

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of April 5, 2012 denying the appellant's request for income assistance as the appellant did not meet the legislated citizenship requirements of Section 7(1) of the Employment and Assistance Regulation (EAR) therefore the conditions of eligibility established under Section 2 of the Employment and Assistance Act (EAA) had not been satisfied.

In addition a further decision under appeal was the ministry's finding that the appellant was not eligible for hardship assistance as set out in Section 39(1) EAR

PART D – Relevant Legislation

Employment and Assistance Act, Sections 1,2,4 and 5
Employment and Assistance Regulation, Sections 7(1), 39 and 41 thru 47.1

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

1. A completed application from the appellant on March 19, 2012 for Income Assistance indicating that the appellant entered Canada in 2003 as a student from another country and that the appellant left the school program in 2011 due to a change in the appellant's financial situation. The appellant stated at that time there was an application for a work permit in late 2011 and presented one that was valid January 20, 2012 to March 31, 2012.
2. A copy of the appellants SIN card showing an expiration date of March 30, 2012.
3. A copy of a Citizenship and Immigration Canada Study Permit signed January 5, 2010 valid until March 30, 2012 with the conditions that the appellant must leave Canada by March 30, 2012 and may accept employment on the campus of the institution at which registered in full-time studies. This Study Permit remarks "Temporary Resident Status Restored as per R182"
4. A written submission from the appellant dated March 21, 2012. In this submission the appellant argued that according to Section 7(1)(d) of the EAR in Canada under at Temporary Residence Permit, Immigration of Canada defines a foreign worker as a temporary resident. Thus, a work permit is temporary residence permit. The appellant points out further that the Study Permit remarks "Temporary Residence Status Restored" therefore he argues this confirms eligibility. In this submission the appellant states in his view Section 5(1)(b) of the EAA if the appellant is not eligible for income assistance it follows he can apply for hardship assistance. The appellant goes on to refer to a fact sheet dated June 30, 2008 dealing with hardship assistance found on the ministry's website. It was his view that if he works in Canada and is being taxed just as much as other Canadians why should he be excluded when in need of assistance. In conclusion the appellant states he is in a financial crisis, living in a shelter and even if he is truly not eligible for assistance consideration he still should be given to granting assistance on compassionate grounds.
5. A copy from the Citizenship and Immigration Canada website information setting out reference for Temporary resident permits and Study permits dated April 17, 2012

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded the appellant did not meet the citizenship requirements and that furthermore the appellant was not eligible for hardship assistance.

Section 2 of the EAA states that 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 the regulations, and
- (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act or the regulations.

Section 7 (1) of the EAR set out 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 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)*; or
- . (f) subject to a removal order under the *Immigration and Refugee Protection Act (Canada)* that cannot be executed.

The ministry's position was the appellant failed to meet the conditions as set out in Section 7(1)(a-f) of the EAR. The appellant argued on the other hand that a Study Permit is equivalent to a Temporary Residence Permit therefore should be eligible for assistance.

The panel finds the ministry reasonably determined that the appellant did not meet the citizenship requirements in Section 7(1)(a-f) based on CIA information that established that a Temporary Residence Permit and a Study Permit are two separate types of permits.

With reference to the appellants argument that he should be eligible for hardship assistance under Sections 4 and 5 of the EA Act. Sections 4 and 5 state:

Section 4 EAA states subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Section 5. (1) EAA states subject to the regulations, the minister may provide hardship assistance to

or for a family unit that

(a) is eligible for it, and

(b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Section 39(1) EAR states for a family unit to be eligible for hardship assistance, the family unit

(a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.1, and

(b) must not be ineligible for income assistance for any other reason.

Recipients under former Act deemed recipients under this Act

EAR Section 41 states the minister may provide hardship assistance to a family unit that is not eligible for income assistance because of the failure to provide a social insurance number or proof of identity required under section 4.1 (2) (a) (i) or 4.2 (3) (a) [*application and applicant orientation requirements*] if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the social insurance number or proof of identity.

Section 42 Repealed (BC Reg. 69/2008)

Applicants who fail to provide sponsorship information

Section 42.1 The minister may provide hardship assistance to the family unit of an applicant described in section 7 (1) (a) or (b) [*citizenship requirements*] that is not eligible for income assistance because of the failure to provide the information and verifications required under section 4.2 (3) (c) [*application requirements*] for the minister to determine whether unearned income described in paragraph (v) of the definition in section 1 (1) of "unearned income" is available to the family unit, if

(a) the minister considers that undue hardship will otherwise occur, and (b) the minister is satisfied that the applicant is making every effort to supply the information and verifications.

Applicants who have applied for income from another source

Section 43 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant has applied for income from another source if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the applicant provides the type of security specified by the minister for the repayment of the

hardship assistance.

Family units that have excess income

Section 44. The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the income of the family unit exceeds the limit under section 10 [*limits on income*] if

- . (a) the minister considers that undue hardship will otherwise occur,
- . (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- . (c) the family unit includes one or more dependent children, and
- . (d) the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

Applicant on strike or locked out

Section 45 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant is on strike or locked out if

- . (a) the minister considers that undue hardship will otherwise occur,
- . (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, and
- . (c) the applicant satisfies the minister that the financial assistance that the applicant who is on strike or locked out is eligible for from his or her trade union, combined with the other resources of the family unit, is inadequate to meet the basic needs of the family unit.

Family units that have excess assets

Section 46 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the assets of the family unit exceed the applicable limit under section 11 (2) [*asset limits*] if

- . (a) the minister considers that undue hardship will otherwise occur,
- . (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- . (c) the applicant satisfies the minister that (i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and (ii) every effort has been made and continues to be made to sell the assets, and

- . (d) the family unit (i) includes one or more dependent children, or (ii) includes only persons who have reached 65 years of age or persons who have persistent multiple barriers to employment.

Family units ineligible or declared ineligible under section 38

[consequences for conviction, acknowledgment, etc. under a former Act]

Section 47 The minister may provide hardship assistance to a family unit that is ineligible or declared ineligible under section 38 *[consequences for conviction, acknowledgment, etc. under a former Act]* if

- (a) the family unit includes one or more dependent children, (b) the minister considers that undue hardship will otherwise occur, and
- (c) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

Family units ineligible or declared ineligible in relation to convictions or judgments

47.1 (1) In the circumstances described in subsection (2), the minister may provide hardship assistance to a family unit that under section 15 (5) (a) *[consequences for conviction or judgment in relation to Act]* of the Act is not eligible for income assistance because it includes only

- . (a) persons convicted of an offence under the *Criminal Code*, this Act or the *Employment and Assistance for Persons with Disabilities Act* in relation to obtaining money under this Act or the *Employment and Assistance for Persons with Disabilities Act* by fraud or false or misleading representation,
- . (b) persons convicted of an offence under this Act or the *Employment and Assistance for Persons with Disabilities Act*, or
- . (c) persons in respect of whom
 - (i) a court has given judgment in favour of the government in an action for debt for obtaining income assistance, hardship assistance or a supplement under this Act or disability assistance, hardship assistance or a supplement under the *Employment and Assistance for Persons with Disabilities Act*, for which he or she was not eligible, and
 - (ii) the minister has made a declaration under section 15 (3) of the Act.

(2) The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise

- (a) the family unit will experience undue hardship, and
- (b) the physical health of a person in the family unit will be in imminent danger. (B.C. Reg. 102/2008)

The panel finds that in the matter of the ministry's finding the appellant was not eligible for hardship assistance. This decision was a reasonable application of Section 39(1) and Sections 41 to 47.1 of the EAR because the appellant was not found ineligible for any of the reasons set out in these

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sections therefore the panel confirms the ministry's decision.