

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated January 23, 2012 in which the Ministry determined that the Appellant was ineligible for income assistance because he did not meet the requirement for 2 years employment as set out in section 8(1) of the Employment and Assistance Act ("EAA") and sections 18(1) and (2) of the Employment and Assistance Regulation ("EAR"). The Ministry further determined that the Appellant did not meet any of the exemption criteria set out in section 18(3) and (4) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 8
Employment and Assistance Regulation (EAR) section 18

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's Request for Reconsideration dated January 11, 2012;
2. The Appellant's Recognizance of Bail dated September 20, 2011;
3. A letter from the Appellant's advocate dated January 12, 2012;
4. A consent form from a medical facility signed by the Appellant and dated January 11, 2012;
5. The Appellant's Two-Year Independence Assessment form which is not dated;
6. A prescription note dated October 24, 2011 prepared by a physician;
7. A Medical Certificate dated November 1, 2011 prepared by physician;
8. An undated medical imaging requisition relating to an examination of the Appellant's left knee;
9. A Release of Information signed by the Appellant on behalf of his advocate and dated January 4, 2012; and
10. A government resource brochure.

Prior to the hearing, the Appellant submitted the following documents:

1. A Release of Information form dated February 15, 2012 authorizing his advocate to assist him;
2. A letter from the Appellant dated February 14, 2012 confirming the attendance of his advocate and his mother at the Appeal hearing; and
3. A CRA Statement of Contract Payment for the Appellant for 2006;
4. A CRA Statement of Contract Payment for the Appellant for 2007;
5. The Appellant's T4 for 2008; and
6. A CRA Statement of Contract Payment for the Appellant for 2009.

The Panel reviewed this material and determined that it was additional evidence. In submissions, the Appellant's advocate conceded that the additional evidence did not address the issues on appeal and was not being advanced in support thereof but rather, the additional evidence was provided for the purpose of demonstrating to the Ministry that the Appellant had been employed over the relevant years and that he was hopeful to become so again in the future once he had his addiction under control. The Panel notes that on review of the Statements of Contract Payment and the T4, only the 2006 Statement of Contract Payment reflects remuneration received by the Appellant that is at least \$7,000.00 and none of these documents provides any evidence of how many hours the Appellant was employed during the years in question. The additional evidence would not therefore, if found to be admissible, satisfy the legislative criteria in section 8(1) of the EAA. The Ministry objected to the additional evidence being admitted due to it not being relevant and due to it being submitted late. The Panel considered the submissions of both the Appellant's advocate and the Ministry and finds that as the additional evidence was not introduced by the Appellant to address the issues on appeal the additional evidence is not admissible pursuant to section 22(4) of the EAA as it was not in support of the information and records before the Ministry at reconsideration.

In the Reconsideration Decision, the Ministry notes that the Appellant has not been employed for 840 hours for two consecutive years and has not received \$7,000.00 of remuneration for two consecutive years. Further, the Ministry says that the Appellant does not meet any of the categories that would allow the requirement of two years financial independence to be waived.

In the Appellant's Notice of Appeal, he states that he has had difficulties working in previous years due to his ongoing struggle with addiction. The Appellant also states that he has moved a lot and does not have a family doctor.

At the hearing, the Appellant's advocate stated that the Appellant has suffered with addiction problems on and

off for over the past 8 years and that he is now at a point that he cannot function at work. While the Appellant has wanted to attend treatment for some time, he cannot afford to pay for it privately and there are no other sources of funding available at this time. The Appellant's advocate says that there are discussions that are ongoing with a local treatment centre for the Appellant to be admitted for in-patient treatment. Given the Appellant's addiction problems, the Appellant's advocate argued that this equates to a medical condition preventing the Appellant from working for at least the next 30 days or preventing him from working for 6 months in the previous 2 years. Further, the Appellant's advocate argued that the Appellant's addiction problems could alternatively be characterized as circumstances beyond his control which prevented him from working and that he has and will continue to experience undue hardship.

The Appellant's mother gave evidence on his behalf. She said that she was grateful to know that her son was seriously considering treatment for his addictions given the impact that it has had on his personal and work life. She said that he cannot work at this time due to his addictions and that he needs treatment to be able to work.

The Ministry stated that in order for the Appellant to qualify for income assistance, he had to either meet the two year financial independence requirement as set out in the legislation or fit within one of the exemptions. The Ministry stated that requests had been made of the Appellant to provide medical documentation supporting his claim that he had a medical condition that prevented him from working but that he had failed to do so. The Ministry reiterated that at the time of the reconsideration decision, there was insufficient evidence that would allow the Appellant to fit within one of the listed exemptions in the EAR. In discussions with the Appellant, the Ministry noted that the chief medical concern advanced by the Appellant was with respect to his left knee but that the medical information provided did not demonstrate that injury to be one that prevented him from working for the next 30 days or that prevented him from working for 6 months in the previous 2 years.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which determined that the Appellant was ineligible for income assistance because he did not meet the requirement for 2 years employment as set out in section 8(1) of the Employment and Assistance Act ("EAA") and sections 18(1) and (2) of the Employment and Assistance Regulation ("EAR"). The Ministry further determined that the Appellant did not meet any of the exemption criteria set out in section 18(3) and (4) of the EAR.

Section 8 of the EAA provides as follows:

- 8 (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have
- (a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,
 - (b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or
 - (c) been employed for remuneration for a portion of two consecutive years and for the balance of those years either
 - (i) served a waiting period in respect of, or received benefits under, a claim under the Employment Insurance Act (Canada), or
 - (ii) received income under a public or private income replacement program or plan.
- (2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

Section 18 of the EAR provides as follows:

- 18 (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.
- (2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7 000 in each of the 2 consecutive years.
- (3) Section 8 of the Act does not apply to the family units of the following categories of applicants:
- (a) applicants who have not reached the age of 19;
 - (b) applicants who are pregnant;
 - (c) applicants who have a medical condition that, in the opinion of the minister,
 - (i) will prevent the applicant from working for at least the next 30 days, or
 - (ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form;
 - (d) applicants with dependent children;
 - (e) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

- (f) applicants who have a foster child;
 - (g) applicants who were supported by an employed spouse for at least 2 years;
 - (h) applicants who were supported by an employed spouse for a portion of a two year period and met a requirement of section 8 (1) of the Act for the balance of the two year period;
 - (i) applicants who were incarcerated in a lawful place of confinement for at least 6 months of the 2 year period immediately preceding the date of application for income assistance;
 - (j) applicants who were in the care of a director under the Child, Family and Community Service Act or who had an agreement with a director under section 12.2 of the Child, Family and Community Services Act until the applicant's 19th birthday;
 - (k) applicants who
 - (i) have separated from an abusive spouse, or
 - (ii) changed place of residence to flee an abusive relative, other than a spouse,
 within the past 6 months if, in the minister's opinion, the applicant's ability to work is consequently impaired;
 - (l) applicants who have been awarded a 2 year diploma or certificate, a bachelors degree or a post-graduate degree from a post-secondary institution;
 - (m) applicants who have persistent multiple barriers to employment;
 - (n) applicants who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the applicant from leaving home for the purposes of employment;
 - (o) applicants who are providing care for a child under an agreement referred to in section 8 of the Child, Family and Community Service Act;
 - (p) applicants who are providing care for a child under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act.
- (4) Section 8 of the Act does not apply to the family units of applicants if, in the minister's opinion,
- (a) the applicant, due to circumstances beyond the applicant's control, has been prevented from searching for, accepting or continuing employment, and
 - (b) the family unit will otherwise experience undue hardship.

[am. B.C. Regs. 331/2003, s. 1; 304/2005, s. 4; 279/2009; 48/2010, Sch. 1, s. 1 (b).]

The Ministry's position is that the Appellant is not eligible for income assistance because he has not established an employment history that includes two consecutive years of employment of at least 840 hours and at least \$7,000.00 of employment income for two consecutive years. The Ministry argues further that the Appellant does not meet any of the criteria described in section 18(3) or (4) of the EAR that would allow the requirement of two years financial independence to be waived.

The Appellant argues that he suffers from an addiction problem and that this is sufficient for him to meet two of the categories that allow for the requirement of two years financial independence to be waived. Specifically, the Appellant says his addiction problems and left knee injury constitute medical conditions that prevent him from working for at least the next 30 days or alternatively, that his medical conditions have prevented him from working for at least 6 months of the 2 years immediately preceding the date of his application for income assistance. Further, the Appellant argues that his addiction is a circumstance beyond his control that prevents him from working and as a result he will experience undue hardship.

Section 8(1) of the EAA provides that for a family unit to be eligible for income assistance, at least one applicant in the family unit must have been employed for remuneration for at least 840 hours in each of two consecutive years or must have earned from employment at least \$7,000.00 in each of two consecutive years. While the Appellant says that over the years he has met these requirements, there was no documentary or other evidence to support this and the Panel concludes that the Ministry reasonably determined that the Appellant did not qualify for income assistance under section 8(1) of the EAA.

Section 18(3) of the EAR provides a number of categories which will exempt an applicant for income assistance benefits from satisfying the requirements of section 8(1) of the EAA. The Appellant submits that he meets the criteria for section 18(3)(c)(i) insofar as his addiction problems and left knee injury will prevent him from working for at least the next 30 days. No documentary medical evidence of his addiction and its impact on his employment was provided by the Appellant in support of this contention. The only medical evidence in support of this claim were two medical notes which, as the Ministry contends, indicate that the Appellant has a left knee injury which has prevented him from working on one occasion for only 7 days and otherwise allows the Appellant to work albeit with restricted duties only. The medical note does not indicate what those restrictions are. Further, there was insufficient evidence in support of the Appellant's claim that either his addictions or left knee injury prevented him from working a total of at least six months in the 2 years preceding the date of his application for income assistance. The Appellant did not advance an argument that any of the other exemption criteria under section 18(3) of the EAR applied to his circumstances and given that, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the exemption criteria under section 18(3) of the EAR.

Section 18(4) of the EAR is a two part test and provides that the requirements in section 8 of the EAA will not apply if an applicant for income assistance, due to circumstances beyond his or her control, has been prevented from searching for, accepting or continuing employment and the family unit will otherwise experience undue hardship. In the Appellant's case, there was insufficient evidence to satisfy this exemption. The medical evidence before the Ministry at reconsideration was limited to two doctors' notes and a medical imaging requisition for the Appellant's left knee. While the Appellant's advocate maintained that the Appellant could not work due to his addictions, there was no supporting documentary evidence of the impact of the Appellant's addiction problem on his ability to search for, accept or continue employment. Further, as the Appellant is currently living with his mother, the circumstances do not support a finding that the Appellant faces an undue hardship. The Panel therefore finds that the Ministry reasonably determined that the Appellant did not meet the exemption under section 18(4) of the EAR.

The Panel therefore finds that the Ministry decision that the Appellant was not eligible for income assistance under section 8 of the EAA was a reasonable application of the evidence and confirms the Ministry decision.