



Income Assistance **Appeals**

Contents

Appealing a Decision	1
Step 1	1
Step 2	1
Judicial Review	2
After the Hearing	2
Overpayments.....	2
Underpayments.....	3

January 1, 2014

<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Appealing a Decision

ESIA Act sections 12(1), 12(4) & 12(5); Policy Manual 12.1.2, 12.1.5 & 12.1.9

Any decision made regarding IA that affects either an applicant or a recipient can be appealed.

Decisions are usually made in writing, but are sometimes made orally. An oral decision can be appealed.

There is a two step appeal process. The first step is an internal Administrative Review, and the second step is a hearing before the independent Assistance Appeal Board (AAB).

Step 1

ESIA Act sections 12(3) & 12(4); Appeal Regulation 6(1); Policy Manual 12.1.4 – 12.1.5

A person must commence their appeal within **30 days** from the time the decision they wish to appeal is communicated to them.

An appeal can be commenced either by a written, signed letter that requests an appeal and sets out the decision being appealed and the reasons why the decision is being appealed; or by using the Department's appeal form:

http://novascotia.ca/coms/employment/documents/Assistance_Appeals_Pamphlet.pdf

Upon receiving an appeal request the Department has **10 days** to conduct an administrative review of the decision under appeal. An administrative review decision is done by a casework supervisor – not the supervisor of the caseworker whose decision is being appealed.

Upon completion of the administrative review the Department sends a substantive written decision to the appellant.

The decision will contain both the factual and legal basis for the Department's decision.

If a person wishes to continue to the next stage of the appeal process (an oral hearing) they must tick the appropriate box and send in their appeal request within **10 days** of receiving the administrative review decision.

Step 2

ESIA Act sections 11 & 13(1); Appeal Regulations 4(3), 5, 11(1) & 12; Policy Manual 12.1.7 & 12.1.9.

The second step of the appeal process is an oral hearing before the AAB.

The AAB will consist of one member who will hear the appeal. The appeal board member is a Provincial appointee, and is **not** an employee of DCS.

Proceedings before the AAB are informal, and are not held in public. However the *Appeal Regulations* require that an appellant be given a chance to present relevant evidence, cross examine witnesses, rebut evidence presented by another party and argue or summarize their case.

The Department usually sends the caseworker and/or eligibility review officer whose decision is being appealed and that person's supervisor. Very occasionally the Department will send a lawyer to represent its interests before the AAB.

The law, and the Policy Manual, specifically allow appellants to be represented by an advocate at their AAB hearing.

Judicial Review

Appeal Regulations 13(2) – 13(3); Policy Manual 12.1.9

Following the appeal hearing the AAB will issue a written decision (*insert hyperlink to sample AAB decision*) within 7 days.

Upon application a decision of the AAB can be judicially reviewed by a justice of the Supreme Court of Nova Scotia.

Prior to applying to have a decision judicially reviewed your client **should** consult with a lawyer as there are limited circumstances when a judicial review will succeed.

There is a **25 day** time limit from the date the decision is communicated to the appellant to commence a judicial review.

After the Hearing

Appeal Regulations 14(2) & 15(1)

If your client was successful the decision subject to appeal will be reversed as of the date of the original decision.

If the issue upon appeal was eligibility for income assistance your client will remain cut-off of income assistance until they remedy the issue which lead to them being cut-off in the first place. Once that has taken place your client should reapply for income assistance.

Your client may also be charged with an 'overpayment'.

Overpayments

ESIA Act section 14; Regulation 68; Policy Manual 8.1.1 – 8.1.2 & 8.1.12

An overpayment is a debt owing to the Province.

An overpayment is the result of an IA recipient receiving IA for which they were not entitled as a result of error, misrepresentation or for a period of time during which a recipient received deferred income.

If someone is determined to be ineligible for IA all amounts paid to them, including Pharmacare, will be included in the overpayment amount.

Having an overpayment does not render someone ineligible for IA.

Overpayments are deducted from an IA recipient's monthly amount at a maximum of \$45.00 per month. The minimum deduction, as per the Policy Manual, is \$15.00 per month.

Overpayments can be waived upon successful request to the Minister of Community Services.

Pursuant to the *ESIA* an overpayment can be waived if:

- i. Recovery is not possible due to the death, bankruptcy or permanent absence from the Province of the person owing the overpayment;
- ii. Recovery would cause undue hardship; or
- iii. Recovery is contrary to the purpose of the Act.

A request to waive an overpayment can be made via a letter to the Minister. Unfortunately waiver of overpayments is extremely rare.

Underpayments

Regulation 69; Policy Manual 8.1.3

It is possible for IA recipients to be underpaid. For example they may have an approved special need (i.e. medical transportation) that is not paid to them in a given month or months.

If a recipient is underpaid, through no fault of their own, they are limited to recovering only 6 months of the underpayment.

Acknowledgement

Dalhousie Legal Aid Service would like to gratefully acknowledge and thank the [Law Foundation of Ontario](#) for its financial support of LEAP.

Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

Laws change frequently. We will try our best to make sure the information contained in all of our documents, as well as any other information you receive from Dalhousie Legal Aid Service, is reliable. However, **we cannot guarantee that the information in this document is completely accurate and up-to-date.** By accessing information from Dalhousie Legal Aid Service you assume any risks that arise from doing so.