

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of October 24, 2012 in which the ministry discontinued the appellant's income assistance on the basis that he no longer met the citizenship requirements set out in s. 7 of the Employment and Assistance Regulation (EAR), and did not qualify for exemption from the citizenship requirements provided in s. 7.1 of the EAR. The ministry also determined that the appellant did not satisfy the legislative criteria set out for hardship assistance in s. 39 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 2 [eligibility of family unit], s. 4 [income assistance and supplements], and s. 5 [hardship assistance].

EAR, s. 7 [citizenship requirements], s. 7.1 [exemption from citizenship requirements], and s. 39 [hardship assistance – eligibility and limitations]

PART E – Summary of Facts

The appellant did not attend the appeal hearing. After confirming that the appellant had been notified, the hearing proceeded in accordance with s. 86(b) of the EAR.

The information before the minister at the time of reconsideration included the following:

- A Request for Reconsideration including information from a ministry worker, and signed by the appellant on October 2, 2012. The ministry worker wrote that the appellant and his spouse attended the ministry office with a translator on September 27, 2012 and were advised that the appellant was no longer eligible for income assistance. The appellant wrote that he was asking for assistance because he has no job and he is a deaf person. His wife left him and he has two dependent children in school.
- A Medical Report form for Persons with Persistent Multiple Barriers signed by the appellant on November 14, 2011 with confirmation from a physician that the appellant has a congenital hearing impairment.
- A report from a ministry liaison with the Canadian Border Service Agency (CBSA) dated October 12, 2012 confirming that the appellant is a failed refugee claimant with an in-force and enforceable deportation order. His immigration hearing was held on January 24, 2012 with a negative outcome and the removal order came into force on February 15, 2012. His immigration appeal was denied. An update from the CBSA on June 25, 2012 confirmed that all the appellant's family members are failed refugee claimants, and all have deportation orders in force and enforceable as of May 15, 2012.
- File information confirming that the appellant arrived in Canada with his family in May, 2009. His wife left the family unit in August, 2012, and his children are 12 and 14 years of age. No one in the family is a Canadian citizen. The appellant lost his appeal for Convention refugee status, and he is not in Canada under a temporary residence permit or minister's permit.

At the appeal hearing the ministry relied on its reconsideration decision and introduced no new information.

In consideration of the evidence from both the appellant and the ministry that the appellant's spouse has left him, the panel finds that the appellant's family unit currently consists of the appellant and his 2 dependent children.

PART F – Reasons for Panel Decision

The issue to be decided is the reasonableness of the ministry's reconsideration decision of October 24, 2012. In that decision the ministry discontinued the appellant's income assistance on the basis that he no longer met the citizenship requirements set out in s. 7 of the EAR, and did not qualify for exemption from the citizenship requirements provided in s. 7.1 of the EAR. The ministry also determined that the appellant did not satisfy the legislative criteria set out for hardship assistance in s. 39 of the EAR.

The relevant legislation is as follows:

EAA

Eligibility of 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...

Income assistance and supplements

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

Hardship assistance and supplements

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance...

EAR

Citizenship requirements

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.

(2) If a family unit satisfies the requirement under subsection (1), income assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is

(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 residence 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),

(f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed, or

(g) a dependent child.

Exemption from citizenship requirements

7.1 (1) Despite section 7 (1), a family unit that does not satisfy the requirement under that section is eligible for income assistance if the minister is satisfied that all of the following apply:

(a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;

(b) the applicant or recipient has one or more dependent children who are Canadian citizens;

(c) the applicant or recipient has separated from an abusive spouse;

(d) the applicant or recipient has applied for status as a permanent resident under the *Immigration and Refugee Protection Act* (Canada);

(e) the applicant or recipient cannot readily leave British Columbia with the dependent children because

(i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,

(ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or

(iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

(2) If a family unit satisfies the requirement under subsection (1), income assistance and supplements may be provided to or for the family unit on account of

- (a) the sole applicant or sole recipient in that family unit, and
- (b) each person in the family unit who is a dependent child.

Hardship assistance — eligibility and limitations

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 47.2, and
- (b) must not be ineligible for income assistance for any other reason...

The "reasons" set out in EAR sections 41 to 47.1 are as follows:

- s. 41 – failure to provide a social insurance number or proof of identity, if prescribed conditions apply;
- s. 42 – repealed;
- s. 42.1 – failure to provide sponsorship information, if prescribed conditions apply ;
- s. 43 – the applicant has applied for income from another source if prescribed conditions apply;
- s. 44 – the family unit was found ineligible because of having excess income and prescribed conditions apply;
- s. 45 – the applicant is on strike or locked out and prescribed conditions apply;
- s. 46 – the family unit has excess assets and prescribed conditions apply;
- s. 47 – the family unit is ineligible for income assistance because of a conviction for an offence as described in EAR s. 38 and prescribed conditions apply;
- s. 47.1 – the family unit is ineligible for income assistance because of a conviction for an offence as described in EAA s. 15 and prescribed conditions apply.
- S. 47.2 – the family unit is ineligible for income assistance because a member of the family unit has not satisfied work search requirements and prescribed conditions apply.

* * *

The ministry's position, as set out in its reconsideration decision, is that the appellant does not satisfy the statutory citizenship requirements of EAR s. 7 as neither he nor his children are Canadian citizens and none of them any longer have any status in Canada. No one in the family unit satisfies the criteria for exemption in EAR s. 7.1, and citizenship is not a prescribed reason for eligibility for hardship assistance as required by EAR s. 39(1).

The appellant's position, as set out in his Notice of Appeal, is that his status in Canada is still in process because he still has the same address and marital status, and he would like to get the assistance because he doesn't have a job yet.

Panel Decision

The evidence demonstrates that no one in the appellant's family unit satisfies the citizenship requirements of EAR s. 7. None are Canadian citizens, there is no evidence that any are authorized to take up permanent residence in Canada, and they have been determined not to be Convention refugees and have no further right of appeal. There is no evidence that any member of the family unit has a temporary residence permit or a minister's permit. The claim for refugee protection has been adjudicated against the appellant and his children, and executable, in-force removal orders have been issued for each of them. The panel finds that the ministry's decision that the appellant does not satisfy the citizenship requirements of EAR s. 7 is reasonably supported by the evidence.

With respect to the exemption provisions, all the prescribed conditions specified in EAR 7.1 must be met. The appellant's spouse is no longer part of the family unit, so the appellant is a sole recipient. However, the other conditions are not satisfied. The appellant's children are not Canadian citizens and there is no evidence that the appellant is separated from an abusive spouse. There is no evidence that the appellant has applied for permanent resident status or that there is a court order, agreement or other arrangement that would likely be contravened by leaving the province with the children. Similarly, there is no evidence of anyone who is resident in British Columbia claiming any rights in respect of the children, or that anyone in the family unit is being treated for a medical condition such that leaving British Columbia would result in imminent danger to his or her physical health. The panel finds that the ministry's conclusion that the appellant does not satisfy the exemption criteria of EAR s. 7.1 is reasonably supported by the evidence.

With respect to hardship assistance, the appellant's ineligibility for income assistance does not arise for any of the reasons in sections 41 to 47.2 of the EAR so he does not satisfy the requirements of EAR s. 39(1)(a). His ineligibility for income assistance arises out of a failure to satisfy citizenship requirements, which is not one of the prescribed "reasons", so the appellant is precluded from eligibility for hardship assistance by operation of EAR s. 39(1)(b). The panel finds that the ministry reasonably determined that the appellant's family unit is not eligible for hardship assistance.

Conclusion

Based on the foregoing analysis, the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence, and is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision.