APPEAL

PART C – Decision under Appeal

The decision at appeal is the decision of the ministry at reconsideration on February 27, 2012. In that decision the ministry denied the appellant's request for Income Assistance due to the appellant being registered as a full time student in a student loan fundable program of studies. The ministry's decision was based on the *Employment and Assistance Regulation (EAR)* Sections 1(1) and 16 (1) and (2).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Sections 1 (1) and 16 (1) and (2).

PART E – Summary of Facts

The documents before the ministry at reconsideration included the following:

- Student Loan Record – Employment and Assistance Clients – in the name of the appellant, printed on 2012-02-08;
- The appellant's Request for Reconsideration signed by the appellant on February 22, 2012.

The appellant did not attend the hearing which was scheduled for 1:30 p.m. on March 29, 2012. The panel waited for her until 1:41 p.m. At that time, she still had not appeared. The panel had before it evidence that the Notice to Attend had been delivered to the appellant on March 19, 2012. The panel therefore proceeded with the hearing based on Section 86 (b) of the *EAR*.

The representative of the ministry was present by teleconference.

At the hearing the representative of the ministry explained that there was a Memorandum of Understanding between the Ministry and Student Loan which allowed for information to be shared between them. It was through this shared information link that it had come to the Ministry's attention that the appellant had registered as a full time student in a student loan fundable program of studies, with courses commencing in December 2011. The representative told of speaking with the appellant on the telephone and the appellant's confirmation that she received a student loan for tuition and books. He advised that he had explained to the appellant that this meant she was therefore not eligible for Income assistance and she had responded that she understood but was surprised that she was not eligible for continued Income Assistance. The representative said that he had then expressed to her his surprise that she was surprised, given that this was the second time that the situation had been explained to her. He told of the appellant having been in the same situation a year earlier, when again she had been denied Income Assistance based on her student and student loan situation, that she had sought reconsideration and that on appeal the reconsideration determination had been upheld.

The representative from the ministry said he had explained to the appellant that if she went back to Student Loans and explained her loss of Income Assistance they would have reassessed her for monthly living allowance.

The panel finds that the ministry twice mis-stated the evidence before them in their argument at reconsideration when they state that the appellant commenced classes on December 5, 2012. December 5, 2012 is still to come. The ministry is however correct when in their Summary of Facts they state that the appellant's courses commenced in December 2011. The appellant does not argue in the documents that she did not commence classes as a full time student in December 2011, or that she had not received student loan funding for her program of studies.

Based on the documents before the panel, we make the following finding of facts:

1. The appellant has been in continuous receipt of Income Assistance as a single employable parent.
2. The appellant has been in receipt of a Student Loan from 12/05/2011.
3. The appellant commenced studies as a full time student in a student loan fundable program of

studies on December 5, 2011.

APPEAl

PART F – Reasons for Panel Decision

The decision to be made at appeal is whether the ministry's decision at reconsideration was a reasonable application of the applicable enactment, the *EAR*, in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request for Income Assistance due to the appellant being registered as a full time student in a funded program of studies. The ministry's decision was based on the *Employment and Assistance Regulation (EAR)* Sections 1(1) and 16 (1) and 2.

Section 1 (1) of the *EAR* gives the following definitions. *""Full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada); "funded program of studies" means a program of studies for which student financial assistance may be provided to a student enrolled in it; "student financial assistance" means funding provided to students under the Canada Student Financial Assistance Act (Canada);"*

Section 16 (1) states that *"A family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student (a) in a funded program of studies, or (b) in an unfunded program of studies without the prior approval of the minister. (2) The period referred to in subsection (1) (a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and (b) is not longer than one year."*

At reconsideration the ministry pointed out that under Section 1 of the *EAR*, a full time student is defined as meaning the same as in the *Canada Student Financial Assistance Regulations* (Canada), and a funded program of studies is defined as a program of studies for which student financial assistance may be provided and student financial assistance is defined as funding provided to students under the *Canada Student Financial Assistance Act* (Canada). They state that the appellant commenced classes as a full time student on December 5, 2012 and that she received student loan funding.

The ministry then looked at Section 16 of the *EAR* and point out that a family unit is not eligible for Income Assistance if a recipient is enrolled as a full time student in a student loan fundable program of studies from the first day of the month after the program commences to the last day of the month exams are held. It is important, they argue, to note that it is the program of studies that is required to be student loan fundable, not the student. Therefore, they concluded, as the appellant has been enrolled as a full time student in a student loan fundable program of studies from December 5, 2012, she is not eligible from January 2012 as long as she remains enrolled in the program.

When she sought reconsideration by the ministry the appellant wrote that she fully understood that the legislation states that a full time student is no longer eligible for assistance. But, she argued, she was a struggling individual, trying to feed and provide shelter for her 2 and 4 year olds. If she was denied any more assistance, she said, she didn't know how she could keep up her school work and provide for her family. Instead, she wrote, she would probably have to drop out and continue staying on income assistance and be forever below the poverty line. "It really surprises me, and hurts me to know that a single struggling mom, trying to do her best and make a better life for her family doesn't qualify for assistance, when there are so many other people who don't deserve it, do qualify." She argued that staying on assistance until she was done school is so much shorter and cheaper than if

she didn't go to school, and forever stayed on assistance without furthering herself. She said that she had applied for low income housing, and for many jobs but that they are a waiting game. She pleaded that she was just asking for a short, tiny amount of assistance until school is over.

When she filed her Notice of Appeal, the appellant wrote that she was worried that she would have to end her studies to provide enough income for her children. "I am barely making ends meet as it is", she wrote, "and with my diploma after I graduate I can start a career".

Given that the appellant did not in the documents contest the ministry's finding that she had commenced classes in December 2011 as a full time student or that she received student loan funding for her program of studies, the panel finds the ministry's determination that she is therefore ineligible for income assistance as of January 2012 to be a reasonable application of the legislation in the appellant's circumstances. The appellant fits the definition in Section 1 (1) of the *EAR.* The effect on a family unit including a full-time student described at section 16 (1) and (2) is unambiguous. The legislation does not give the ministry discretion to alter its restrictions.

The panel therefore finds that the ministry's decision at reconsideration was a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision.