

# Welfare and Appeals: Step 2

## Appeal Tribunal Hearing

If you do not agree with a decision made at the reconsideration stage, you may be able to request an appeal tribunal hearing. At this stage, it is best to have an advocate help you. This fact sheet will provide you with the basic information you need to get started.

Before you apply for a tribunal hearing, consider whether it might be better to gather more evidence and reapply for benefits. If this second application is denied, you can then go through reconsideration (and a tribunal hearing, if necessary) with more evidence on the record to support your case. (See *Welfare fact sheet #8a* for more information.)

A tribunal panel of three people hears the evidence from both sides and makes a final decision on the case. The panel members are not employees of the Ministry of Human Resources (MHR), but are people selected and paid by the government to conduct tribunal hearings. The Employment and Assistance Appeal Tribunal Office (tribunal office) in Victoria organizes and supervises the members of all tribunal panels and sets the time and place for each tribunal hearing. You can contact this office by phone at 1-866-557-0035 or by fax at (250) 356-9687.

Hearings usually take place in person, although the law now allows tribunal hearings by teleconference. Or, if all parties agree, each side can hand in a written argument and let the tribunal panel make a decision based on that information. (Employment and Assistance Act [EAA], section 22)

### What you can appeal

You can appeal decisions about the refusal, reduction, or termination of most assistance or

supplements. However, at a tribunal hearing, you cannot appeal a decision by MHR that —

- you must enter into an employment plan;
- your employment plan should be amended, suspended, or cancelled;
- certain conditions will be part of your employment plan;
- you must repay the ministry a certain amount because you were overpaid;
- you may or may not have access to a program established or funded under the Employment and Assistance Act (EAA) or the Employment and Assistance for People with Disabilities Act (EAPWDA); or
- deals with travel supplements, reconsideration and appeal supplements, or supplements related to employment plans.

**Note:** There are arguments about the interpretation of the law that may allow you to appeal a decision even if the ministry tells you that the decision cannot be appealed. It is best to talk to an advocate *before* accepting a ministry decision about any of these issues or signing any papers given to you by the ministry.

If MHR has denied you assistance or a supplement and you have proceeded to a tribunal hearing, you cannot reapply for the same benefit or start the appeal process again until the ministry has made a decision about your first application and appeal.

(EAA, sections 9[7], 18, and 27; Employment and Assistance Regulation [EAR], section 81; EAPWDA, sections 9[7], 17, and 18; Employment and Assistance for Persons with Disabilities Regulation [EAPWDR], section 73)

If you lose at the tribunal hearing and the ministry has already acted on the decision against you, you *cannot* make the same request to the ministry (or

make any appeal about that request) unless there is a change in your circumstances. (EAA, sections 17[3] and 18; EAPWDA, sections 16 and 17)

If MHR tells you that you cannot go to a reconsideration or appeal tribunal, you may be able to ask for what is called an administrative review. If you are in this situation, ask an advocate for help.

(Employment and Assistance Manual, section 12 – 2)

If you are going to a tribunal hearing because MHR cut off a benefit you were receiving, you will continue to receive the benefit during the tribunal hearing process. It is important to know that if you lose your tribunal hearing you might later owe MHR for the money you received during this time. However, you can usually arrange to repay the money in reasonable installments. (For example, MHR could take as little as \$10 off each welfare cheque.)

If you are applying for a new benefit that you do not yet have, you will not be paid the benefit during the tribunal hearing process.

## Submitting the Notice of Appeal

### *Setting up a hearing*

Ask your Employment and Assistance worker (EAW) for a Notice of Appeal to the Employment and Assistance Appeal Tribunal (appeal notice). On this form, put how you want the appeal to be heard (in person, in writing, or by teleconference). Be sure to think about how you would be most comfortable dealing with the ministry and how you can best present your case. Some people feel it is difficult to explain their arguments well to the tribunal panel if the hearing is by teleconference.

Let the ministry know in advance if you have any specific requirements for the hearing, such as for a support person to be present at the hearing or wheelchair access to the hearing room.

### *Notification*

You should also set out how you want to be notified of the date of your tribunal hearing or if you want your advocate to deal with the paperwork on your behalf. If you want your advocate to set up the hearing, include with the form a letter noting the advocate's name and contact information (you must

sign the letter). Or you can write your advocate's name and contact information in the part of the form where you are asked to put a fax number. Indicate that you would like the notice of the tribunal hearing date to be faxed to your advocate.

### *Time and place of hearing*

The chairperson of the tribunal panel that will hear your case must give everyone taking part in the hearing two business days notice of the hearing. If this is not enough notice, include a letter with your appeal form stating that you require more than two business days notice. Explain the circumstances (such as your health or childcare) that make it impossible for you to attend a hearing on just two days notice.

### *Time Limits*

You must submit your appeal notice within seven business days from the date you find out your reconsideration is denied. Be sure that your envelope is postmarked before the seven-day period is up. This will guarantee your right to an appeal hearing. (EAA, section 20)

Once you have submitted your appeal notice, a hearing must be held within 15 business days, unless both parties and the chairperson agree to a later date. (EAR, section 85)

Advocates helping people with welfare appeals have found that the government often provides only two days notice, so that you have little time to prepare or contact your advocate. Be sure to tell your advocate immediately about any notice you receive from MHR.

Keep very good records of what you send to the ministry and when you send it, as well as what you receive from the ministry and when you receive it.

### *Adjournments*

If you do not receive enough notice of a tribunal hearing, you should ask for the hearing to be postponed or "adjourned." If possible, call your welfare office to ask for an adjournment at least 24 hours before the hearing is scheduled to take place.

If the ministry agrees to your request for an adjournment, you must fill out an Adjournment Request Form (adjournment form), available at the

tribunal office. Call the tribunal office and ask for the adjournment form to be faxed to the MHR office you use. When you go to collect the form, sign it yourself, then ask the supervisor (DSO) or his or her representative in that office to sign it and fax it back to the tribunal office. It is important to complete the adjournment request as quickly as possible.

If the other parties do not agree to your request for an adjournment, at the start of the tribunal hearing you or your advocate will have to present the arguments about why it should be postponed. It is best to have these arguments and any evidence in support of your request in writing.

### ***Dismissal of an appeal***

A request for a tribunal hearing may be dismissed if both parties agree and sign the appropriate forms. It may also be dismissed if the tribunal panel finds that the appeal is frivolous, vexatious, trivial, or not brought in good faith. (EAA, section 23)

## **The Appeal Hearing**

### ***Procedure***

A tribunal hearing is usually conducted in person. It is a relatively informal meeting in which you or your advocate will present your case to the tribunal panel. A representative from MHR presents the ministry's argument. At the start of the hearing you can ask the chairperson to help you understand the procedure.

It is a basic principle of justice that all the written evidence given to the tribunal panel must also be presented to all the parties so that people can confirm or challenge the information. Therefore, it is important to check at the start of the hearing whether all the participants (the three panel members, you and your advocate, and ministry staff) have the same written information. This has been a problem at some appeals.

If anybody is going to attend the hearing by teleconference, find out right away how they can get copies of any papers you plan to present. The same is true if you are attending the tribunal hearing by phone — be sure you can receive and send material to everyone participating in the hearing. Talk to MHR

before the hearing about what information they will be presenting.

At the start of the tribunal hearing, the chairperson may ask that certain papers be accepted as evidence. These will usually be papers that MHR has sent to members of the tribunal panel beforehand. As noted above, you are entitled to copies of this material. If you find that the MHR package contains information you have not seen before, you may want to ask for a short break to consider it. You can also ask for an adjournment if you or your advocate need time to address this new information, but you should only do so if it is important. If you request an adjournment, explain to the tribunal panel what you need to find out and why you need more time.

Keep notes of discussions you have with ministry staff and comments made at your tribunal hearing by MHR staff or the panel members.

### ***Argument and evidence***

The new Employment and Assistance Act (EAA) says that a decision may only be changed by the appeal panel if the decision was not “reasonably supported” by the evidence or if the law was not “reasonably applied” in the circumstances of the person appealing. This does not mean that because you think your request is reasonable, it will be accepted. In this case, “reasonable” is a legal term that has a meaning that an advocate can explain.

In practice, it does not seem to be necessary, or even a good idea, to present a lot of legal arguments and case law about what is “reasonable.” The most effective approach may be to give the appeal tribunal as much evidence in support of your argument as possible.

The evidence you are allowed to refer to is the information and records that were before the ministry at reconsideration. You can also present oral or written information that supports the information the ministry already had. (EAA, section 22) For example, if you feel that the ministry did not properly consider your doctor's letter, you could get more information from your doctor and tell the tribunal panel that it is written testimony in support of the original letter from your doctor. MHR may challenge new documents

presented at the tribunal hearing, which is why it is best to have the help of an advocate.

## Decision by a tribunal panel

The tribunal panel must make a decision and give it to the chairperson of the Employment and Assistance Tribunal Panel (tribunal chair) within 5 business days after the end of the appeal hearing. The tribunal chair then has 5 business days to mail you a copy of the panel's decision. It could take up to 10 days from the end of the hearing until the time the decision is mailed to you. (EAR, sub-sections 87[2] and 87[6])

The time for the panel to give its decision to the tribunal chair can be extended by up to 10 days if the panel chair asks the tribunal chair for an extension. It must be clear that the tribunal panel is trying to complete the decision quickly and that it is in the best interests of the parties for the tribunal chair to allow an extension. (EAR, section 87)

## Deciding what to do next

If your argument is not accepted at the tribunal hearing, you must get the help of an advocate or a lawyer to proceed any further. In some cases, it is possible to start a judicial review. You will likely need a lawyer to start a judicial review. (A fact sheet on judicial review will be available soon.)

If you lose at the tribunal hearing, an advocate can explain your options. You may have to look elsewhere in the community for support. If your circumstances change, you may be able to apply again for the benefit or supplement you want.

This fact sheet refers to the acts and regulations that set out the law about welfare in BC. It also refers to the BC Employment and Assistance Manual, which is not law but sets out the ministry's interpretation of the law.

You can find the acts and regulations referred to in the fact sheets at

<http://www.mhr.gov.bc.ca/publicat/vol1/Part3/3-2.HTM>. Or ask for help at your public library.

For more help understanding the law and ministry policy, talk to an advocate. Visit

<http://www.povnet.org> and click on "Find an Advocate" in the left-hand column to see a map of advocates in BC, or contact your local library to find a community group that can help you.

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*This information comes from reliable sources. However, more information is coming out regularly. Please watch the LSS website (<http://www.lss.bc.ca>) or the PovNet website (<http://povnet.org>) for up-to-date information and new fact sheets.*



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