

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 18, 2012 which held that the appellant is not eligible for income assistance because she does not meet the two year financial independence criteria under Section 8 of the Employment and Assistance Act (EAA) and Section 18 of the Employment and Assistance Regulation (EAR), in that she was not employed for remuneration for at least 840 hours in each of the two consecutive years or has not earned remuneration for employment of at least \$7,000 in each of the two consecutive years, and does not fall within any of the excluded categories under Section 18(3) of the EAR, or the exemption under Section 18(4) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 8

Employment and Assistance Regulation (EAR), Section 18

PART E – Summary of Facts

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

- 1) Two-Year Independence Assessment dated March 8, 2012, signed by the appellant, in which the response indicated is "no" to a series of questions, including whether the applicant was employed for 840 hours in each year of any consecutive two-year period, whether income from employment was at least \$7,000 in each year of any consecutive two-year period, whether she was employed and paid for work performed only for a portion of a consecutive two-year period and for the remaining balance was waiting for or receiving Employment Insurance (EI) benefits or was receiving income under a private or public income replacement plan, whether the applicant is pregnant, has a medical condition, has been supported by an employed spouse for a consecutive two-year period, was incarcerated in a lawful place of confinement for a total of 6 months in the past two years, at age 19 was in the care of the Ministry of Children and Family Development or entered into a youth agreement, separated from an abusive spouse or left an abusive relative in the past 6 months, was granted a two-year certificate or diploma or higher degree from a post secondary institution, is providing care for a child under an agreement, or receiving assistance for a child who resides with the applicant under an agreement;
- 2) Application for Income Assistance (Part 2) dated March 8, 2012; and,
- 3) Request for Reconsideration- Reasons, prepared by an advocate on behalf of the appellant.

In the Request for Reconsideration, that advocate states that the appellant moved to the community on February 14, 2012 from another country where she was being supported by her brother who is now incarcerated and no longer able to support her. The advocate states that the appellant has medical conditions that have prevented her from working and required her brother to support her. She is a 62-year-old woman who speaks very little English and suffers from arthritis, high blood pressure, and asthma. The appellant has friends in the community but they cannot support her and she has no other family or friends. The advocate states that without assistance the appellant will become homeless and live on the streets and cannot secure basic food, shelter, and required medical attention.

The advocate sets out a portion of the ministry policy relating to an application for discretion which states, in part, that a supervisor may use discretion to authorize the issuance of assistance in cases where, due to circumstances beyond an applicant's control, the applicant has been prevented from searching for, accepting, or continuing employment and could not have achieved two consecutive years of financial independence prior to applying for income assistance and the family unit would otherwise experience undue hardship if eligibility were denied. Factors beyond an applicant's control could include the following examples: long term incapacitating physical, social or mental health problems, long term dependency upon government assistance, chronic medical problems or addictions, extended periods of caring for dependent or disabled family members, and previously restricted to living in a community or country where the economic and/or social conditions prohibited or precluded the possibility of two consecutive years of financial independence. For possibility of undue hardship, if the family unit will be unable to secure basic food, shelter and/or required medical attention if denied income assistance.

In her Notice of Appeal, the appellant adds that although she does not meet the two years of financial independence eligibility criteria, she will be homeless as she has no income or means of supporting herself. The appellant states that she currently does not pay rent and the friends she lives with have said if she cannot pay some money she will have to leave.

At the hearing, the appellant had the assistance of an interpreter and stated that she cannot lie and she admits that she has not worked in the past two years. In response to a question, the appellant stated that she understood the questions in the Two-Year Independence Assessment form and that she had the assistance of an interpreter at that time. The appellant stated that her brother is supposed to be released from incarceration next month and, if she does not receive assistance, she will have to return to the other country to get his help.

The appellant stated that she has worked in the past caring for her grandchildren and great-grandchildren for her daughter who still lives in the other country. The appellant stated that she has an appointment with a doctor today as she does not see well and has high blood pressure. The appellant stated that she had previously left a situation of domestic violence.

The ministry relied on the reconsideration decision which states that the appellant applied for income assistance on March 8, 2012 and also signed the Two-Year Independence Assessment form. On this form, the appellant confirmed that she had not worked and earned more than \$7,000 in any two consecutive year period, she had not worked 840 hours in each of any two year consecutive period, and she had not collected Employment Insurance (EI) or collected income from a private or public income replacement plan. The ministry clarified at the hearing that the two consecutive years of employment need not be immediately prior to the application for income assistance and can be any time prior. The appellant has not indicated that her situation meets any of the categories that would allow the ministry to waive the two years of financial independence eligibility criteria. The appellant is 62 years old, she is not pregnant, she has not provided confirmation that she currently has a medical condition preventing her from working, she does not have dependant foster or in-care children living with her, she has not provided confirmation that she is supported by a spouse, she has not been incarcerated for 6 months or more in the last 2 years, she was not a child in care under the Child, Family and Community Services Act up until her 19th birthday, she does not have Persons with Persistent Multiple Barriers (PPMB) designation, she does not reside with a spouse requiring medical care and she has not been prevented from working due to circumstances beyond her control as the appellant advised the ministry that she had been supporting herself by selling vending machine products. The appellant has not submitted a signed declaration listing her previous employment history, employment earnings, employment duration and/or her attempts to obtain verification documents of her previous employment. The ministry has been unable to determine if the appellant's employment ended due to circumstances beyond her control as she has not provided a Record of Employment. The appellant did not mention her medical conditions during her intake appointment with the ministry and a physician has not confirmed her medical conditions. The appellant has also not provided an eviction notice from her landlord to confirm she would become homeless if she does not receive income assistance.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant was not eligible for income assistance because she does not meet the two year financial independence criteria under Section 8 of the EAA and Section 18 of the EAR, and does not fall within any of the excluded categories under Section 18(3) of the EAR, or the exemption under Section 18(4) of the EAR.

Section 8(1) of the EAA provides that a family unit is not eligible for income assistance unless at least one applicant in the family unit has:

- (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.

Section 18(1) of the EAR provides that for the purposes of Section 8(1)(a) of the EAA, an applicant must have been employed for remuneration for at least 840 hours in each of the two consecutive years.

Section 18(2) of the EAR provides that for the purposes of Section 8(1)(b) of the EAA, an applicant must have earned remuneration for employment of at least \$7,000 in each of the two consecutive years.

Section 18(3) of the EAR provides that Section 8 of the EAA does not apply to the 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;
- (d) applicants with dependent children;
- (e) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (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*;

(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*.

Section 18(4) of the EAR provides that Section 8 of the EAA does not apply to 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.

The ministry's position is that the appellant is not eligible for income assistance as she has not met the two year financial independence criteria. The ministry argues that the appellant signed the Two-Year Independence Assessment form and confirmed that she had not worked and earned more than \$7,000 in any two consecutive year period, she had not worked 840 hours in each of any two year consecutive period, and she had not collected Employment Insurance (EI) or collected income from a private or public income replacement plan. The ministry argues that the appellant has not indicated that her situation meets any of the categories that would allow the ministry to waive the two years of financial independence eligibility criteria. The ministry argues that the appellant did not mention her medical conditions during her intake appointment with the ministry and a physician has not confirmed her medical conditions. The ministry also argues that the appellant has not been prevented from working due to circumstances beyond her control as she advised the ministry that she had been supporting herself by selling vending machine products. The ministry has been unable to determine if the appellant's employment ended due to circumstances beyond her control as she has not provided a Record of Employment. The ministry argues that it has not been shown that the appellant will otherwise experience undue hardship as the appellant has not provided an eviction notice from her landlord to confirm she would become homeless if she does not receive income assistance.

The appellant's position is that although she does not meet the two year financial independence criteria, she does fall within one of the excluded categories under Section 18(3) of the EAR and she qualifies for the exemption under Section 18(4) of the EAR. The appellant argues that she has medical conditions in the form of arthritis, high blood pressure, and asthma that have prevented and will prevent her from working for a period of time pursuant to Section 18(3)(c) of the EAR. The appellant argues that the ministry should exercise its

discretion under Section 18(4) of the EAR to exempt the appellant from application of the requirement for two years of employment as her medical conditions prevent her from searching for, accepting or continuing employment and she will otherwise experience undue hardship by becoming homeless and living on the streets and not being able to secure basic food, shelter, and required medical attention.

The panel finds that the appellant admits that she has not worked and earned more than \$7,000 in any two consecutive year period, she has not worked 840 hours in each of any two year consecutive period, and she had not collected Employment Insurance (EI) or collected income from a private or public income replacement plan, as required under Section 8 of the EAA and Section 18(1) of the EAR. At the hearing, the appellant confirmed that she understood the questions in the Two-Year Independence Assessment form dated March 8, 2012, that she had the assistance of an interpreter on the intake appointment, and that she "cannot lie" and she acknowledges that she has not worked for two years. However, the appellant argues that she has medical conditions in the form of arthritis, high blood pressure, and asthma that have prevented and will prevent her from working for a period of time pursuant to Section 18(3)(c) of the EAR. The appellant did not provide any further information from a medical practitioner to confirm her medical conditions, the duration of the conditions, and to confirm that the conditions will prevent her from working for at least the next 30 days or have prevented her from working for a total of at least 6 months of the 2 years immediately preceding the application for income assistance. In the Two-Year Independence Assessment form, the appellant's response to the question whether she has a medical condition was "no." The panel finds that the ministry reasonably concluded that supporting information has not been provided to establish that the appellant falls within the excluded category under Section 18(3)(c) of the EAR.

The appellant also argues that the ministry should exercise its discretion to exempt the appellant from application of the requirement for two years of employment as her medical conditions prevent her from searching for, accepting or continuing employment and she will otherwise experience undue hardship by becoming homeless and living on the streets and not being able to secure basic food, shelter, and required medical attention. The appellant stated that she currently does not pay rent and the friends she lives with have said if she cannot pay some money she will have to leave. However, no further information was provided from the appellant's friends to confirm if and when the appellant will have to leave her current residence and the appellant stated that she may return to her previous country since her brother, who previously supported her, will be released from incarceration "next month." The panel finds that the ministry reasonably determined that there is not sufficient information provided to establish that the appellant's medical conditions have prevented her from searching for or accepting employment and that, without income assistance, she will experience undue hardship.

The panel finds that the ministry decision that the appellant is not eligible for income assistance because she does not meet the two year financial independence criteria and does not fall within any of the excluded categories under Section 18(3) of the EAR, or the exemption under Section 18(4) of the EAR, was reasonably supported by the evidence and confirms the decision.