

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 10, 2012 that the appellant was not eligible to receive income assistance after failing to show that he had been employed for remuneration for at least 840 hours in each of two consecutive years or earned at least \$7,000.00 remuneration for employment in each of two consecutive years as outlined in the Employment and Assistance Act, Section 8 and the Employment and Assistance Regulation, Section 18 and was not exempt from these requirements under s. 18(3) or (4).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 8
Employment and Assistance Regulation (EAR), s. 18

PART E – Summary of Facts

The appellant did not attend the hearing. The panel verified that the appellant was notified of the hearing time and place and then proceeded with the hearing under EAR Section 86(b). The information for this appeal is contained in the appeal package and a submission made to the panel by the ministry at the hearing. The appeal package contains the Request for Reconsideration, dated and signed by the appellant on December 28, 2011 and the reconsideration decision, January 10, 2012.

The appellant, in his request for reconsideration, dated December 22, 2011, wrote:

“Denial creates undue hardship.

Am working part-time on-call. All that he has been able to acquire.

This has added up to \$80.00/bi-weekly.

has been & is continuing to look for other more secure employment.

No income will result in homelessness due to legislation

which unfairly discriminates against young people.

Ombudsperson complaint filed.”

The appellant, in his Notice of Appeal stated:

“I disagree because if I don't get help I will be in immanent (sp) eviction. I do have an on call job but it is no help. I am looking for a permanent job in the mining industry, when winter is over. I only need help until I get a permanent job, so please reconsider.”

The ministry wrote in section 2 - Decision To Be Reconsidered:

“Applicant states has completed highschool + 2 months certificate program from **** (mining program). Appl (sp) states has never worked, done volunteer experience with 'essential skills' program, No mental/physical condition that prevents applicant from working. Has been in MCFD care at 14-15 yrs old, not when turned 19. Appl (sp) has never been incarcerated, not fleeing abuse. Not caring for any dependant child. Does not meet 2yr independence and has been denied income assistance and offered right to reconsideration.”

The ministry wrote, referring to the appellant, in its reconsideration decision that:

“You (the appellant) have not indicated that your situation meets any of the categories that would allow the requirement of 2 years of financial independence to be waived. You are 19 years of age or older (in your case you are 20 years old), you are not pregnant, you do not have medical conditions preventing you from working, you do not have any dependant, foster or in-care children with you, you have not been supported by a spouse, you have not been incarcerated within the last 2 years (for 6 months or more), you were not in care until your 19th birthday, you do not have Person with Persistent and Multiple Barriers status, you do not reside with a spouse requiring medical care and you have not been prevented from working due to circumstances beyond your control.”

The ministry replied to the appellant's position that he needs income assistance “because without it, it will create undue hardship” by stating that the appellant is working part-time on-call and seeking secure employment. The ministry noted that the appellant “feels that the legislation unfairly discriminates against young people”. The ministry wrote “The minister notes that the legislation was created to ensure that all applicants and clients of the ministry are treated fairly”. At the hearing the

ministry reviewed its position referring to the reconsideration decision and the legislative requirements that the appellant would have to meet.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant was not eligible to receive income assistance after failing to show that he had been employed for remuneration for at least 840 hours in each of two consecutive years or earned at least \$7,000.00 remuneration for employment in each of two consecutive years as outlined in the Employment and Assistance Act, Section 8 and the Employment and Assistance Regulation, Section 18 and was not exempt from these requirements under s. 18(3) or (4).

Requirement for 2 years employment

- 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.

Requirement for 2 years employment

- 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.

The ministry's position is that the appellant is not entitled to receive income assistance as he did not show that prior to applying for assistance he had been employed for remuneration for at least 840 hours in each of two consecutive years and had earned at least \$7,000.00 remuneration from employment in each of two consecutive years as outlined in the EAA s. 8. The ministry states with reference to EAR s.18(3), the appellant had reported that he had "been actively looking for work" and that he did not report any additional information to show that "any of the legislative exemptions would be applicable" to himself. The ministry states with reference to EAR s.18(4) that the appellant was seeking employment, that there is no evidence to show the appellant suffers from any medical condition(s) or other factors beyond his control that would prevent him meeting the 2 year work and income test.

The appellant's position is that he has not been able to find enough work to support himself and therefore needs help in the form of income assistance. He states that he has a part-time on-call job, but it does not pay him enough to pay for his needs. He feels that the ministry should help him until he can get work in the mining sector.

Pursuant to EAA s. 8(1) and EAR s. 18(1) and (2) the panel finds that the appellant has failed to show that he has met these requirements. To do this he would have had to demonstrate that he had or had worked at least 840 hours in each of two consecutive years or had earned at least \$7,000.00 in remuneration in each of two consecutive years. The appellant did not dispute the ministry's position that he had not worked the requisite number of hours or that he had not earned the requisite amount within the previous 2 years.

Pursuant to EAR s. 18(3) and (4) the panel finds that no evidence was provided by the appellant to demonstrate that he meets the criteria for an exemption from EAR s. 18(1) and (2). The appellant did not show that he was eligible for income assistance. He stated that he was working at a part-time job that pays \$80.00/biweekly. He is hoping to find work in the mining industry in the summer.

The panel finds that the decision of the ministry was reasonably based on the evidence and therefore confirms the decision of the ministry pursuant to Section 24 (2)(a) of the EAA.