

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated June 5, 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). The appellant 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) Statement for June 2006 from an employer stating in part that the appellant earned a total of \$957.63;
- 2) T-4 Statement of Remuneration Paid to the appellant for 2006 stating in part that the total employment income was \$3,476.02;
- 3) Undated note 'To Who (sic) this may concern' stating in part that the appellant worked with him every weekend from 2007 to 2008 cleaning up work sites, that she was getting paid \$8.00 per hour for 8 hours per day, or \$64 per day. The total hours worked was 134 during 2007 to 2008;
- 4) Record of Employment (ROE) dated April 11, 2008 which states in part that the appellant worked 130 hours for total earnings of \$1,347.36;
- 5) Inventory Payment Receipt dated October 5, 2008 which states in part that the appellant worked for 1 hour for \$8.00;
- 6) ROE dated November 14, 2011 which states in part that the appellant worked for 192 hours in October and November, for total earnings of \$1,996.80;
- 7) Two-Year Independence Assessment dated March 26, 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;
- 8) Application for Income Assistance dated March 26, 2012;
- 9) Copies of prescriptions dated March 30, 2012 in the appellant's name for Ran-Ramipril; and,
- 10) Request for Reconsideration- Reasons.

In her Request for Reconsideration, the appellant states that she has been going to her doctor to get medications but she cannot afford them. The appellant states that she needs help for living, with the medications that she needs to buy and to pay rent, and all the other things she needs to live. The appellant states that she has shown that she is looking every day for work, even applying on weekends. The appellant states that she found more information from her past work, which she has included. In her Notice of Appeal, the appellant adds that she has been looking for work but cannot find anything; that she has shown all the places that she has been applying and that she has not gotten anywhere.

At the hearing, the appellant's father stated that he has personally driven the appellant around looking for jobs and watched her fill out applications and she has not been able to get any work. The appellant's father stated that he believes the appellant's large size works against her and that employers would rather hire a smaller, thin person. The appellant's father stated that his daughter has a learning disability and that she has always been a slow learner and she also has high blood pressure. The appellant's father stated that he can no longer afford to support his daughter, that she owes him and his wife close to \$6,000 in back rent and it is very difficult for him but they will have to ask the appellant to move out if she cannot come up with some money. The appellant's father stated that he has had multiple heart attacks and has had to give up his heart medications because he cannot afford them, having 8 children and 13 grandchildren between him and his wife, and that he cannot do it anymore. The appellant's father stated that his daughter was sexually abused when she was a young child and that he believes she has problems because of this but she does not want to talk about it and has not received counseling for it.

The panel accepted the father's oral testimony regarding the appellant's difficulties obtaining employment and her high blood pressure as further information regarding the appellant's ability to be financially independent and being in support of the information and records before the ministry on its reconsideration, but did not admit the testimony regarding the appellant's learning disability and sexual abuse as this was not part of the information before the ministry at the time of its reconsideration, as required by Section 22(4) of the Employment and Assistance Act.

The appellant stated that when she applied for income assistance she showed her prescription for her high blood pressure medications, but she has not been able to take them because she cannot afford them. The appellant stated that she has finished grade 10 and completed some of the courses for grade 11 and 12. She also took some courses at a community college for a few months, in the culinary arts program. The appellant stated that she has a diploma for a make-up artist course but this program was for about 6 months. The appellant stated that she has prepared two resumes, one to apply for retail jobs and one for her make-up artist applications. The appellant stated that she has been constantly looking for work and it has only resulted in some short-term work as detailed in the documents provided to the ministry. The appellant stated that she has maintained a journal recording her efforts in applying for employment and has given copies of the journal up to April 4, 2012 to the ministry. The appellant stated that she has had to borrow money and she owes quite a bit to her parents. The appellant stated that she has not discussed the abuse from her childhood with anyone, including not with her family physician.

The ministry relied on the reconsideration decision which states that the appellant applied for income assistance on March 26, 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 each of any two consecutive year period, she had not worked 840 hours in each of any two year consecutive period, she does not have a medical condition which will prevent her from working, she had not been supported by an employed spouse, she had not been incarcerated in a lawful place of confinement for a total of 6 months in the past 2 years, she was not in the care of the Ministry of Children and Family Development when she turned 19 years old, she had not been granted a two-year certificate or diploma, and she was not providing care to a foster child or receiving benefits for a child in the home of a relative.

At the hearing, the ministry reviewed the policy relating to the application of Section 18(4) of the Employment and Assistance Regulation (EAR) and stated that examples of factors beyond a person's control could include: (1) long term incapacitating physical, social or mental health problems such that two years of financial independence would not have been possible, (2) long term dependency upon government assistance, (3) chronic medical problems or addictions, (4) extended periods of caring for dependent or disabled family members, and (5) where previously restricted to living in a community or country where the economic or social conditions prohibited financial independence. The ministry stated that it must also be shown that the family unit would otherwise experience undue hardship if denied income assistance, and this includes where they are unable to secure basic food, shelter and required medical attention.

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

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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 each of any two consecutive year period and she had not worked 840 hours in each of any two consecutive year period. The ministry points out that the appellant submitted pay stubs, Records of Employment and a letter of employment, but she does not dispute that she does not meet the employment hours or income criteria under Section 18(1) of the EAR. 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 provided copies of her prescription for high blood pressure medication but did not suggest that this condition has prevented her from working. The ministry also argues that the appellant had not provided evidence that she has had circumstances beyond her control that prevented her from accepting and maintaining employment. The ministry acknowledges the appellant stated that she requires assistance to purchase prescription medication, however the ministry notes that there are other resources available such as Fair PharmaCare and Special Authorization for medication through her doctor and the ministry is not satisfied that the appellant will face undue hardship if income assistance is not provided.

The appellant's position is that although she does not meet the two year financial independence criteria, she has been continuously looking for work and she falls 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 a medical condition in the form of high blood pressure and being overweight that has 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 her from application of the requirement for two years of employment as her medical condition prevents her from searching for, accepting or continuing employment. The appellant also argues that she will otherwise experience undue hardship since her parents will ask her to move out and that she will not be able to secure basic food, shelter, and required medications.

The panel finds that the appellant admits that she has not worked and earned more than \$7,000 in each of any two consecutive year period and she has not worked 840 hours in each of any two consecutive year period, as required under Section 8 of the EAA and Section 18(1) of the EAR. The appellant stated that she has prepared two resumes and has continuously searched for work but has only been able to get short-term employment despite her efforts and that she has a medical condition with high blood pressure and being overweight that has 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 condition, the duration of the condition, and to confirm that the condition will prevent her from working for at least the next 30 days or has 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 her from application of the requirement for two years of employment as her medical condition prevents her from searching for, accepting or continuing employment and she will otherwise experience undue hardship by not being able to secure basic food, shelter, and required medications. The ministry argued that, according to its policy, an example of a factor beyond a person's control could include a long term incapacitating physical, social or mental health problem such that two years of financial independence would not have been possible. The ministry's policy is, of course, not determinative of the matter. However, the panel finds that the ministry reasonably concluded that there is not sufficient information provided to establish that the appellant's medical condition of high blood pressure/ being overweight is an "incapacitating" physical health problem which has prevented her from searching for or accepting employment, as the appellant has been capable of ongoing efforts to search for employment and no further information was provided from a medical practitioner to confirm the severity of her medical condition. The appellant's father stated that his daughter currently owes him and his wife approximately \$6,000 in back rent and, although he does not want to, they may have to ask the appellant to move out; no further information was provided to confirm if and when the appellant will have to leave her current residence and the other options that may be available to the appellant for living accommodations. The appellant stated that she requires assistance to purchase prescription medication, however the ministry explained that there are other resources available to obtain medications and the panel finds that the ministry reasonably concluded that there was not sufficient information to find that the appellant will face undue hardship if income assistance is not provided. The panel finds that the ministry reasonably determined that there is not sufficient information provided to establish that the appellant's medical condition is a circumstance beyond her control that has 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.