

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the decision made by the ministry at Reconsideration on January 20, 2012. In that decision, the Ministry denied the appellant's request for income assistance as he had not met the two-year financial independence requirement required in Section 8 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 8

Employment and Assistance Regulation (EAR) Section 18

PART E – Summary of Facts

At reconsideration, the documents that were before the Ministry included the following:

- The appellant's income assistance application dated November 25, 2011;
- The appellant's Two-Year Independence Assessment dated November 28, 2011 (Assessment); and
- A completed Request for Reconsideration signed by the appellant on December 28, 2011.

The Assessment indicates that the appellant had not been employed for 840 hours in each year of any consecutive two year period or that his income from employment was at least \$7,000 in each year of any consecutive two-year period. The appellant indicated that he does not have any medical condition that prevents him from working or had precluded him from working for at least six months of the last two years. The Assessment also indicates that the appellant had not been supported by an employed spouse for a consecutive two year period, and when he turned 19 years of age was not in the care of the Ministry of Children and Family Development. The Assessment also indicates that the appellant does not have a two-year certificate or diploma, a bachelor's degree (or higher) from a post secondary institution and he is not providing care for a child under an agreement under the *Child, Family and Community Act*.

The Request for Reconsideration states that the appellant is a single employable male, 20 years old, who has lived with his grandmother since age 6. It states that he has never worked before but has done odd jobs for people. He has completed grade 11 and has no medical conditions. On his Request for Reconsideration, the appellant indicated that he has been looking for work for almost three years but had not found any. He also states that he needs money to pay his room and board to help his grandmother out. He indicates that bills are piling up and food is always low. He also indicated that he has received a warning that the electricity will be shut off if the bill is not paid.

In his Notice of Appeal, the appellant states that he disagrees with the Reconsideration decision because "...if I am unable to find work how else am I suppose to meet the two year independent requirement without having an income...". The appellant also states that he is not able to pay his required room and board.

At the hearing, the appellant stated that he had been looking for work for more than three years but had not found employment. The appellant stated that he had performed some odd jobs, shoveling snow and doing yard work for neighbors but that it was not steady or full time employment. The appellant also stated that he pays room and board to his grandmother and that the electricity bill is in his grandmother's name. The appellant stated that he is "...pretty much homeless right now" and that it is unfair to be denied income assistance when he has been looking for work and has been unable to meet the two year financial independence requirement.

The Ministry relied on the Reconsideration Decision. The Ministry stated that the appellant applied for income assistance and was denied because he did not meet the prescribed requirements of Section 8(1) of the EAA and Section 18(1) or (2) of the EAR. The Ministry stated that the intake

worker reviewed the exemptions set out in Section 18(3) of the EAR but as the appellant did not qualify for any of the exemptions, the Ministry denied his request for income assistance. The Ministry also stated that Section 18(4) of the EAR was not applicable as there was nothing to indicate that the appellant was prevented from searching for, accepting or continuing employment due to circumstances beyond his control.

Based on the whole of the evidence, the panel's finding of facts are as follows:

- The appellant is a single employable person who has lived with his grandmother since age six (6).
- The appellant has not been employed for 840 hours in each year of any consecutive two year period or that his income from employment was at least \$7,000 in each year of any consecutive two-year period.
- The appellant has been looking for work for more than three years but has not secured employment other than a few odd jobs for neighbors.

PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the decision of the Ministry at reconsideration was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. The Ministry's reconsideration decision denied the appellant's request for income assistance as he had not met the two-year financial independence requirement.

Section 8(1) of the EAA states that to be eligible for income assistance, an applicant 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.

Sections 18 (1) and (2) of the EAR states that an applicant must have been in paid employment (or a combination of paid employment and receipt of Employment Insurance or private income replacement program) for at least 840 hours or have earned \$7,000 in each of 2 consecutive years.

Section 18(3) of the EAR states that Section 8 of the EAA does not apply to 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; (B.C. Reg. 304/2005)
- (d) applicants with dependent children;
- (e) Repealed (B.C. Reg. 48/2010)
- (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*; (B.C. Reg. 331/2003)
- (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*. (B.C. Reg. 331/2003)

Section 18(4) of the EAR states that 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.

As the appellant has not been employed for 840 hours in each year of any consecutive two year period nor was his income from employment was at least \$7,000 in each year of any consecutive two-year period, he does not meet the legislated two-year independence requirement set out in EAA Section 8(1) (a) or (b).

As the appellant has not been employed for remuneration for a portion of two consecutive years and for the balance of those years been receiving Employment Insurance benefits or receiving income under a public or private income replacement program or plan, he does not meet the legislated requirement of EAA Section 8(1)(c).

The appellant does not meet any of the exemptions listed under EAR Section 18(3) so the panel finds that the conclusion by the Ministry that the criteria of EAA Section 8(1) was not met was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

The appellant states that he will be homeless if he cannot pay his room and board and that the electricity will be cut off if the bill is not paid. While the panel finds that the appellant may experience undue hardship if income assistance is denied there is no evidence that the appellant has been prevented from searching for, accepting or continuing employment due to circumstances beyond his control so the panel finds that the exemption legislated by EAR Section 18(4) has not been met.

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The panel finds that the Ministry's decision to deny the appellant income assistance as the two-year financial independence requirement was not met was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances and the panel confirms the Ministry's decision as per Section 24 of the EAA.