

Order Number: 038-2009

Date Enacted: April 3, 2009



TSAWWASSEN FIRST NATION
s̓əwəθən məsteyəx^w

Education, Health and Social Development Act

**EDUCATION, HEALTH AND SOCIAL DEVELOPMENT APPEAL
REGULATION**

Contents

1. Interpretation	2
2. Application	2
3. Administrative Review Processes	2
4. Notification of denial, reduction or suspension of assistance	2
5. Appeal	2
6. How to Request an Appeal.....	3
7. Time limit for requesting an Appeal	3
8. Commencing an Appeal	3
9. Decisions that may not be appealed	3
10. Appeal Arbitrator	3
11. Prescribed qualifications for Appeal Arbitrator	3
12. Rate of Remuneration.....	3
13. Time period for scheduling and conducting hearing.....	3
14. Appeal Procedures.....	4
15. Notice of Determinations and Reasons	4
16. Decision is Final.....	4
17. Reinstatement of Assistance following Appeal	4
18. Confidentiality.....	4

Interpretation

1 In this regulation:

“**Act**” means the Education, Health and Social Development Act.

“**appellant**” means a person who commences an appeal under sections 8, 11, 16, and 19 of the Education, Health and Social Development Act.

“**Applicant(s)**” means a person that has applied for assistance under the Education, Health and Social Development Act;

“**Assistance**” means assistance, programs or services under Part 1-3 of the Act;

“**program manager**” means the Manager of the applicable program area within the relevant Department of the Tsawwassen Government.

“**Parties**” means in relation to an appeal to the arbitrator, the appellant and the relevant Department within the Tsawwassen government under whose decision is under appeal;

“**Recipient**” means a person currently receiving assistance under Part 1- 3 of the Act;

Application

2 This regulation applies in respect of appeal processes described in section 8, 11, 16 and 19 of the Act.

Administrative Review Processes

3 Notwithstanding any other section in this regulation, the appeal process described in this regulation will be used only if the administrative review provisions as provided for under each program’s policy or regulations are considered by the CAO to have been exhausted.

Notification of denial, reduction or suspension of assistance

4 All applicants and/or recipients will be informed by the program manager, in writing, of the reason(s) for a decision, and if applicable, of their right to an appeal.

Appeal

5 Notwithstanding section 9, the applicant and/or recipient may request an appeal.

How to Request an Appeal

- 6 The applicant and/or recipient must notify the Chief Administrative Officer of the Tsawwassen Government verbally or in writing of the desire for an Appeal under the relevant section of the Act and upon that will be provided with a Request for Appeal form as in Schedule A.

Time limit for requesting an Appeal

- 7 The completed a Request for Appeal form and all supporting documents must be mailed or delivered to the Chief Administrative Officer within 7 business days of notification under section 6.

Commencing an Appeal

- 8 Upon receipt of a Request for Appeal form and notwithstanding section 9, the Chief Administrative Officer will provide the request to the Appeal Arbitrator.

Decisions that may not be appealed

- 9 The following categories of decision are not appealable:
- (a) Income Assistance Rates
 - (b) Formulas for Income Assistance Eligibility Calculator
 - (i) For greater certainty, data inputted into that formula, and calculations as a result of those formulas, can be appealed.

Appeal Arbitrator

- 10 Subject to section 11, an appeal arbitrator will be appointed by the Chief Administrative Officer.

Prescribed qualifications for Appeal Arbitrator

- 11 To be eligible for appointment as the Appeal Arbitrator, a person must
- (a) have an understanding of the essential elements for the conduct of a fair and objective appeal,
 - (b) have an understanding of the key aspects of relevant Act and it's regulations,
 - (c) not be an employee of the relevant Department of the Tsawwassen government within the past 6 months,
 - (d) not be a recipient of benefits under the Act, and
 - (e) not have a personal, professional, financial or other interest in matters coming before them that would cause a reasonably informed person to have reasonable perception that the Appeal arbitrator would not be independent or impartial.

Rate of Remuneration

- 12 The appeal arbitrator shall receive remuneration negotiated between the Chief Administrative Officer and the appeal arbitrator before the commencement of the appeal. Remuneration shall be based on the complexity and expected length of time to complete the appeal. The arbitrator may request additional remuneration if the appeal has proceeded longer than reasonably anticipated.

Time period for scheduling and conducting hearing

- 13 A hearing will must be held within 15 business days after the Request for Appeals is submitted by the applicant unless the parties consent to a later date.
- 14 The Appeal Arbitrator must notify the parties of the date, time and place of the hearing at least 2 business days before the hearing is to commence.

Appeal Procedures

- 15 The practices and procedures of the appeal arbitrator will include the following:
- (a) a party to an appeal may be represented by an agent;
 - (b) the committee may hear an appeal in the absence of a party, if the party was notified of the hearing;
 - (c) the parties may call witnesses to give evidence.

Notice of Determinations and Reasons

- 16 The written determination of the appeal must
- (a) specify the decision under review,
 - (b) summarize the issues and relevant facts considered in the appeal,
 - (c) set out the reasons for the decision, and
 - (d) specify the outcome of the review which may
 - (i) confirm the decisions,
 - (ii) deny the request for appeal under section, or
 - (iii) revise the decision.
- 17 The Appeal Arbitrator must within 5 business days of the conclusion of the hearing provide a copy of their determination to the parties.

Decision is Final

- 18 The decision of the Appeal Arbitrator is final.

Reinstatement of Assistance following Appeal

- 19 If the decision reduce and/or cancel or suspend assistance is revised by the Appeal Process, assistance shall be reinstated at the rate prior to the decision being appealed.

Confidentiality

- 20 The Appeal Arbitrator must keep confidential all documents and information submitted to it respecting the hearing of an appeal.
- 21 Determinations of the Appeal Arbitrator must not be disclosed to any person.
- 22 Appeal proceedings are confidential.
- 23 Despite section 20-22,
- (a) the appeal arbitrator may publish their determinations if all names, addresses and other identifying information are removed from the decision before publication, and
 - (b) documents, information, determinations of the appeal arbitrator and matters arising in the course of appeal proceedings may be disclosed for purposes of the investigation for, or prosecution of, an offence under the laws of Tsawwassen, British Columbia and Canada.