

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated August 9, 2012, in which the Ministry of Social Development (“Ministry”) confirmed its decision to deny the Appellant income assistance. The Ministry denied income assistance on the basis that the Appellant did not meet the eligibility criteria set out in section 8 of the Employment and Assistance Act (EAA) and section 18 of the Employment and Assistance Regulation (EAR) in that the Appellant had not: (1) been employed for remuneration for at least 840 hours in each of the two consecutive years prior to his application, and (2) earned remuneration for employment of at least \$7,000 in each of the two consecutive years prior to his application. Neither did the Appellant fall within any of the exemptions listed in subsections 18(3) and 18(4).

PART D – Relevant Legislation

The relevant legislation is sections 8 and 10 of the EAA and section 18 of the EAR.

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of a "Two Year Independence Assessment" form apparently completed by the Appellant. This form indicates that the Appellant answered 'no' to the questions concerning his past employment, but did not complete all the subsequent sections of the form (except one regarding whether he had been incarcerated), although he did sign it.

According to the Ministry's decision recorded on the Request for Reconsideration form, there was a conversation between the Ministry worker and the Appellant. That conversation is related as follows in the Ministry's reconsideration decision:

"When the worker asked you if you have worked 850 hour [sic] per year or earned \$7000 per year for two consecutive years at any point you answered "No". You chose not to complete the second section of the assessment form."

And:

"Your worker requested that you explain how you managed to live on \$320.00 during 2011 and how you managed to pay rent when your income was below the amount that you declared as your rent cost in 2012. You declined to answer the question."

The panel accepts that this is an accurate statement of the conversation that took place between the Ministry worker and the Appellant.

The panel also received as part of its appeal package a letter dated November 14, 2011 from what appears to be the Appellant's former employer addressed to the Appellant. This letter indicates that the Appellant's employment at a car wash will end as of November 28, 2011, as the car wash was being closed down for a period. The panel did not have any context or explanation for this letter. Neither did the panel consider it material. Accordingly, the panel chose not admit this letter as evidence, as under s. 22(4) of the EAA it was found not to be in support of the information and records before the Ministry at the time of the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's decision to deny the Appellant income assistance.

The relevant legislation is sections 8 and 10 of the EAA:

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.

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for income assistance or hardship assistance is eligible to apply for it,
 - (b) determining or auditing eligibility for income assistance, hardship assistance or a supplement,
 - (c) assessing employability and skills for the purposes of an employment plan, or
 - (d) assessing compliance with the conditions of an employment plan, the minister may do one or more of the following:
 - (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
- (2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for income assistance, hardship assistance or a supplement.
- (3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).
- (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period.
- (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the

prescribed amount for the prescribed period.

And section 18 of the EAR:

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*.
- (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.

The Ministry's position is that the Appellant has not demonstrated that he has: (1) been employed for

remuneration for at least 840 hours in each of the two consecutive years prior to his application, and (2) earned remuneration for employment of at least \$7,000 in each of the two consecutive years prior to his application as required by the legislation. Nor has the Appellant demonstrated that he qualifies for any of the exemptions listed in subsection 18(3) of the EAR.

The Appellants position is set out in his Reason for Request for Reconsideration section in the Request for Reconsideration. There he writes: "The reason I'm requesting for reconsideration is because I cannot find a job and also because I need the money at the moment I am also staying with my family because I can't afford to pay rent."

The panel finds that section 10 of the EAA places the onus on the Appellant to demonstrate that he qualifies for income assistance. In this case, the Appellant must establish that he meets the eligibility criteria set out in section 8 of the EAA and section 18 of the EAR, in order to be eligible to receive income assistance. That is, the Appellant must demonstrate to the Ministry that he has: (1) been employed for remuneration for at least 840 hours in each of the two consecutive years prior to his application, and (2) earned remuneration for employment of at least \$7,000 in each of the two consecutive years prior to his application. The Appellant did not demonstrate either of these to the Ministry.

The exceptions to this rule are set out in subsection 18(3) and 18(4) of the EAR. The Appellant did not demonstrate to the Ministry that he met any of these exceptions.

Based on this analysis of the criteria that must be met in order for the Appellant to qualify for income assistance, the Panel finds that the Ministry's Reconsideration Decision to deny the Appellant income assistance was a reasonable application of the applicable legislation.

Accordingly, the Panel confirms the Ministry's decision.