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PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 27 March 2012, which held that the appellant was ineligible for income assistance for the two months December 2011 and January 2012, pursuant to section 13(1)(a) and section 13(2)(b) of the Employment and Assistance Act and section 29(3)(a) of the Employment and Assistance Regulation, because he voluntarily left employment without just cause, the consequence of which, for a recipient with no dependent children, is a period of ineligibility of two calendar months.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 13(1)(a) and section 13(2)(b).
Employment and Assistance Regulation (EAR), section 29(3)(a).

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PART E – Summary of Facts

The evidence before the ministry at reconsideration is contained in the appellant's Request for Reconsideration, dated 16 March 2012:

- In Section 2, completed by the ministry, the ministry states that the appellant started work at Company X on 06 December 2011 and the last day worked was 21 December 2012 (sic), with final pay on 31 December. The ministry reports that an official at [Company X] states that the appellant got into an argument with another worker when he picked up his last cheque, then he stopped showing up for work. The official states they called him and tried to find him. The ministry goes on to state that the appellant had disclosed that he was staying with friends in [City A] and they were drinking too much so he then was traveling back and forth from City B and the cost was too much for him. The official from Company X states that the appellant had his own furnished apartment in City A and was living alone. She states that the appellant just disappeared back to City B. The ministry states that the appellant's record of employment (ROE) shows he quit his job.

- In section 3, under Reasons for Request for Reconsideration, the appellant writes:

  "I phoned company X from a friend's phone as I have no phone and asked them if there was still work there. I was told that there was no more work. I have a witness to this phone call who overheard the conversation and who will vouch for what I heard on the phone. The record of employment was incorrectly filled out and should have stated"laid off". On that basis I should be eligible for income assistance."

  He goes on to state that since being laid off he has been searching for employment as well as going to his employment program provider. He further explains:

  "Furthermore, I spent two weeks traveling between City B and City A by vehicle. I do not have a vehicle and it was very difficult to arrange rides. When I was able to, drivers wanted gas money. I did receive a $25 gas voucher from [employment program provider] but it was not enough to even begin to cover transportation costs. I stayed with friends in City A for three days and then obtained an apartment. I spent four days in the apartment before being laid off work. The statement saying I was living in the apartment implies that I lived there for the time I was employed. This is incorrect."

  The balance of his Reasons goes to argument with respect to the period of ineligibility for income assistance.

In his Notice of Appeal dated 03 April 2012, the appellant states:

"I was laid off. I did not quit. R0E was filled out incorrectly. I have a witness to the phone call saying that there was no more work. I have not received any income assistance since December 2011."

After reconsideration but before the hearing the panel received a Submission from the appellant's advocate dated 24 April 2012. The Submission drew attention to a section in a brochure of the BC Benefits Appeal Tribunal (no longer extant) that indicated: "Existing benefits may be continued through the appeal period, but only if the recipient signs a 'promise to repay' beforehand. If the recipient wins the appeal, he or she keeps these benefits. If the recipient loses, these benefits must be repaid….." The advocate submits that in a recent discussion with the appellant she asked if he had been told about this and should have been given the option so that he could have received

benefits while they waited for the appeal process to go through.

The panel notes that the option to which the advocate refers is now known as a "reconsideration or appeal supplement" (EAR, section 54). In considering this Submission, the panel is mindful of the relevant legislation: Under EAA section 17(3), the jurisdiction of the tribunal is strictly limited to reconsideration decisions, specifically those respecting the refusal, discontinuation or reduction of benefits, and the amount of a supplement. And EAA section 17(5) provides for the designation by regulation of categories of supplement or circumstances of refusal of benefits that are not appealable. Under EAR section 81(1), reconsideration or appeal supplements are not subject to appeal. As the issue of an option for a reconsideration or appeal supplement is not addressed in the Reconsideration Decision under appeal, and as is in any event such a supplement is not appealable, the panel finds the issue raised in the Submission does not fall under its jurisdiction.

At the hearing, the appellant's advocate stated that the appellant had been falsely accused of quitting his job, when instead he had been laid off. She stated she was witness to the appellant phoning in and being told that there was no work for him. She alleged that Company X engages in dubious safety and labour relations practices and that the company cannot be trusted. In answer to a question, the appellant said he did odd jobs around the worksite, such as cleaning, as directed by the foreman. He stated he called in that day, as he did most days, to make sure that there was work for him, as it was a long drive to the worksite.

The ROE document was discussed. It is dated 17 January 2012, and did not reach the ministry until 5 March, 2012, having been sent, not to the appellant, but to the employment program provider, which passed it along to the ministry. Under Box 16, Reason for issuing, the entry is "Quit", and code E. It was noted that Service Canada requires the ROE be issued within 5 days of the end of employment, whatever the cause, and be sent to the employee directly.

The appellant's advocate stated that despite the appellant having been found ineligible for income assistance for the two months December 2011 and January 2012, he had not received any benefits for the last four months, and it was "punitive" to expect someone to live under such hardship for that long. There was an exchange, not relevant to the issue under appeal, between the advocate and the ministry as to why the appellant is not currently receiving benefits and what steps the appellant should take to make sure he can resume receiving income assistance. The ministry also stated that it is usual when preparing a Request for Reconsideration for the ministry to discuss with a client the option of a reconsideration and appeal supplement, and she did not know why that had not happened with the appellant in this case.

The ministry stood by its position at reconsideration. The ministry noted that the Reconsideration Decision determined the period of ineligibility to be December 2011 and January 2012, a change from the original decision which indicated a two month period as of 01 March 2012.

With the exception noted below, the panel finds that the new information provided by the appellant and his advocate is in support of the information and records that were before the ministry at the time of reconsideration. The information about the date and forwarding of the ROE and the appellant's practice of daily phone calls to his former employer add detail to that contained in the Request for Reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act. However, the panel cannot admit as evidence the

negative opinions of the advocate regarding Company X, as the reputation of the company and its practices was not before the ministry at reconsideration.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was ineligible for income assistance for the two months December 2011 and January 2012, pursuant to section 13(1)(a) and section 13(2)(b) of the EAA and section 29(3)(a) of the EAR, because he voluntarily left employment without just cause, the consequence of which, for a recipient with no dependent children, is a period of ineligibility of two calendar months. More specifically, the issue is whether the ministry's determination that the appellant voluntarily left employment without just cause is a reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is set out below:

From the EAA:

Consequences of not meeting employment-related obligations

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

(a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has

(i) failed to accept suitable employment,

(ii) voluntarily left employment without just cause, or

(iii) been dismissed from employment for just cause, or

(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.

(2) For the purposes of subsection (1),

(a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

And from the EAR:

Consequences of failing to meet employment-related obligations

29 (3) For the purposes of section 13 (2) (b) *[consequences of not meeting employment-related obligations]* of the Act, the period of ineligibility for income assistance lasts

(a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;

(ii) the date the default occurred,

The position of the ministry is that, while it considered the appellant's statement that the former employer incorrectly filled out the ROE and that he stated he was laid off, the minister is satisfied that the ROE and verbal communication from the former employer establishes that the appellant quit his job. Therefore the ministry determined that in accordance with section 13 of the Act, the appellant is subject to a period of ineligibility, in the appellant's circumstances until 2 calendar months have elapsed from the date the default occurred. The ministry considers the last day the appellant worked, 21 December 2011 according to the ROE, as the day he quit employment, and therefore finds his period of ineligibility to be the calendar months of December 2011 and January 2012.

The position of the appellant is that he phoned Company X and asked if there was still work there. He states that he was told that there was no more work. His advocate was witness to this conversation. He maintains the ROE was incorrectly filled out and should have stated "laid off", and therefore he should be eligible for income assistance. His advocate cites Section 8 of the Interpretation Act [RSBC 1996 c. 238] as requiring that every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. She asks that the appellant's situation be remedied accordingly.

The evidence shows that the ROE issued by the Company X shows his last day of work being 21 December 2011, and issued because the appellant "quit" (Code E). The evidence also shows that, when the ROE came to the attention of the ministry, contact was made with Company X, and that entry on the form was verified with a company official. The panel notes that the ministry, in administering the legislation, must rely on documents issued by third parties under the mandate of other jurisdictions. Pay stubs and ROEs are examples. It is the responsibility of the ministry client to review the accuracy of any document issued by a third party that is to be made available to the ministry, and if there are problems, to seek a correction by the issuer. There is no evidence that the appellant made any attempt to dispute the "quit" entry on the ROE. The panel finds it reasonable that the ministry relied on the documentary evidence, verified with a phone call to the company, in coming to its decision. The panel therefore finds the ministry reasonably concluded that that the appellant voluntarily left employment without just cause.

The legislation sets out consequences for when a recipient has voluntarily left employment without just cause. Under the circumstances of the appellant, as a sole recipient with no dependent children, the panel finds the ministry reasonably determined that the consequence is a period of ineligibility for income assistance until 2 calendar months have elapsed from the date the default occurred, as prescribed in EAR section 29(3)(a)(ii). As his last day of work was 21 December 2011, the panel finds that the ministry reasonably determined that the 2 calendar month of ineligibility was December 2011 and January 2012.

The panel therefore finds that the ministry determination that the appellant was not eligible for income assistance for the 2 month period December 2011 – January 2012 is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.