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PART C – Decision under Appeal

The decision being appealed is the Ministry's April 30, 3012 reconsideration decision denying the Appellant income assistance because neither he nor his wife met the citizenship requirements for income assistance eligibility as provided for in section 7(1) of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 2.

Employment and Assistance Regulation (EAR) Section 7.

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PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information in the Ministry's files indicating that:
   - The Appellant's file was opened on November 10, 2011 as a single parent of 2 dependent children. His wife was added to his file on March 6, 2012.
   - The Appellant had a work permit valid from May 9, 2011 until May 8, 2012 and his wife's work permit expired on January 11, 2012. She had applied for a new work permit.
   - The Appellant submitted a refugee protection claimant document for his wife that was signed on March 14, 2007 and which expired on March 14, 2012.
   - He also submitted a refugee protection claimant document for himself that was signed on November 21, 2007 and which expires on November 21, 2012.
   - The Ministry asked the Appellant to submit immigration documents for himself and his wife on about March 9, 2012.
   - The Ministry contacted Canada Revenue Agency because the Appellant was not receiving Child Tax Benefits (CTB) and the Ministry was advised that either the Appellant or his wife needs a valid work permit for more than 18 months to receive the CTB.
   - The Ministry advised the Appellant that he would need to provide proof from the Canada Immigration Centre (CIC) that deportation orders cannot be executed in order to be eligible for income assistance.
   - On March 23, 2012 the Ministry provided the Appellant with a letter to present to CIC which requested that they advise the Ministry whether or not a deportation order could not be executed; the Ministry required this information to determine the Appellant's eligibility for income assistance.
   - On March 27, 2012 the Appellant was denied income assistance.
   - On March 29, 2012, in response to its request for information from the CIC and the Ministry received the following answer:
     "Response received from sponsorship administrator/default recovery program/MSD confirming there are enforceable deportation orders with no stay of execution. Refugee status has been denied, no application for appeal or PRRA in process".

2. Appellant's request for reconsideration with supporting documents listed below. In that request the Appellant's wife wrote that she and the Appellant have been refugee claimants and their claims were not approved in July 2009 because there was never a war in their country. In July 2009 a lawyer told them their case was a humanitarian case and that they should apply right away. The wife wrote that this is known as the Pre-Removal Risk Assessment (PRRA) and they applied for PRRA in December 2009 in Vancouver B.C. The wife wrote that their application was transferred to Lethbridge and to Ottawa. The application is now in Vancouver and she expects the assessment decision in September 2012. She also wrote that they are all considered claimants under the refugee board as long as they are waiting for a decision from Immigration. She stated that while waiting for the PRRA they were also allowed to apply for permanent residency.

The Appellant's wife further wrote that they went through all the steps under the Refugee Board and they never missed any application. She also indicated that Immigration has taken away their passports because they are each waiting for a decision regarding their status as a protected person under the humanitarian application. The wife wrote that although refugee status has been denied they are still waiting for the humanitarian decision, a category under the refugee board, and hence they

are also considered as a protected person which is why Canada has an enforceable deportation order. She also wrote that they have been denied the first step but there are two sides to their claim and they will all be granted Protected Person status again. She submitted that their case should be looked at fairly because they are seeking the same protection as any other refugee in Canada and they are entitled to social welfare benefits for so long as the process continues that immigration put them through.

The following documents were submitted with the request for reconsideration:

- Letter dated July 23, 2010 from Citizenship and Immigration Canada regarding the Appellant's application for Permanent Residence status under Humanitarian and Compassionate grounds. The letter stated the anticipated time frames for cases and those received in December 2009 are estimated to be reviewed in June 2013. The letter also provided contact information and a client number for access to his file.
- Typed document setting out the following:
  1. Visit to a Member of Parliament's (MP) constituency office where the executive assistant to the MP apparently indicated that she made enquiries on their behalf and that the risk assessment process for the Appellant was received on January 25, 2011; that the assessment process takes about 20 months; that the MP is not in a position to expedite permanent residence applications; and, that they must follow the formal immigration process.
  2. Explanation from the Appellant about the process they went through under the refugee system, why the deportation order is enforceable and why they did not get a response for such a "critical case because this is a case that would be determined by many facts –Best Interests of the Child Assessment of Hardship". The Appellant stated that you can apply for H&C [humanitarian and compassionate grounds] and PRRA at the same time which they did in December 2009, and that any person can apply to stay in Canada on humanitarian or compassionate grounds, including refugee protection claimants whose claims are not approved by the Immigration and Refugee Board. The Appellant further indicated that applications to become a permanent resident on humanitarian and compassionate grounds are approved only in exceptional circumstances. It can take many years to process an application. The Appellant wrote that if you have received an order to leave Canada (a removal order) you can still apply to stay on humanitarian and compassionate grounds and the application will not prevent or delay the removal. A person must leave on or before the date on the removal order. The Appellant also wrote that an application will still be processed even if the person leaves Canada. CIC will notify the applicant of the decision in writing. There is no guarantee that an application will be approved and no right to appeal a refused application for permanent residency on humanitarian and compassionate grounds; however, in some cases a review can be requested by the Federal Court of Canada.

In the Appellant's notice of appeal the Appellant asked whether the Ministry contacted immigration in the city where their PRRA application is being processed. He also wrote that the other option is did the Ministry contact the Refugee Board in another province; they transferred their file to this province. The Appellant wrote "again we have a PRRA in process". The Panel will consider these statements as part of the Appellant's arguments for this appeal in Part F- Reasons for Panel Decision.

The Ministry indicated that it would rely on its reconsideration decision as its submissions for this appeal.

The Panel makes the following findings of fact which are not in dispute:
1. The Appellant, his wife and two children comprise the family unit applying for income assistance.
2. No member of the family unit is a Canadian citizen or a permanent resident of Canada.
3. The Appellant's family unit is subject to an enforceable deportation or removal order.
4. The work permits the Appellant and his wife had have expired.
5. The Appellant and his wife's refugee claims were not approved.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is not eligible for income assistance because neither he nor his wife met the citizenship requirements for income assistance eligibility in section 7(1) of the EAR.

The following section of the EAA sets out the applicable eligibility definition for a family unit:

Eligibility of family unit
2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if
(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

The following section of the EAR sets out the applicable citizenship requirements for a family unit to be eligible for income assistance:

Part 2 — Eligibility for Income Assistance
Division 1 — Applications and Applicant Requirements
Citizenship requirements
7 (1) For a family unit to be eligible for income assistance at least one applicant or recipient in the family unit must be
(a) a Canadian citizen,
(b) authorized under an enactment of Canada to take up permanent residence in Canada,
(c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee,
(d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada),
(e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada), or
(f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed.

(2) If a family unit satisfies the requirement under subsection (1), income assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is (a) a Canadian citizen, (b) authorized under an enactment of Canada to take up permanent residence in Canada, (c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee, (d) in Canada under a temporary residence permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada), (e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada), (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed, or (g) a dependent child.

In its reconsideration decision the Ministry indicated that it reviewed the Appellant's file and all of the events, as well as the Appellant's request for reconsideration statement with the attachments. The Ministry also reviewed the applicable legislation. The Ministry wrote that to be eligible for income assistance or disability assistance, the Appellant must meet Canadian citizenship requirements, make a claim for refugee protection with the Refugee Protection Division of the Immigration and Refugee Board or possess a Temporary Resident Permit. The Ministry wrote that it received confirmation that the Appellant's refugee claim had been denied by CIC. The Ministry also considered the Appellant's submission that although his refugee claim was denied he has applied for refugee status under humanitarian reasons and that he has applied for PRRA. However, when the Ministry contacted CIC they indicated that no application for PRRA was done as of March 29, 2012. Based on this information the Ministry determined that the Appellant had not provided any verification from CIC that he was appealing the denial of his refugee status or that he has applied for PRRA. Therefore the Ministry determined that the Appellant and his wife did not meet the requirements of section 7(1) of the EAR.

The Appellant submitted that the Ministry should have contacted Immigration in Vancouver where their PRRA application is in process or it should have contacted the Refugee Board in Toronto which transferred their file to Vancouver. The Appellant also argued that their PRRA application is still in process and they are expecting a response by September 2012. Therefore, the Appellant's position is that they qualify for income assistance.

Based on the evidence, the Panel finds that there is no dispute that the Appellant does not meet the requirements of EAR section 7(1) (a), (b), (c) or (f). As for meeting any of the other requirements in section 7(1), the Panel finds that the Ministry did consider all of the documents and statements submitted by the Appellant. However, the Panel notes that even when asked by the Ministry the Appellant provided no documents, such as copies of any applications or letters, confirming the status of their PRRA application or any other applications pending before CIC or the Refugee Board. Instead the Appellant submitted that the Ministry should contact these agencies. The Panel finds that in fact the Ministry did contact CIC and on March 29, 2012 the Ministry received a response from the "sponsorship administrator/default recovery program/MSD confirming there are enforceable deportation orders with no stay of execution. Refugee status has been denied, no applications for appeal or PRRA in process". Therefore the Panel finds that based on all of the evidence and the applicable legislation, the Ministry reasonably determined that the Appellant was not eligible for income assistance because he and his wife did not meet the citizenship requirements in section 7(1) of the EAR. The Panel confirms the reconsideration decision.