

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") August 29, 2012 reconsideration decision denying the Appellant's request for income assistance because he did not meet the citizenship requirements in section 7(1) of the Employment and Assistance Regulation or the requirements for hardship assistance in section 39(1) of that regulation.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sections 2 and 4.

Employment and Assistance Regulation (EAR) Sections 7, 39, and 41-47.1.

PART E – Summary of Facts

The Appellant did not attend the hearing. The Panel confirmed that the Appellant was notified of the hearing and then proceeded with the hearing under section 86(b) of the EAR.

A Ministry observer attended the hearing.

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's files that the Appellant is married and has 3 children.
2. Letter dated August 3, 2012 from the Canada Border Services Agency confirming that the Appellant and his wife are under a removal order. No removal date had been scheduled.
3. Information from the Canada Border Services Agency confirming the effective and enforceable removal order and that the Appellant and his wife are expected to leave the country as soon as possible. The agency also confirmed that both the Appellant and his wife are failed refugee claimants. There was a hearing on June 18, 2012 with a negative outcome. The removal order came into force on July 10, 2012. The agency further advised that a Pre Removal Risk Assessment was not available and that the Appellants had no right to appeal to the Immigration and Refugee Board.
4. Information from the Canada Border Services Agency on August 13, 2012 that the Appellants have valid work permits to February 11, 2014. The enforceable removal order is in place with no barriers to removal.
5. Appellant's August 14, 2012 request for reconsideration in which he stated that he is basing his request on a humanitarian basis. He wrote that he has 3 children and while legally in Canada has no place to stay. He had to vacate his apartment on August 12, 2012. He wrote that he knows there is a deportation order against him but no-one knows when immigration is going to remove him and his family. He asked how is he to survive since he is not allowed to work. He did not receive his work permit yet.

Because the Appellant did not appear at the hearing the Panel will consider the Appellant's request for reconsideration statement to be his position for this appeal.

At the hearing, the Ministry reviewed its reconsideration decision and the applicable sections of the EAR.

The Panel makes the following findings of fact which are not in dispute:

1. The Appellant, his wife and 3 children make up the family unit applying for income assistance.
2. No member of the family unit is a Canadian citizen or a permanent resident of Canada.
3. The Appellant and his wife are subject to an enforceable deportation or removal order.
4. The refugee claims by the Appellant and his wife were refused and they have no right of appeal.
5. The Appellant and his wife have valid work permits until February 11, 2014.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that Appellant was not eligible for income assistance because he did not meet the citizenship requirements in section 7(1) of the EAR or the requirements for hardship assistance in section 39(1) of that regulation.

The following sections of the EAA set out the applicable eligibility criteria for a family unit:

2 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 (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family who unit that is eligible for it.

The following sections of the EAR set out the applicable requirements for a family unit to be eligible for income assistance:

7 (1) 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 resident 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.

39 (1) 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.

41 Applicants who do not meet requirement for social insurance number or proof of identity.

42.1 Applicants who fail to provide sponsorship information.

43 Applicants who had applied for income from another source.

44 Family units that have excess income

45 Applicant on strike or locked out

46 Family units that have excess assets

47 Family units ineligible or declared ineligible under section 38 [*consequences for conviction, etc.*]

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

In its reconsideration decision, the Ministry stated that it fully reviewed the Appellant's request and

determined that the Appellant did not meet the citizenship requirements for income assistance. The Ministry referred to the information it received from Citizenship and Immigration Canada, indicating that the Appellant and his wife are failed refugee claimants with an enforceable and executable deportation order in place. The removal order became enforceable on July 10, 2012. The Appellant did not dispute these facts.

The Panel finds that there is no dispute that the Appellant does not meet the requirements of EAR section 7(1)(a), (b), (c), (d), (e) or (f). The Appellant and his wife are not Canadian citizens, they are not authorized to be permanent residents of Canada, their refugee claims failed, they have no temporary resident or minister's permit, their refugee claims have been finally decided and they are subject to an executable removal order. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant was not eligible for income assistance under section 7(1) of the EAR.

The Appellant asked for income assistance based on humanitarian grounds because he has 3 children, had to vacate his residence and he hadn't received his work permit. The Ministry, however, noted that the Appellant and his wife have valid work permits effective until February 11, 2014.

The Ministry also considered the Appellant's request under the hardship assistance provisions in EAR section 39(1). That regulation states that to be eligible for hardship assistance the family unit must be ineligible for income assistance for one or more of the reasons set out in sections 41 to 47.1 of the EAR, and not for any other reason. The Ministry considered sections 41 to 47.1 of the EAR and determined that the Appellant and his wife do not fall within any of the circumstances defined in those sections. The Ministry further determined that it has no ability to consider the Appellant for hardship assistance because his family unit is ineligible for income assistance for another reason; that is, he and his wife do not meet the citizenship requirements in section 7.

The Panel finds that, in the Appellant's circumstances, the Ministry reasonably applied the applicable hardship regulation. Based on the evidence, the Panel further finds that the Ministry reasonably determined that the Appellant is ineligible for hardship assistance because he and his wife do not fall within any of the situations defined in sections 41 to 47.1 of the EAR. They also are ineligible for hardship assistance for another reason; namely, they do not meet the citizenship requirements for income assistance. Therefore, they did not meet the requirement in section 39(b) of the EAR.

The Panel confirms the reconsideration decision.