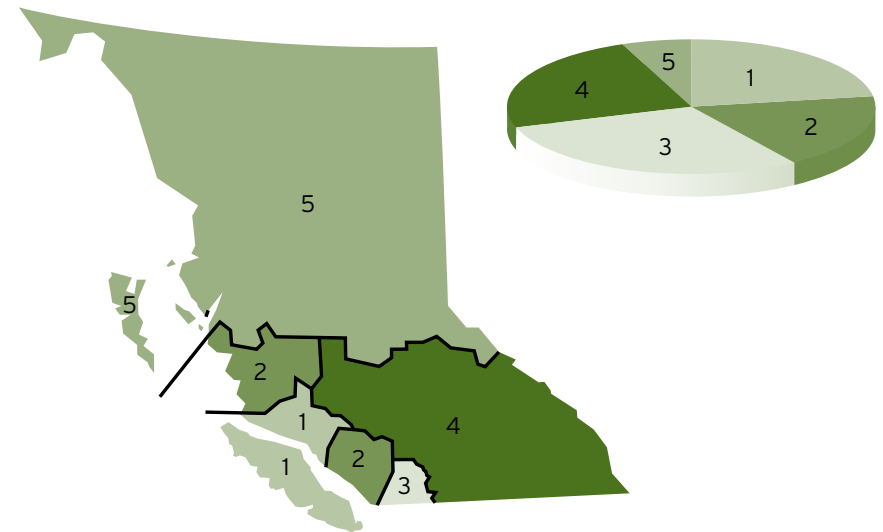
Notices of Appeal Received	975
Appeals Assessed as not within the Jurisdiction of the Tribunal (do not proceed to hearing)	95
Appeals Dismissed (before or during hearing)	54
Files Carried Over (Notices of Appeal received before September 30, 2012 but proceeding to hearing after or not assessed by September 30, 2012.)	70

Notices of Appeal - by Type

Disabilities - Persons with Disabilities - Designation	218
Disabilities - Persons with Persistent Multiple Barriers (PPMB)	52
Eligibility - Deductions on Income/Earnings Exemptions	14
Eligibility - Dependency/Living Arrangements	19
Eligibility - Eligibility Audit	13
Eligibility - Excess Income/Assets	84
Eligibility - Failure to Accept/Pursue Income/Assets	8
Eligibility - Failure to Provide Information/Verification	30
Eligibility - Identification	2
Eligibility - Residency	8
Eligibility - Time Limit for Income Assistance	1
Eligibility - Undeclared Income/Assets	18
Employment - Dismissed/Quit/Refused Employment	6
Employment - Employment Plan/Failure to Look for Work	86
Employment - Requirement for Two Year Financial Independence	13
Health Supplements - Dental Supplement	28
Health Supplements - Diet/Natal Supplements	4
Health Supplements - MSP/Other Health Supplements	7
Health Supplements - Medical Equipment	72
Health Supplements - Medical Supplies	14
Health Supplements - Medical Transportation	8
Health Supplements - Monthly Nutritional Supplement (MNS)	43
Health Supplements - Short-Term Nutritional Supplement Products	4
Health Supplements - Therapies	4
Other - Child in Home of Relative/Under 19	2
Other - Child Care	12
Other - Crisis Supplement	88
Other - Family Maintenance	4
Other - Hardship	3
Other - Other	110

Notices of Appeal - by Region

Region 1	Vancouver Island	220
Region 2	Vancouver Coastal	176
Region 3	Fraser	287
Region 4	Interior	234
Region 5	Northern	58



“Professionals are not created by hope or desire – but through a combination of some innate ability and study and experience.”

Toronto (City) v. CUPE, Local 79 (1982), 35 OR (2nd) 545 (Ont CA)

Appeal Outcomes

The total number of Notices of Appeal received differs from the number of appeals closed because of files carried over from the previous year or into the following year and various other factors. The number of decisions confirmed and the decisions rescinded do not equal the number of appeals heard for the same reason. The following statistics relate to appeal files that were closed in 2011/12.

Ministry of Social Development

Appeals heard	841
Decisions confirmed	715
Decisions rescinded	125

Ministry of Children and Family Development

Appeals heard	10
Decisions confirmed	7
Decisions rescinded	3

Tribunal Members

Candidates

To be a member of this Tribunal, a person must have an understanding of the essential elements for the conduct of a fair and objective appeal and the key aspects of the relevant legislation as per section 82 of the Employment and Assistance Regulation. The Candidate Training and Testing Package provides this information to interested members of the public so they can acquire and demonstrate the prescribed knowledge and skills. It enables recruitment from a broader sector of the community and has enhanced the efficiency of the application process.

Members

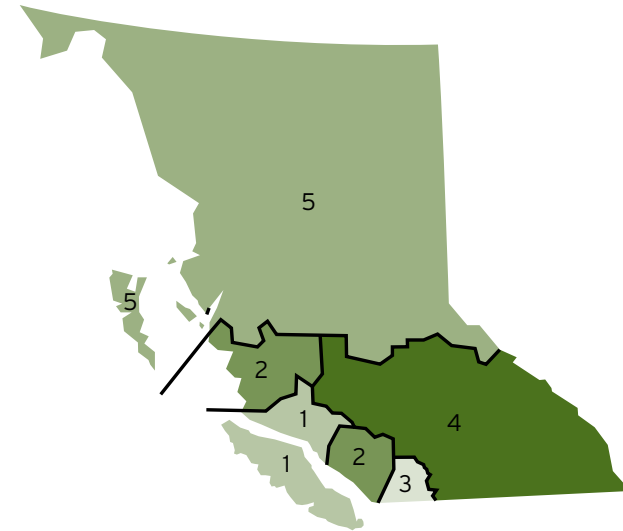
On successfully completing the Computer-Based Training Program (CBT) members are appointed to appeal hearings with an experienced panel chair who mentors the new member.

When members gain experience, they will complete the web-based Decision Writing Module prior to being assigned the role of panel chair. Further coaching occurs at the decision review stage to ensure the decision meets the legislative requirements outlined in section 86 of the Employment and Assistance Regulation.

Performance Reviews

Member performance is evaluated using the Competency-Based Learning and Development Tool. It is used for coaching as it clarifies the requirements and expectations of members; a competency review is completed prior to making recommendations to the Minister of Social Development for reappointment.

Performance reviews of members	25
Applicants who completed testing	93
New members provided with the CBT	17
Members appointed	20
Members reappointed	4
Total members during this reporting period	148



Number of Members - by Region

Region 1	Vancouver Island	50
Region 2	Vancouver Coastal	30
Region 3	Fraser	19
Region 4	Interior	38
Region 5	Northern	11

4. What Our Decisions Look Like

CASE 1

Eligibility

Ministry Decision

Not eligible for income assistance as a full-time student in a funded program of studies from the first day of the month following the month in which classes commenced until the last day of the month in which exams are held.

Summary of Facts

In July 2011, the appellant advised her employment and assistance worker that she was planning to attend school and was requested to submit confirmation of attendance at this meeting and again in August. No information was received. At a second meeting, the appellant advised she had been attending school full-time since September 6. The ministry received confirmation from the educational institution that the appellant was enrolled as a full-time student in courses beginning September 6 and ending April 24.

Tribunal Decision - ministry decision rescinded

Reasons for Decision

The issue in this appeal was whether the ministry decision to deny income assistance from September 2011 to April 2012 was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

Section 16(1) of the Employment and Assistance Regulation (EAR) states that a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student in (a) a funded program of studies. Subsection (2)(a) states the period extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held.

The appellant's position was that she understood she would be eligible for income assistance until December because of health issues. Her family paid her tuition because she was not eligible for a student loan due to outstanding debt and she needed assistance to cover her rent and other expenses. The ministry's position was that she was a full-time student in a funded program and the ineligibility period was from the first day of the month following the commencement of classes until the last day of the month in which exams were held.

The panel found the ministry's determination that the appellant was a full-time student enrolled in a funded program of studies was reasonably supported by the evidence. While the appellant argued she could not obtain a student loan, the legislation requires only that the program is funded. However, the ministry determined that the period of ineligibility extended from September 2011 to April 2012.

As classes commenced September 6, the first day of the following month was October 1, not September 1. As exams ended April 24, the last day of the month for the period of ineligibility was April 30. The panel found the ministry's decision on the period of ineligibility was not a reasonable application of the legislation in the circumstances of the appellant and rescinded the decision.

Ministry Decision

Appellant is liable to repay child care subsidy overpayment

Summary of Facts

The appellant lived with her husband and two children and received a child care subsidy. The husband attended university and worked part-time. From July 2011 through February 2012, the amount of child care subsidy received was based on the husband's status as a student and the appellant's earnings. On renewal of the subsidy in March 2012, the appellant indicated her husband worked part-time and provided pay stubs indicating he received income July 2011 through February 2012; the time period where the child care subsidy was based solely on the appellant's income. The verification and audit office determined that, as a result, the appellant was overpaid \$3,140.

Tribunal Decision - ministry decision confirmed

Reasons for Decision

Section 9(1) of the Child Care Subsidy Regulation (CCSR) states that the monthly net income of a family is calculated by adding the income that each person in the family receives per month including, but not limited to, (a) employment income and (b) self-employment income.

The appellant did not dispute that both her and her husband's income must be included in the calculation of the family's net income. She disputed the amount of income on which the overpayment was based as well as the length of time for which the overpayment was calculated. She stated the reconsideration officer failed to consider her submissions that stated "during all these periods, her husband's income was reported

and there is no proof available that shows she underreported income from March 2011 through February 2012". The panel noted that the submission only referred to conversations and correspondence after March 2012, when the ministry informed the appellant of the net income discrepancy. The appellant's position was that the ministry miscalculated the overpayment and that the ministry's current calculation, since March 2011, should follow section 9(3) of the CCSR.

The ministry's position was that the ongoing calculation of the family income in reapplying for a child care subsidy was not an issue under appeal. The appellant's husband's income from the period starting July 2011 through to February 2012 was not reported until March 2012 when the appellant reapplied for the child care subsidy. The adjusted amount of the net income resulted in the appellant receiving child care subsidy she was not eligible for, and the appellant is liable for that overpayment per section 7(1) of the *Child Care Subsidy Act (CCSA)*. The ministry also argued that, as per section 7(5) of the CCSA, the amount of an overpayment was not open to appeal.

The panel found the appellant received child care subsidy during the period from July 2011 through February 2012 based solely on her income. The husband's income was not included in the calculation of the child care subsidy and, as a result, the appellant was overpaid for that period and liable to repay that amount as per section 7(1) of the CCSA. When the monthly net income of a family varies, section 9(3) of the CCSR allows the ministry to estimate the annual net income that everyone in the family will receive and divide the estimated annual amount by 12. While this may apply to the appellant's current application for child care subsidy, the current application is not under appeal. This appeal deals with the period from March 2011 to February 2012 and where the amount earned was known as it was indicated on the pay stubs.

The panel determined the ministry decision was reasonably supported by the evidence and confirmed the decision.

CASE 3**Excess Assets****Ministry Decision**

Denied income assistance for January and February 2012

Summary of Facts

The appellant, a single applicant, applied for income assistance on January 26, 2012. He advised the ministry that his primary vehicle was a 1997 motor vehicle with an estimated value of \$1,600. He also owned a 2004 motorcycle with an estimated value of \$3,700, confirmed by a motorcycle dealership. On February 23, 2012, the appellant sold the motorcycle for \$2,600 and provided a copy of a cheque issued to him on that date for \$2,600. The appellant advised the ministry that he subsequently used that money to pay an outstanding loan as well as his rent for March and April.

Tribunal Decision - ministry decision confirmed

Reasons for Decision

The issue in this appeal was whether the ministry decision to deny the appellant income assistance for January and February 2012 was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

Section 1 of the Employment and Assistance Regulation (EAR) defines “asset” as including equity in personal property that can be converted to cash and cash assets. “Cash assets” are defined as including money in the possession of a person or the amount of an immediately negotiable cheque payable to the person. Section 11(1) of the EAR provides that one motor vehicle generally used for day-to-day transportation needs is an exempt asset if the equity in the motor vehicle does not exceed \$5,000. Section 11(2) provides that a one-person family unit is not eligible for income assistance if the person has assets with a total value of more than \$1,500 or has cash assets in an amount that is equal to or greater than the amount of income assistance the applicant would otherwise be eligible for (\$610 in the appellant’s circumstances) and \$150.

The appellant’s position was that he was in need of assistance as he was in debt and could not find a job. The ministry’s position was that the appellant was not eligible for income assistance in January 2012 because, although his car was an exempt asset under the legislation, the appellant also owned a motorcycle valued in excess of the legislated asset limit of \$1,500. The ministry further submitted that the appellant was not eligible for income assistance for February 2012 because the motorcycle remained an asset in excess of the allowable limit until its sale, at which time the sale proceeds became a cash asset in excess of the allowable limit.

The panel found that the ministry was reasonable in determining that the appellant was not eligible for income assistance for January 2012

because he had assets in excess of the allowable limit of \$1,500. The panel found that the appellant's ownership of the motorcycle was confirmed by vehicle licensing and insurance documents and accepted the approximate value of \$3,700 as confirmed by the motorcycle dealership quote. The panel also found that the ministry was reasonable in determining that the appellant was ineligible for income assistance for February 2012 because (1) prior to the sale of the motorcycle on February 23, 2012, the motorcycle continued to be an asset valued at \$3,700 in excess of the legislated limit of \$1,500; and (2) upon the sale of the motorcycle, the appellant was in receipt of a \$2,600 cheque which was immediately negotiable and therefore a cash asset as defined in the legislation and exceeded the amount of monthly income assistance that the appellant would otherwise be entitled to under the legislation (\$610 plus \$150).

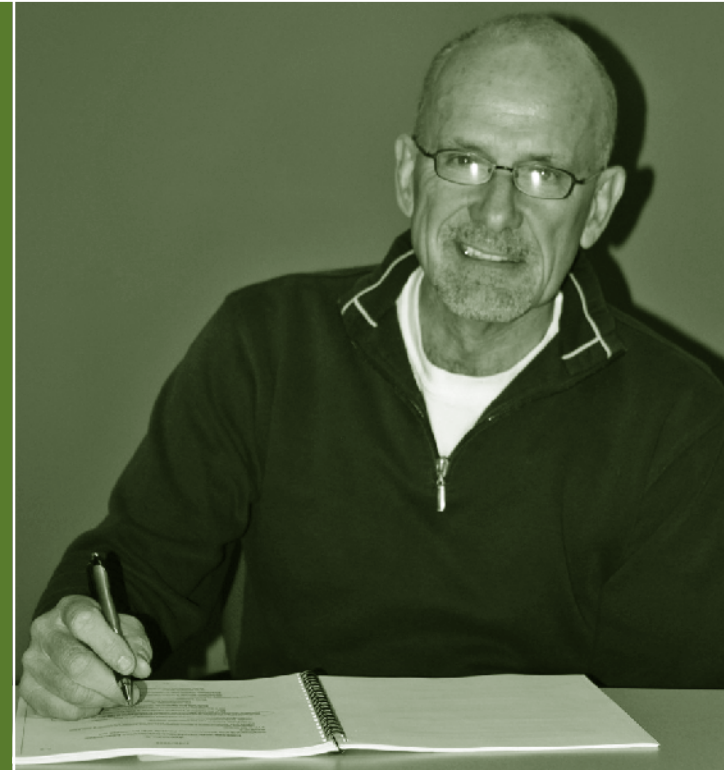
The panel determined that the ministry decision was a reasonable application of the applicable enactment and confirmed the decision.



Our Organizational Values

In carrying out its mission, the Employment and Assistance Appeal Tribunal is guided by the following values:

- Fairness
- Impartiality
- Excellence
- Efficiency
- Timeliness
- Accessibility
- Accountability
- Transparency
- Independence



5. Oversight of Tribunal Decisions

In the past year, there were three applications for judicial review of Tribunal decisions which were heard in the Supreme Court of British Columbia. All three applications were dismissed on the basis that the panel decision in each case was “reasonable”:

- In *Garbutt v. B.C. (Minister of Social Development)*, 2012 BCSC 1276, which involved a decision involving a Persons with Disabilities (PWD) application, the Court found that the panel’s reasons were adequate and that its determination that the appellant was able to do the majority of daily living activities without assistance was not unreasonable based on the evidence.
- In *Sahyoun v. B.C. (Employment and Assistance Appeal Tribunal)*, 2012 BCSC 1306, the Court rejected the appellant’s argument that he had a vested right to statutory benefits carried forward from the previous legislative scheme. The Court held that the panel decision set out the relevant facts and the law, and that the panel conducted a procedurally fair hearing.

- In *Ntibarimungu v. Minister of Social Development*, unreported, September 11, 2012, the Court held that the panel’s decision confirming the ministry’s decision that the appellant ceased to be eligible for income assistance while registered as a “full-time student” in a “funded program of studies” for the purposes of s. 16(1) of the Employment and Assistance Regulation was supported by the evidence.

No discussion of oversight of Tribunal decisions would be complete without reference to the mandate of the Ombudsperson of British Columbia, who is charged with responsibility under the *Ombudsperson Act* for investigating complaints about administrative tribunals and other public bodies.

The Tribunal Chair met with the Ombudsperson to discuss steps that the Tribunal has recently taken to enhance the administrative fairness of the Tribunal’s process, including training for Tribunal members on how to ensure appropriate and adequate reasons are being provided to the parties.

“In any event, regardless of whether I apply the standard of correctness or the standard of patently unreasonable, in my opinion the reasons cannot be viewed as inadequate.”

Garbutt v. British Columbia (Social Development) 2012 BCSC 1276

Glossary

act | the *Employment and Assistance Act*

appeal record | the appeal record for the Tribunal is initially comprised of the Notice of Appeal and the record of the ministry decision. As the appeal progresses, it also includes submissions, any additional information admitted into evidence at the hearing, and the Tribunal decision

appellant | a person who commences an appeal

business day | a day other than Saturday, Sunday, or a statutory holiday

independent | the activities of the Tribunal are separate and operate at “arms length” from both ministries

members | a member of the Tribunal appointed by the Minister of Social Development under section 19(2)(c) of the Act

minister | the Minister of Social Development or the Minister of Children and Family Development, depending on context

ministry | the Ministry of Social Development or the Ministry of Children and Family Development, depending on context

Notice of Appeal | the appeal form specified by the Minister of Social Development that must be submitted to the Tribunal in order to commence an appeal

oral hearing | a hearing that is conducted with the parties present in person, by teleconference, or by video conferencing

panel | the member(s) designated by the Tribunal Chair under section 22(1) of the Act to hear an appeal

panel chair | the chair of a panel designated under section 22(2) of the Act

party | in relation to an appeal to the Tribunal, the appellant and/or the Minister whose decision is under appeal

reconsideration decision | the final ministry decision pertaining to the initial request - the decision that may be appealed to the Tribunal

record of the ministry decision | the information and records that were before the Minister when the reconsideration decision under appeal was made

representative | an agent, lawyer, or advocate representing a party during an appeal

tribunal | the Employment and Assistance Appeal Tribunal established under section 19(1) of the Act

tribunal chair | the Chair of the Tribunal appointed under section 19(2)(a) of the Act

witness | a person who provides evidence at a hearing

written hearing | a hearing that is conducted through the submission of written evidence and written argument

Appendix A: Tribunal Staff

(October 1, 2011 - September 30, 2012)

Kyrstin Adams

Dores Baxter

Kathryn Bissett

Lori Butler

Sherry Caven

Willana Gibson

Tracie Horne

Karla Krawchuk

Dale Krocker

Glenna McEwen

Sarah McEwen

Marilyn McNamara

Shirley Martin

Nicole Murray

Lynda Parent

Renee Petersen

Valerie Provencal

Tanya Rak



Appendix B:

Tribunal Members

(October 1, 2011 - September 30, 2012)

Region 1

William Bell
Arthur Berry
Glenys Blackadder
Patricia Bradley
Sarah Brickett
Janet Brons
Gregory Bunyan
Gurjit Chaplin
Bruce Cline
Diane Coe
David Coombe
Joan Cotie
Endre Dolhai
Susan Edwards
Robert Fenske
Brenda Fowler
Karen Gillan
Hunter Gordon
Daniel Graham

Peter Gustar
Marcus Hadley
James Hooton
Terrence Ison
Luke Krayenhoff
Anne-Marie Lafleur
Gabriella Lang
Thomas Lathrop
Avo Lepp
Patrick Maguire
Elizabeth Marshall
Harry Martin
Henry Mathias
Jennifer McCaughey
Marilyn McNamara
Andrew Murray
Jane Nielsen
Rita Parikh
Bob Purgavie
Richard Roberts

Pierre Rousseau
Gillian Saxby
Sheldon Seigel
Patricia Smith
Michael Soronow
Jacquie Tarasoff
David Thompson
Kenneth Thornicroft
Lynn Twardosky
Frank Whitton
Bertram Wolfe

Region 2

Haydn Acheson
Alexander Danilovic
Jagdev Dhillon
Ronald Fox
Margaret Gaily
Arlene Henry
Allan Hewett
Chris Hope
Marie Ingram
Roy Johnson
Daniel Kiselbach
Carla Lewis
Maryam Majedi
Carole McKnight
Natalia Mikiciuk

Tajdin Mitha
Terry Mullen
Sheldon Nider
Don Peters
Sandra Polinsky
Patrick Poyner
Stacy Robertson
Veronica Rossos
Hope Sealy
Gary Snarch
Begum Verjee
Kenneth Wilson
Susan Witter
William Wright
Norman Wrightman

Region 3

Sheila Begg
 David Coulson
 Jennifer Duprey
 Karl Ellingsen
 Hugh Gaffney
 Robert Gunnell
 June Harrison
 Vincent Hart
 Lachlan Heron
 Beverly Kennedy
 Mebs Lalani
 Allen Lees
 Bernie Leong
 Henry Neufeld
 Ana Rocho
 Kundan Sangha
 Jeremy Sibley
 John Taggart
 Sandra Walters

Region 4

Peter Allik-Petersenn
 Lorianna Bennett
 Gail Bernacki
 Jeanne Byron
 Dale Carlson
 Brien Cates
 Susan Cooper
 Lynda Cross
 Elizabeth Cytra
 Kimberley Darling
 Mel Donhauser
 Gillian Dougans
 Richard Dunsdon
 Ruth Embree
 Larry Ferguson
 Bob Fergusson
 Bruce Gardiner
 Maxine Glover
 David Goldsmith

Peter Grauer
 David Greenshields
 Larry Grist
 David Handy
 Dave Hanna
 Brian Hornidge
 Peter Knittel
 Shiela Lange
 Gary Lotochinski
 Gautam Parghi
 Mary Pickering
 Laurent Rivard
 Kerry Schofield
 Clinton Smith
 William Stalker
 Ronald Terlesky
 Helene Walford
 Christopher Wells
 Paul Wortley

Region 5

Erin Anderlini
 Anne Clayton
 Bryan Crampton
 Victor Curell
 Daniel Gilgan
 Martin Griffith-Zahner
 Richard Lee
 Lee Ongman
 Linda Smerychynski
 Frances Stanley
 William Woolsey

Appendix C:

Budget

(October 1, 2011 - September 30, 2012)

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The provincial government's fiscal year begins April 1st. The Tribunal's reporting year begins October 1st. Therefore, budget tables for two fiscal years are shown so that the full Tribunal fiscal year is reported.

OPERATING BUDGET	APRIL 2011-MARCH 2012	APRIL 2012-MARCH 2013
Salaries and Benefits	\$ 937,000	\$ 937,000
Boards/Commissions/Courts - Fees and Expenses	496,000	496,000
Public Servant Travel	22,000	22,000
Professional Services: Operational	150,000	150,000
Information Systems: Operating	12,000	12,000
Office and Business Expenses	130,000	130,000
Statutory Advertising and Publications	5,000	5,000
Recoveries	(1,000)	(1,000)
TOTAL	\$1,751,000	\$ 1,751,000

How To Contact Us

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