

Employment and Assistance Appeal Tribunal



Annual Report 2012/13

Timeliness

Our staff in Victoria





December 2013

Honourable Don McRae
Minister of Social Development and Social Innovation

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, 2012 to September 30, 2013. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.

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

Marilyn R. McNamara
Chair, Employment and Assistance Appeal Tribunal



Contents

Message from the Chair	01
<hr/>	
1. Who We Are and What We Do	03
The Employment and Assistance Appeal Tribunal	
Tribunal Members	
The Appeal Process	
<hr/>	
2. If You Want To Appeal	10
How to Appeal	
Type of Hearing	
Oral Hearing - In Person	
Oral Hearing - By Teleconference	
Written Hearing	
After the Hearing	
<hr/>	
3. How We Did in 2012/13	11
Notices of Appeal Received	
Notices of Appeal by - Type	
Notices of Appeal by - Region	
Appeal Outcomes	
Judicial Review Outcomes	
<hr/>	
4. What Our Decisions Look Like	15
CASE 1: Dismissed from Employment	
CASE 2: Medical Transportation Supplement	
CASE 3: Definition of Dependant	
<hr/>	
5. Looking Ahead	23
<hr/>	
Glossary	24
<hr/>	
Appendix A: Tribunal Staff	25
<hr/>	
Appendix B: Tribunal Members	26
<hr/>	
Appendix C: Budget	28
<hr/>	
How To Contact Us	29
<hr/>	

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 and Social Innovation 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 eleventh annual report of the Employment and Assistance Appeal Tribunal of British Columbia. We are proud of our accomplishments over the past year.

The Tribunal reports to the Honourable Don McRae, Minister of Social Development and Social Innovation. During this reporting period, the Tribunal also reported to the Honourable Moira Stilwell.

Our 135 members are located throughout the province and provide timely resolution by hearing appeals within 15 business days of the Tribunal receiving notice a person wishes to appeal. With a requirement to meet strict legislative timeframes, recruiting throughout the province, particularly in rural areas, remains a strong focus for the Tribunal. Given our need for members, and pursuant to my authority as Chair under section 6 of the *Administrative Tribunals Act*, I appointed 18 candidates as members after consultation with the minister. These new members receive training and gain experience while awaiting the completion of the Ministerial Appointment process.

Members possess the necessary skills at the time of appointment; however, they have varied backgrounds and often minimal exposure to administrative law and decision writing. They require training to develop these specific skills. New members complete a web based "Initial Training" program prior to being assigned to hearings with an experienced panel chair who mentors the new member. Further training was provided through two-day workshops held in Victoria, Vancouver and Kelowna for both new and experienced members. A full day workshop was also held in Victoria for members chairing the more complex persons with disabilities appeals.

We continue to pursue technology to enhance efficiencies, reduce cost and better position the Tribunal in moving towards more automated workflow and electronic files. The web based expense claim system was initiated, allowing members to securely enter and submit invoices online, reducing reliance on paper and building efficiency into the financial invoicing process. In addition, an eCalendar was designed, built and implemented to track member appointments to appeals. Currently utilized by staff, members will soon have access to the hearing calendar.

A new website was designed to improve access through navigation channels that make sense to the user and assist them to locate information relative to their specific needs quickly and easily. It will utilize current technology that will allow users to complete and submit forms online from various types of mobile devices. The transition to the new website will occur in the coming year.

Thank you to staff and members whose efforts 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 and Social Innovation 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 and Social Innovation 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 or 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, 135 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 and Social Innovation after a merit based process and consultation with the Chair. Pursuant to section 6 of the *Administrative Tribunals Act*, the Tribunal Chair may appoint members for a period of up to six months on consultation with the minister.

Candidates

To be considered for appointment to the Tribunal, a person must have an understanding of the essential elements for the conduct of a fair and objective hearing and the key aspects of the relevant legislation as per section 82 of the Employment and Assistance Regulation.

Members commit to respect diversity and are expected to possess the ability to interpret and apply legislation, write decisions in a clear and concise manner, communicate clearly and effectively, and be proficient in the use of computers and common software applications.

The Candidate Training and Testing Package provides information to individuals interested in becoming a member so they can acquire and demonstrate the prescribed knowledge and skills.

The process enables recruitment from a broader sector of the community and has enhanced the efficiency of the application process. Reference and criminal record checks are completed prior to a recommendation for appointment.



“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)

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 and Social Innovation or the Ministry of Children and Family Development in 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.

NOTE: The Tribunal is recruiting from the rural areas of the province. 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.

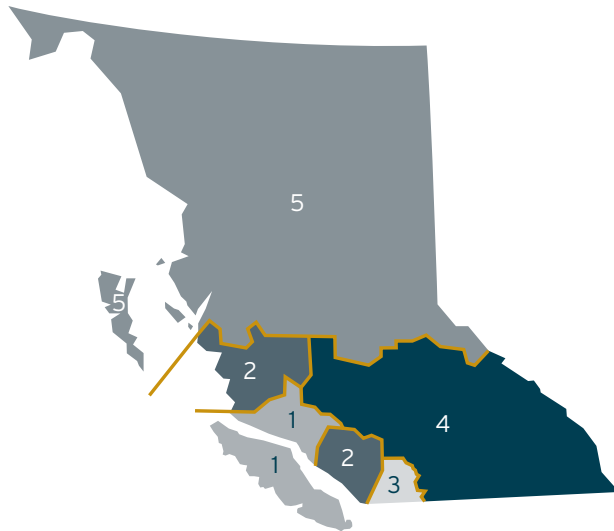
Members

Members must complete the Initial Training before being appointed to hear an appeal with an experienced panel chair who serves as a mentor.

Once members have attended a number of hearings, they will complete the Decision Writing Training before being appointed as panel chair. Once assigned the role of panel chair, a mentor will be appointed to provide support and guidance. 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. In this reporting period, the Tribunal appointed 60 members who have completed their Initial Training and are now attending hearings.

Reappointment of Members

Members are appointed initially for a period of two years and may be reappointed for a further term of two or four years. Member performance is evaluated prior to making recommendations to the Minister of Social Development and Social Innovation for reappointment. The Competency-Based Learning and Development Tool, which clarifies the requirements and expectations of members, is used for coaching and evaluation. In this reporting period, 24 members were reappointed.



Number of Members - by Region

Region 1	Vancouver Island	46
Region 2	Vancouver Coastal	33
Region 3	Fraser	13
Region 4	Interior	31
Region 5	Northern	12
Total		135

The Appeal Process

The Tribunal hears appeals of reconsideration decisions made by the Ministry of Social Development and Social Innovation 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 and Social Innovation's reconsideration process is available from the ministry's offices by calling 1-866-866-0800 or by visiting their website.

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. ”

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 appeal is heard within 15 business days of the Notice. 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 provides a written decision, generally within five business days of the hearing. This time limit may be extended by no more than 10 additional business days if the Tribunal Chair is 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 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 2012/13 are included in section 4, "What Our Decisions Look Like." Complete decisions are available on our website: www.gov.bc.ca/eaat.

How to Appeal...

**You have
7 Business Days**

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

1. Complete and submit the Notice of Appeal form
2. It must be received by the TRIBUNAL within 7 business days of receiving your ministry 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 online, from the Tribunal and from the ministry.

How to Contact the Employment and Assistance Appeal TRIBUNAL

TEL: Toll free **1-866-557-0035**
In Victoria **250-356-6374**

EMAIL: eaat@gov.bc.ca

WEB: 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.

The Appeal Process

If a person is dissatisfied with the reconsideration decision from the ministry, he or she may submit a Notice of Appeal to the Employment and Assistance Appeal Tribunal. There are two parties to an appeal: the person requesting an appeal and the ministry.



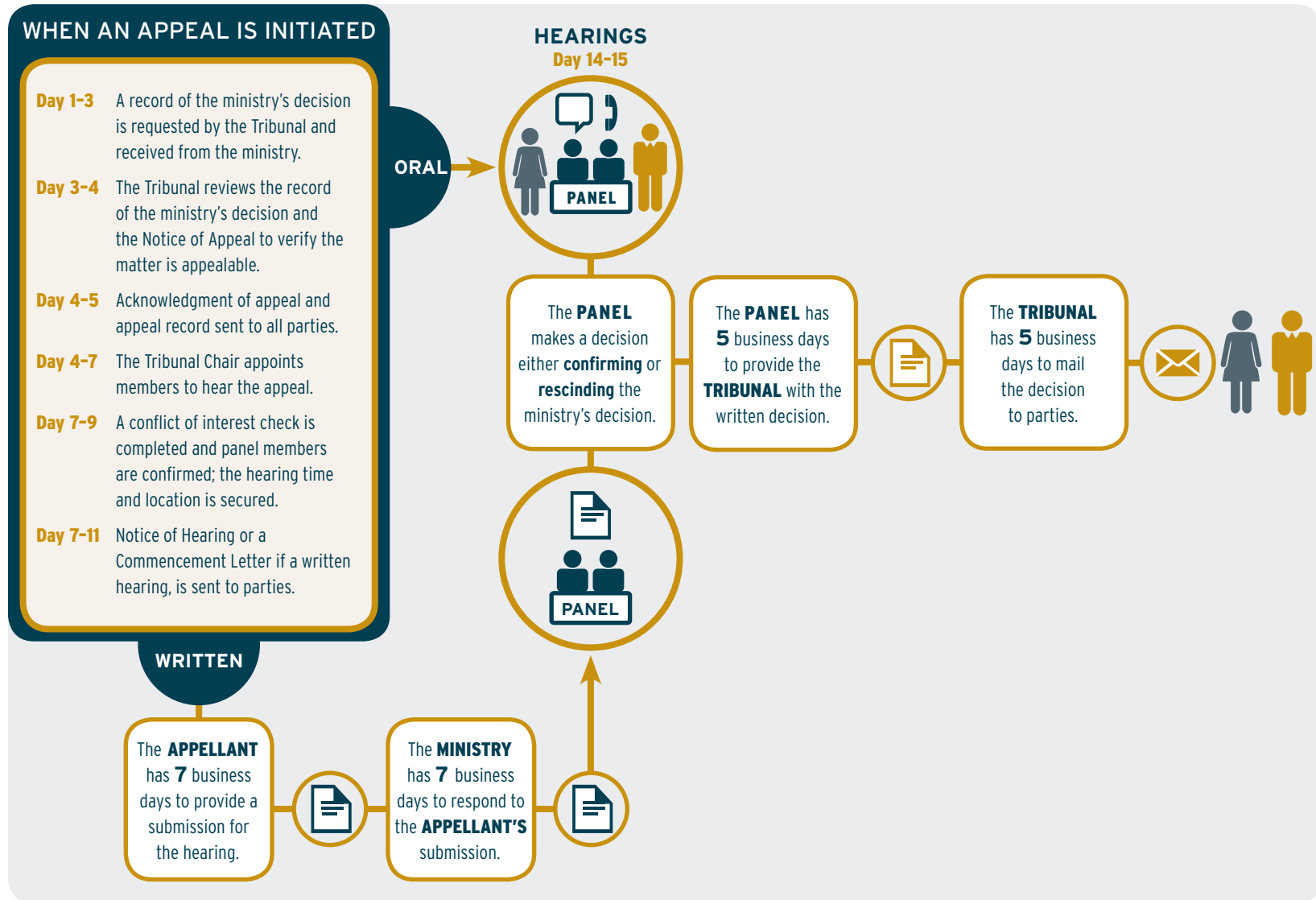
A person has **7** business days to submit a Notice of Appeal to the Tribunal with a choice of:



ORAL
(IN PERSON OR TELECONFERENCE)



WRITTEN



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 submit 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 written.

Oral Hearing - In Person

If your hearing is proceeding as an oral hearing in person, the Tribunal will send you a Notice of Hearing at least two business days before the hearing, notifying you of the date, time and place. 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 at least two business days before the hearing, notifying you of the date and time and providing 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 consents, 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, which has 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 Tribunal Chair with a written decision within five business days of the conclusion of the hearing. Upon request of a panel chair, the Tribunal Chair may extend the time limit by no more than 10 additional business 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 Tribunal Chair about any concern.

3. How We Did in 2012/13

Meeting the timelines established by the legislation is one way of measuring the Tribunal's performance. The Tribunal must hold a hearing within 15 business days of receiving a Notice of Appeal. The Tribunal met the timeline for all appeals.

The panel must provide a copy of its decision to the Tribunal Chair 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 760 appeals heard, 100% of the decisions were received and mailed within the statutory timelines.

Here is a brief summary of the results of our work for the reporting period of October 1, 2012 to September 30, 2013.

Notices of Appeal Received

Notices of Appeal Received	849
Appeals Assessed as not within the Jurisdiction of the Tribunal (did not proceed to hearing)	57
Appeals Dismissed (before or during hearing)	50
Files Carried Over (Appeals opened between October 1, 2012 and September 30, 2013 and not closed, heard or rejected by September 30, 2013)	50

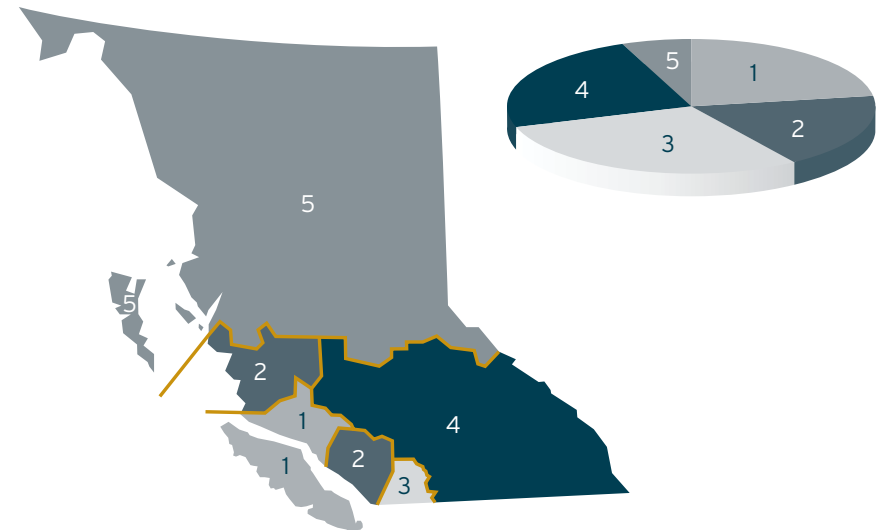
Notices of Appeal - by Type

Disabilities - Persons with Disabilities-Designation	181
Disabilities - Persons with Persistent Multiple Barriers (PPMB)	47
Eligibility - Deductions on Income/Earnings Exemptions	18
Eligibility - Dependency/Living Arrangements	26
Eligibility - Eligibility Audit	2
Eligibility - Excess Income/Assets	72
Eligibility - Failure to Accept/Pursue Income/Assets	3
Eligibility - Failure to Provide Information/Verification	31
Eligibility - Residency	6
Eligibility - Time Limit for Income Assistance	3
Eligibility - Undeclared Income/Assets	15
Employment - Dismissed/Quit/Refused Employment	4
Employment - Employment Plan/Failure to Look for Work	50
Employment - Requirement for Two Year Financial Independence	4
Employment - Three Week Reasonable Work Search	1
Health Supplements - Dental Supplement	18
Health Supplements - Diet/Natal Supplements	1
Health Supplements - MSP/Other Health Supplements	9
Health Supplements - Medical Equipment	65
Health Supplements - Medical Supplies	14
Health Supplements - Medical Transportation	21
Health Supplements - Monthly Nutritional Supplement (MNS)	48
Health Supplements - Short-Term Nutritional Supplement Products	2
Health Supplements - Therapies	3
Other - CIHR/Under 19	2
Other - Child Care	13
Other - Crisis Supplement	97
Other - Family Maintenance	2
Other - Hardship	3
Other - Other	88

*Additional appeal types have recently been identified and will be added to the Tribunal's Case Management System to enable more detailed reporting of the Other-Other category for the next annual report.

Notices of Appeal - by Region

Region 1	Vancouver Island	166
Region 2	Vancouver Coastal	142
Region 3	Fraser	294
Region 4	Interior	190
Region 5	Northern	57



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. For the same reason, the number of decisions confirmed and the decisions rescinded do not equal the number of appeals heard. The following statistics relate to appeal files that were closed in 2012/13.

Ministry of Social Development and Social Innovation

Appeals heard	747
Decisions confirmed	658
Decisions rescinded	87

Ministry of Children and Family Development

Appeals heard	13
Decisions confirmed	12
Decisions rescinded	1

Judicial Review Outcomes

The Tribunal received two judicial review decisions in the past reporting period. In *Lee v. Employment and Assistance Appeal Tribunal and Minister of Social Development*, 2013 BCSC 513, the Tribunal determined the ministry was reasonable in not back dating eligibility to receive disability assistance as there was no statutory authority to do so. The petitioner argued the doctrine of necessity permits or requires that an appeal tribunal should have the power to make remedial orders. The Court determined the Tribunal's authority on an appeal is limited to assessing the reasonableness of the minister's decisions and that it does not have an implied power to make remedial orders generally.

In *McDonald v. Minister of Social Development*, 2013 BCSC Oral Reasons for Judgment, the petitioner applied for a stay of a Tribunal decision. In this case, the Tribunal determined the ministry was reasonable in declaring the person ineligible for benefits for not pursuing income as he refused to apply for Canada Pension Plan benefits. The petition was dismissed.



4. What Our Decisions Look Like

CASE 1

Dismissed from Employment

Ministry Decision

Dismissed from employment for just cause and denied income assistance for a period of two months.

Summary of Facts

The evidence before the ministry was that the appellant was a single person who was receiving income assistance. The appellant lost his job and provided a Record of Employment (ROE) which indicated he was dismissed from his position. On calling the employer, the ministry was informed that the appellant missed work shifts.

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 a period of two months was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

Section 13(1) of the *Employment and Assistance Act* (Act) states that an applicant is subject to the consequence described in section (2) at any time while a recipient is receiving income assistance if the recipient has been (a)(iii) dismissed from employment for just cause. Section 13(2) indicates that the consequence is that income assistance must be

reduced for the prescribed period. Section 29(3)(a) of the Employment and Assistance Regulation states the prescribed period referred to in section 13(1)(a) of the Act is until two calendar months have elapsed.

The appellant's position was that the reason for his dismissal was due to not being a "fast enough" worker. He argued that it is a backwards way of running a social welfare program when someone is cut off welfare for losing a job, especially a youth on welfare and looking for work.

The ministry's position was that the ROE showed the appellant was dismissed, and on calling the employer, the employer stated the appellant was dismissed for failure to attend the scheduled shifts. Had he been dismissed because he was not a "fast enough" worker, the ministry would not apply the sanction because sanctions would not be applied to a person receiving assistance if they were dismissed during a probationary period because they were not well suited to the job.

The panel finds as a fact that the appellant was dismissed for non-attendance based on the information in the ROE and the employer's statement. The panel noted no other mitigating explanation for his dismissal from employment was submitted, such as possible conflict with the employer or possible bias toward him by the employer. The panel found that the ministry's decision that denied the appellant income assistance for the prescribed period of two calendar months was a reasonable application of the applicable enactment in the circumstances of the appellant.

CASE 2**Medical Transportation Supplement****Ministry Decision**

Eligible for general health supplement for medical transportation less than the amount claimed.

Summary of Facts

The evidence before the ministry was that the appellant was a recipient of disability assistance, living some distance from a community that offered medical services appropriate for his medical condition. He took a taxi to his medical appointment although the ministry had previously advised him that the least expensive appropriate mode of transportation was the Medical Bus at \$20 per round trip. The Medical Bus stops at a store four blocks from the appellant's home. The appellant said that the \$264 cost of the taxi was paid for with a friend's credit card and that he must repay this debt.

Tribunal Decision - ministry decision confirmed

Reasons for Decision

The issue in this appeal was whether the ministry decision that the appellant was only eligible for a medical transportation subsidy less than the amount claimed was reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

Section 2(1) of Schedule C of the Employment and Assistance for Persons with Disability Regulation (EAPWDR) states that for a recipient of disability assistance, the minister will pay for (f) the least expensive appropriate mode of transportation to or from an office, in the local area, of a medical practitioner or nurse practitioner.

The appellant's position was that the legislation refers to a singular "mode" of transportation which takes a person "to or from" a medical office or hospital. Since the Medical Bus does not provide door-to-door service, it cannot be an appropriate "mode" of transportation. In any case, the roads were icy, he was on crutches, and he could not walk the distance ("close to a mile") between his residence and the store where the bus stops. Further, he is not eligible for the Medical Bus as it is for "out-of-town" not "local" trips and the medical clinic is in his "local" community.

The appellant also argued that the legislation does not require him to schedule his medical appointments around the bus schedules, as his medical appointments are scheduled in accordance with his medical needs. The medical offices book his appointments and he has no control over those bookings. When his appointments are booked on days when there is no Medical Bus, it cannot be called an appropriate mode of transportation. The appellant maintained that it is unreasonable for the ministry to require him to provide a receipt for the taxi fare since his friend paid for the taxi and has the receipt and the legislation and ministry procedures do not expressly state he must provide a receipt.

The ministry's position was that the basic issue is whether a taxi is the most appropriate mode of transportation to the appellant's medical appointment at \$250 to \$300 per round trip while the Medical Bus is \$20 per round trip. The ministry said that it had confirmed the Medical Bus will stop in the appellant's community as long as it is advised ahead of time, and that the appellant's home is about four blocks, or 0.6 km,

from the store. Evidence was presented to the panel confirming this information. The ministry argued there is no evidence the service is inappropriate for him.

The panel finds that the ministry's detailed information about the availability of the Medical Bus and how the appellant can access it to be more persuasive than the appellant's statement that he was not eligible for it. Accordingly, the panel finds that the appellant could have used the Medical Bus for his medical appointments.

The use of the word "may" in s. 62(1) of the EAPWDR and s. 2 of Schedule C provides the ministry with the discretion to decide whether to provide an applicant with a general health supplement such as medical transportation. Of course, that discretion must be exercised reasonably.

In challenging the ministry's discretion to refuse to pay the taxi fare, the onus is on the appellant to show on the balance of probabilities that it was "the least expensive appropriate mode of transportation" to and from his medical appointment. Given the panel's finding of fact that the appellant is eligible to use the Medical Bus, a taxi was not the least expensive mode of transportation.

The appellant argued that because the legislation doesn't expressly require an applicant to schedule his medical appointments around the Medical Bus schedule, it is unreasonable for the ministry to do so. In the panel's view, in assessing whether the Medical Bus is the appropriate mode of transportation, it is reasonable for the ministry to consider whether the appellant's medical appointments can be scheduled on days when that service is available in the appellant's community. The appellant acknowledged that he can exercise control over the scheduling of his medical appointments, as he can schedule several on one day. In any event, the appellant has acknowledged that the Medical Bus was operating on the day of the subject appointment, which makes it an appropriate mode of transportation.

The appellant interprets s. 2(1)(f) of Schedule C EAPWDR as requiring door-to-door service. In the panel's view "mode of transportation" does not require a single mode for the entire trip; it contemplates that a trip may consist of various segments. A person's medical condition may be such that door-to-door service is the only appropriate option; however, the appellant has not proven that the difficulty of walking to the bus stop makes this mode of transportation inappropriate for him.

Regarding the provision of a receipt for the taxi fare, it is reasonable for the ministry to request supporting evidence to be satisfied that the appellant actually did incur the cost of the taxi and to verify the amount. The appellant has provided no such supporting evidence.

For these reasons, the panel finds that the ministry reasonably concluded that the Medical Bus was the least expensive appropriate mode of transportation to the medical appointment. Accordingly, the panel finds that the ministry's decision to pay the appellant a medical transportation supplement of \$20 rather than \$264 was a reasonable application of the legislation in the circumstances of the appellant. The ministry's decision is confirmed.

Ministry Decision

Not eligible for assistance as a single parent since the appellant is residing with a “dependant.” As she did not apply for income assistance as a family unit, she received an overpayment of assistance that she is liable to repay.

Summary of Facts

The evidence before the ministry included: a Residential Tenancy Agreement between the landlord and the appellant and two other adults, including the parent of the appellant’s child; an Assignment of Maintenance Rights signed by the appellant; a Notice of Assignment of Maintenance Rights addressed to the child’s father at the same address as the appellant; and a Child Support Agreement signed by the appellant and the child’s father in which they acknowledge that they are the parents of their young daughter and responsible for her support.

Evidence was provided that each person has his/her own bedroom and bathroom, the kitchen and yard are shared, they do their own laundry, make their own meals, clean their own space and take turns mowing the lawn. The appellant stated the child’s father works six to seven days a week and, when not working, spends his weekends out of the house: he is only a tenant. The appellant makes all decisions when it comes to their daughter and is the primary provider excepting child support.

A letter from the appellant’s bookkeeper stated, that she has been preparing the appellant’s income tax returns for the past five years and during that time the appellant has gone from a common law relationship to a single parent. The appellant stated that she lost her job over a

year ago and was unable to obtain another position so she remained in the shared accommodation situation because it was less expensive. The appellant’s ex-boyfriend has paid child support to ensure that his daughter is taken care of but it is not his responsibility to feed, house or take care of her even though he and the appellant remain friends and are under the same roof.

Tribunal Decision - ministry decision rescinded (in part)

Reasons for Decision

The issue in this appeal was whether the ministry decision that the appellant was not eligible for income assistance as she resides with a “dependant” and must apply for income assistance as a family unit. Consequently, she received an overpayment of assistance that she is liable to repay was a reasonable application of the legislation in the circumstances of the appellant.

Section 5 of the Employment and Assistance Regulation (EAR) states that for a family unit to be eligible for income assistance, an adult in the family unit must apply for income assistance on behalf of the family unit. Section 1(1) of the *Employment and Assistance Act* (EAA) defines a family unit to mean an applicant and his or her dependants.

On March 17, 2013, the definition of “dependant” read as follows:

“dependant,” in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental responsibility for the person’s dependent child

As of March 18, 2013, the definition reads as follows:

“dependant,” in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person’s dependent child

Section 27 (1) of the EAA states if income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

The ministry argued that section 1(1) of the EAA defines “family unit” to include an applicant or recipient and his or her dependants, and the definition of “dependant” includes a person who resides with the person and indicates a parental responsibility for the person’s dependent child. The ministry argued the tenancy agreement indicates the appellant and the child’s father live in the same residence, and therefore the child’s father “resides” with the appellant.

At reconsideration, the ministry argued that signing the birth certificate and a child support agreement indicates the father has accepted “parental responsibility” for the child. At the hearing, the ministry argued that the child’s father also indicates a “parental role” for the child. Although the social worker stated the father has “minimal involvement,” he works six to seven days per week and may not have much time to be involved with the child. A negative inference can be drawn from the fact that there is no direct evidence from the father. Since the child’s father resides with the appellant and indicates a parental responsibility or a parental role for the appellant’s child, the child’s father is considered a “dependant” under section 1(1) of the EAA since the day the appellant’s file opened. As such, he must be included as part of the appellant’s family unit for the purpose of assessing the family unit’s eligibility for assistance.

Since the appellant did not apply for income assistance on behalf of her entire family unit under section 5 of the EAR, the family unit is not eligible for the income assistance she received and this amount constitutes an overpayment which the appellant is required to repay to the ministry under section 27 of the EAA.

The appellant’s position is that her family unit does not include the child’s father as he is not a “dependant” since he does not reside with her and he does not indicate a parental responsibility or a parental role for their child. Further, she argued the ministry applied an incorrect definition of “dependant.”

The appellant argued that simply because her address and the child's father's is the same, and the kitchen shared, they do not invariably "reside" together. The situation is analogous to a university residence or recovery facility. Their bedrooms are not even on the same floor of the house. There are effectively three separate dwelling units and three roommates who look after their own cleaning and cooking. They do not have mutual friends and live separate lives.

The allegation by the child's father that he pays "most of the bills" is factually incorrect since the bills, including rent and hydro, are divided equally between the appellant, the child's father, and the other occupant. They do not have joint bank accounts and there is no pooling of funds, as seen in the bank statements and supported by letters written by the appellant's bookkeeper. The father does not have parental responsibility for their child.

She also argued the father does not have a "parental role." A "parental role" requires more than "parental responsibility," as it requires some input into the upbringing of the child. There was never any contention with the paternity of the child but signing the child's birth certificate several years ago and being legally obligated to pay child support is insufficient for finding that he has taken on a "parental role." She referred to the letter from a social worker, who observed that the child's father has "minimal involvement" in the child's life, and also referred to a letter from the appellant's mother, who stated that the child's father is "not much of a father" as he is not involved in his daughter's life nor does he provide care.

Further, the appellant argued the ministry applied an incorrect definition of "dependant" when it assessed whether the child's father indicated a parental responsibility for their child. While the words "role" and "responsibility" are related, they represent different concepts and one may have some responsibilities associated with a particular role without necessarily assuming that role.

Pursuant to section 5 of the EAR, to be eligible for income assistance, an adult in the family unit must apply for income assistance on behalf of the family unit. "Family unit" is defined in section 1(1) of the EAA as the recipient and her "dependants" and the first part of the definition of "dependant" is "...anyone who resides with the person." The normal meaning of "reside" is to have one's permanent home in a particular place and the appellant does not dispute that she and the child's father live at the same address. While the appellant argued that she and the child's father have separate bedrooms and bathrooms and use the common areas such as the kitchen separately, there is no wall dividing the living spaces into distinct self-contained units, such as the case of a separate suite with its own entrance, and there are common hallways to bedrooms and bathrooms and the other living spaces of the single dwelling unit. The panel finds that the ministry reasonably determined that the child's father "resides" with the appellant because he lives in the appellant's residence.

Section 1(1) of the EAA provides three different options for falling within the second part of the definition of “dependant.” The ministry considered the appellant’s relationship with the child’s father under paragraph (c) and argued that he indicates a parental responsibility for the child. Paternity was never contentious; he signed the child’s birth certificate and voluntarily paid child support and signed a child support agreement. Based on this evidence, the panel finds that the ministry reasonably determined the child’s father indicates a “parental responsibility” for the appellant’s dependent child. Therefore, the panel finds that the ministry reasonably concluded that the child’s father is the appellant’s “dependant” and, therefore, part of her family unit for the purposes of determining eligibility for income assistance for the months of February and March 2013.

However, the definition of “dependant” under paragraph (c) was amended on March 18, 2013 from “indicates a parental responsibility for the person’s dependent child” to “indicates a parental role for the person’s dependent child.” When the ministry assessed the appellant for eligibility for income assistance in months subsequent to March 2013, the panel finds that the ministry relied on the rescinded definition and improperly considered whether the child’s father indicates a parental responsibility for the appellant’s dependent child rather than a parental role. The panel is of the opinion that the words “role” and “responsibility” are related but they represent different concepts. While the ministry argued parental “role” at the hearing, the panel’s jurisdiction is to determine the reasonableness of the reconsideration decision in which the ministry

relied on whether the child’s father indicated a parental “responsibility” for the appellant’s child.

The panel finds that the ministry’s decision that the appellant did not apply for income assistance on behalf of her entire family unit for the months of February and March 2013 and therefore received assistance for which she was not eligible pursuant to section 5 of the EAR, incurring an overpayment which the appellant is required to repay to the ministry under section 27 of the EAA, was a reasonable application of applicable enactment in the appellant’s circumstances. The panel confirms the ministry’s decision regarding the months of February and March 2013.

With respect to the months of April through July, 2013, the panel finds that the ministry must apply the current definition of “dependant” to determine whether the child’s father is part of the appellant’s family unit for the purposes of her ongoing eligibility for the months of April through July, 2013. The panel finds that the ministry decision was not a reasonable application of the applicable enactment in the appellant’s circumstances and rescinds that part of the ministry’s decision. Therefore, the decision is overturned and is referred back to the ministry for further consideration.

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. Looking Ahead

The Tribunal continues to recruit members, particularly in rural communities, and the coming year is no exception. A person must demonstrate they have the knowledge and skills required of a member in order to hold fair and respectful appeal hearings and make and write well reasoned decisions. Our goal is to have sufficient members who reflect the diversity of our communities to conduct the type of hearing preferred by the appellant within the legislated timelines.

Our website should meet the needs of the public, parties and members. It was redesigned to accommodate users and we are looking forward to implementing the new site. Forms will be able to be completed online by various mobile devices and the website will allow for information to be extracted and entered directly into a case management system, even though our current case management system does not allow for this functionality. This data transfer would eliminate the need for staff to physically re-enter information from paper into electronic format, as is the case currently. We will also be able to readily update the information on the website and are looking forward to having a member intranet page for member specific information and training materials.

The Tribunal is moving towards an electronic workflow environment. The first step in our “e records” project, started this fiscal, is to provide appeal records electronically to the Ministry of Social Development and Social Innovation, as their workflow is primarily electronic. The next step will be to provide electronic appeal records to members. Appellants will have the choice of receiving paper or electronic information, recognizing they may not have access to technology that would enable them to review electronic documents. Developing electronic appeal files will reduce courier costs and enable the Tribunal to move from physical offsite storage of paper files to electronic records retention, archiving and final disposition.

Each stage of the project will be examined carefully to ensure workflow procedures are in place to protect the privacy and security of information. We recognize these are significant changes and that staff and members will need time to become familiar with different software programs and procedures. When the workflow is fully electronic, working remotely becomes a possibility.

“ The Tribunal is moving towards an electronic workflow environment. ”

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 and Social Innovation under section 19(2)(c) of the Act

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

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

notice of appeal | the appeal form specified by the Minister of Social Development and Social Innovation 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, 2012 - September 30, 2013)

Erica Aaftink
Kyrstin Adams
Dores Baxter
Kathryn Bissett
Lori Butler
Willana Gibson
Tracie Horne
Michelle Lagos
Glenna McEwen
Marilyn McNamara
Carrera Marotto
Shirley Martin
Nicole Murray
Lynda Parent
Renee Petersen
Tanya Rak
Katie Ray-Wilks
Alanna Valentine



Appendix B:

Tribunal Members

(October 1, 2012 - September 30, 2013)

Region 1

William Bell
Arthur Berry
Patricia Bradley
Sarah Brickett
Janet Brons
Gregory Bunyan
Gurjit Chaplin
Bruce Cline
Diane Coe
Joan Cotie
Endre Dolhai
Erik Eriksson
Robert Fenske
Brenda Fowler
Karen Gillan
Carl Gorham

Daniel Graham
Donna Hains
James Hooton
Terence Ison
Lowell Johnson
Luke Krayenhoff
Anne-Marie Lafleur
Gabriella Lang
Thomas Lathrop
Patrick Maguire
Henry Mathias
Donald McLeod
Marilyn McNamara
Inge Morrissey
Patrick Munroe
Andrew Murray
Wesley Nelson

Jane Nielsen
Marnee Pearce
Anne Richmond
Richard Roberts
Pierre Rousseau
Marlene Russo
Gillian Saxby
Gordon Thompson
Carman Thompson
Kenneth Thornicroft
Lynn Twardosky
Joan van der Holt
Bert Wolfe

Region 2

Haydn Acheson
Brenda Austin
Natalia Bryant
Jeffrey Chambers
Susanne Dahlin
Alexander Danilovic
Maureen Fitzgerald
Margaret Gaily
Kathy Grant
Patricia Hanna
Arlene Henry
April Ingram
Jim Jones
Daniel Kiselbach
Margaret Koren
Carla Lewis

Maryam Majedi
Perry Mazzone
Carole McKnight
Tajdin Mitha
Terry Mullen
Karnail Nagra
Sandra Polinsky
Patrick Poyner
Kim Read
Ellen Riley
Stacy Robertson
Hope Sealy
Adam Shee
Gary Snarch
Roy Wares
Susan Witter
Reece Wrightman

Region 3

Jafar Chowdhury
David Coulson
Jennifer Duprey
Robert Gunnell
David Handelman
Peter Hanslo
Chris Hope
Neena Keram-Prasad
Oscar Khalideen
Ana Rocho
Jeremy Sibley
Rosalie Turcotte
Sandra Walters

Region 4

Lorianna Bennett
Joan Bubbs
Jeanne Byron
Susan Cooper
Lisa Denham
Mel Donhauser
Jill Dougans
Larry Ferguson
Lauren Forsyth
David Goldsmith
Marcus Hadley
William Haire
Kathryn Holmes
Marie Ingram
Doug Ivey

Robert Kelly
David Kendrick
Lorraine Kent
Deborah Kinnear
Shiela Lange
Janet Lingford
Jean Lorenz
Carrie Manarin
Marilyn McLean
Marilyn Mellis
Wayne Reeves
Clinton Smith
William Stalker
Ronald Terlesky
Helene Walford
Christopher Wells

Region 5

Susan Armstrong
Kevin Ash
Sean Carberry
Anne Clayton
Zelda Craig
Bryan Crampton
Victor Curell
Lorraine Grant
Michael Hare
Jeanne Robert
Linda Smerychynski
Janet Ward

Appendix C:

Budget

(October 1, 2012 - September 30, 2013)

28

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 2012 - MARCH 2013	APRIL 2013 - MARCH 2014
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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www.gov.bc.ca/eaat