

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The issue under appeal is the ministry's reconsideration decision of May 8, 2012 which determined that the Appellant was not eligible for income assistance under s. 8(1) of the EAA because the Ministry of Social Development (the "Ministry"), found that the Appellant had not met the two-year financial independence requirement, nor had he met any of the exemption categories under section 18 of the EAR.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance Act ("EAA") Section 8

Employment and Assistance Regulation ("EAR") Section 18.

PART E – SUMMARY OF FACTS

The evidence before the Ministry on reconsideration was:

- Request for Reconsideration dated April 18, 2012 (2pgs) ("RR")
- undated Two Year Independence Assessment (2pgs)

The evidence of the Appellant in the RR at page 2 was that:

- he had been cut off of assistance from his first nation band (the "Band") upon completing school
- he attended school all year, except holidays and summer break, to complete his grade 12
- he hadn't had a job except for the seasonal jobs during summer months
- he has a large family and lives in a large house and is without income to help pay rent
- he has been sending out resumes to mining and drilling companies, in and out of town, every few days
- he is trying very hard to find work and is in need of assistance until he can get on his feet in the workforce.

At the Hearing the Appellant stated that:

- He had provided the Ministry with copies of his bank statements showing that he had earned nearly \$5,000 during the summer of 2011.
- He felt that he should be eligible to receive income assistance because he had earned an amount that was "close to enough" to the required amount of \$7,000.
- He felt that he should be eligible.

At the Hearing the Ministry stated that:

- The Appellant needed either the requisite earnings or hours in order to be eligible for income assistance.
- The Appellant has submitted his bank statements.
- There are many exemptions to section 8 which are set out in section 18 of the EAR and allow for eligibility which have already been reviewed with the Appellant.
 - The Ministry read through each exemption showing how the Appellant did not qualify.

The Panel admitted both the Appellant's and the Ministry's oral evidence under section 22(4) of the EAA as evidence in support of the information and records that were before the minister when the decision under appeal was made. The Panel did not admit any additional evidence.

The Panel finds that:

- The Appellant is a family unit.
- The Appellant had received financial assistance from his Band while enrolled in school.
- The Appellant worked seasonal summer jobs while enrolled in school.
- Since graduation, he is persistent in his efforts to seek employment in and out of town.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue to be decided is the reasonableness of the Ministry's reconsideration decision which concluded that the Appellant was not eligible for any income assistance under section 8 of the EAA.

Section 8 of the EAA and Section 18 of the EAR provide as follows:

Employment and Assistance Act -- Section 8

Requirement for 2 years employment

- 8 (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have
- (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.
- (2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

Employment and Assistance Regulation -- Section 18

Requirement for 2 years employment

- 18 (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.
- (2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7,000 in each of the 2 consecutive years.
- (3) Section 8 of the Act 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*.

ATTACH EXTRA PAGES IF NECESSARY

- (4) Section 8 of the Act does not apply to the 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.

[am. B.C. Regs. 331/2003, s. 1; 304/2005, s. 4; 279/2009; 48/2010, Sch. 1, s. 1 (b).]

The Appellant argues that he was not able to have either worked the requisite hours or earned the requisite remuneration required to qualify for Income Assistance because he was enrolled full time in school; and further that his having completed school disqualified him from receiving continued assistance for room and board from his Band; he was only available to work seasonal jobs during summer vacation and school holidays.

The Ministry argues that the conditional existence of either one of 2 scenarios, namely, being employed for at least 840 hours in each of 2 consecutive years or having earned at least \$7,000 in each of 2 consecutive years, as described in paragraphs 8(1)(a) or (b) must exist in order for a family unit to be eligible for income assistance.

Further the Ministry argues that the Appellant did not qualify for any of the exemptions listed in subsection 18(3) of the EAR.

The Panel finds that by his own admission, the responses contained in the Two-Year Independence Assessment form completed by the Appellant during his intake appointment, demonstrate that there is no evidence to support that the Appellant meets the criteria required under subsection 8(1) of the EAA or subsections 18(1), (2) or (3) of the EAR.

The Ministry notes that subsection 18(4) of the EAR allows for the minister to waive the two-year financial independence requirement if the minister is satisfied that due to circumstances beyond the Appellant's control, the Appellant has been prevented from searching for, accepting or continuing employment, and the family unit will otherwise experience undue hardship if not assisted.

The Panel finds that by the Appellant's own admission there is no evidence to indicate the existence of circumstances beyond his control preventing him from accepting and maintaining employment. The evidence demonstrates that the Appellant is willing and able to work and there is no evidence to suggest that the Appellant would experience undue hardship if he does not receive income assistance.

In conclusion, the panel finds that the Ministry's reconsideration decision to deny the Appellant's request for income assistance was reasonably supported by the evidence. The Panel therefore confirms the Ministry's decision under sections 24 (1)(a) and 24(2)(a) of the *Employment and Assistance Act*.