

PART C – Decision under Appeal

The Decision under Appeal is the Reconsideration Decision dated Sept. 20, 2012, where the Ministry found that the Appellant was not eligible for Income Assistance (IA) as she did not meet the citizenship requirements of the Employment and Assistance Regulation, Section 7.

PART D – Relevant Legislation

EAA	Employment and Assistance Act, Sections 2, 4 and 5.
EAR	Employment and Assistance Regulation, Sections 7, 39, and 41-47.1

PART E – Summary of Facts

The evidence before the ministry was that the Appellant was a recipient of IA as a single recipient since June 2009. In Aug. 2012 the ministry was informed by Citizenship and Immigration Canada that the Appellant was a failed refugee claimant with an enforceable and executable removal order. A hearing had been held in July with a negative outcome and a removal was now in force. On Aug. 30 the Appellant attended the ministry office where she was advised she was no longer eligible for IA as she had an active and enforceable removal order.

On Sept. 10 the Appellant signed the request for reconsideration. The Appellant did not include any reasons in requesting the reconsideration although it appears a copy of the appellant's work permit was provided. The work permit for the Appellant is valid until Sept. 14, 2014. This document states that the work permit "does not authorize re-entry."

On Sept. 20, the Ministry provided its Reconsideration Decision. They found the Appellant was not eligible for IA as she did not meet the citizenship requirements of Sec. 7(1) if the EAR. The decision found that the Appellant, under 7(1) was:

- (a) not a Canadian citizen,
- (b) not authorized to take up permanent residence in Canada,
- (c) not a convention refugee, as her refugee claim was denied,
- (d) not in Canada under a temporary resident permit issued or on a minister's permit; she had no status in Canada and a work permit alone does not confer status in Canada; as her refugee claim was denied she does not meet citizenship status,
- (e) not in the process of having her claim for refugee protection determined as her claim for refugee protection was denied, or
- (f) not subject to a removal order that cannot be executed.

The Reconsideration Decision went on to find that the Appellant was not eligible for Hardship Assistance. (It does not appear from the materials before the Tribunal that there was any application for Hardship Assistance.)

The Appellant filed a Notice of Appeal, signed Sept. 27, 2012, in which she stated that she was looking at Appealing the Immigration Decision and that she had no money to pay rent, eat or obtain legal assistance in her appeal. She was looking for work, but having difficulty due to her lack of English.

The Appellant provided new evidence at the hearing consisting of a sheet of paper setting out a landlord's name, contact info and information regarding her tenancy, and also three receipts from the landlord. As this material is in support of the previous filed material, showing that the Appellant required money to pay rent, it is admitted under S. 22(4)(b) of the Employment and Assistance Act.

At the hearing the Appellant stated she did not believe the decision was correct as she had no money to pay for food or shelter and she was relying on friends for several months to get by. She was told by her lawyer that she would not have to leave Canada for several months. She was able to find a basement suite for rent cheaply, but there were problems with her landlord and she was kicked out. She now has to store her personal belongings in one location while she stays in another. She provided the receipts to show she has paid

these monies. It is very difficult to find work and she has no means to leave the country either. She is aware that other people in her situation have received assistance up until the time they leave the Canada.

When asked the Appellant confirmed that she has not filed an appeal of this matter, she could not afford to, and legal aid denied her assistance. She agreed that on July 31 her refugee claim was denied and that there was an order in place for her to leave Canada.

The Ministry reviewed the decision setting out the legislative requirements under sec. 7 and the reason for the denial of IA. They confirmed their position that the Appellant did not qualify as she did not meet the requirements of sec. 7. The ministry added that it may very well be that some people are receiving assistance up to the time they leave Canada as the ministry is not always informed of the status of their refugee claims.

When asked the ministry agreed that there did not appear to be any application for a hardship assistance by the Appellant, only a denial of IA and subsequent appeal of that decision.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably determined the Appellant was not eligible for IA as she did not meet the citizenship requirements of the EAR.

The relevant Legislation is as follows.

Employment and Assistance Act

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

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.

Employment and Assistance Regulation

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.

...

Part 4 — Hardship Assistance

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

(2) A family unit that is eligible for hardship assistance must be provided with hardship assistance

- (a) in accordance with Schedule D,
- (b) only for the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, and
- (c) subject to section 4 (2) of Schedule D, only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance.

(3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in

- (a) section 41, 44 or 46, or
- (b) section 43, unless the source is employment insurance,

is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 consecutive calendar months of receipt.

[en. B.C. Reg. 161/2004, s. 1; am. B.C. Regs. 304/2005, s. 6; 102/2008, s. 1.]

Rules about applications, payments, etc.

40 Subject to this Part, the following sections apply in respect of hardship assistance:

(a) section 4 [*application and applicant orientation requirements*];

(a.1) section 4.1 [*application for income assistance - stage 1*];

(a.2) section 4.2 [*application for income assistance - stage 2*];

(b) section 5 [*applicant requirements*];

(c) section 7 [*citizenship requirements*];

(d) section 8 [*effect of applying for other sources of income*];

(e) section 9 [*requirement to apply for CPP benefits*];

(f) section 10 [*limits on income*];

(g) section 11 [*asset limits*].

[am. B.C. Reg. 313/2007, s. 1 (b).]

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

41 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because of the failure to provide a social insurance number or proof of identity required under section 4.1 (2) (a) (i) or 4.2 (3) (a) if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the social insurance number or proof of identity.

[am. B.C. Reg. 313/2007, s. 1 (c).]

Repealed

42 Repealed. [B.C. Reg. 69/2008, s. 1 (c).]

Applicants who fail to provide sponsorship information

42.1 The minister may provide hardship assistance to the family unit of an applicant described in section 7 (1) (a) or (b) [*citizenship requirements*] that is not eligible for income assistance because of the failure to provide

the information and verifications required under section 4.2 (3) (c) for the minister to determine whether unearned income described in paragraph (v) of the definition in section 1 (1) of "unearned income" is available to the family unit, if

- (a) the minister considers that undue hardship will otherwise occur, and
- (b) the minister is satisfied that the applicant is making every effort to supply the information and verifications.

[en. B.C. Reg. 161/2004, s. 2; am. B.C. Reg. 313/2007, s. 1 (d).]

Applicants who have applied for income from another source

43 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant has applied for income from another source if

- (a) the minister considers that undue hardship will otherwise occur, and
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

Family units that have excess income

44 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the income of the family unit exceeds the limit under section 10 [*limits on income*] if

- (a) the minister considers that undue hardship will otherwise occur,
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- (c) the family unit includes one or more dependent children, and
- (d) the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

Applicant on strike or locked out

45 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant is on strike or locked out if

- (a) the minister considers that undue hardship will otherwise occur,
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, and
- (c) the applicant satisfies the minister that the financial assistance that the applicant who is on strike or locked out is eligible for from his or her trade union, combined with the other resources of the family unit, is

inadequate to meet the basic needs of the family unit.

Family units that have excess assets

46 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the assets of the family unit exceed the applicable limit under section 11 (2) [*asset limits*] if

- (a) the minister considers that undue hardship will otherwise occur,
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- (c) the applicant satisfies the minister that
 - (i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and
 - (ii) every effort has been made and continues to be made to sell the assets, and
- (d) the family unit
 - (i) includes one or more dependent children, or
 - (ii) includes only persons who have reached 65 years of age or persons who have persistent multiple barriers to employment.

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

47 The minister may provide hardship assistance to a family unit that is ineligible or declared ineligible under section 38 [*consequences for conviction, etc. under a former Act*] if

- (a) the family unit includes one or more dependent children,
- (b) the minister considers that undue hardship will otherwise occur, and
- (c) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

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

47.1 (1) In the circumstances described in subsection (2), the minister may provide hardship assistance to a family unit that under section 15 (5) (a) [*consequences for conviction or judgment in relation to Act*] of the Act is not eligible for income assistance because it includes only

- (a) persons convicted of an offence under the *Criminal Code*, this Act or the *Employment and Assistance for Persons with Disabilities Act* in relation to obtaining money under this Act or the *Employment and Assistance*

for *Persons with Disabilities Act* by fraud or false or misleading representation,

(b) persons convicted of an offence under this Act or the *Employment and Assistance for Persons with Disabilities Act*, or

(c) persons in respect of whom

(i) a court has given judgment in favour of the government in an action for debt for obtaining income assistance, hardship assistance or a supplement under this Act or disability assistance, hardship assistance or a supplement under the *Employment and Assistance for Persons with Disabilities Act*, for which he or she was not eligible, and

(ii) the minister has made a declaration under section 15 (3) of the Act.

(2) The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise

(a) the family unit will experience undue hardship, and

(b) the physical health of a person in the family unit will be in imminent danger.

The issue is whether the Appellant was properly denied assistance as he did not meet the legislated citizenship requirements under sec. 7(1) of the EAR. The decision found that the Appellant, under 7(1) was:

(a) not a Canadian citizen,

(b) not authorized to take up permanent residence in Canada,

(c) not a convention refugee,

(d) not in Canada under a temporary resident permit issued or on a minister's permit;

(e) not in the process of having his claim for refugee protection determined, or

(f) not subject to a removal order that cannot be executed.

The ministry position is that as the Appellant does not meet the citizenship requirements, she is not eligible for IA. The Appellant's position is that she has no means of support and needs assistance to pay for food and shelter.

There is no evidence before the tribunal that the Appellant fits under any of the requirements of sec. 7(1) of the EAR. The evidence, as confirmed by the Appellant, was that her application for refugee status had been denied and she was subject to an executable removal order. There was no evidence she was a Canadian citizen or a permanent resident. There was no evidence she was a convention refugee or in Canada under a temporary residence permit or minister's permit. She simply had a work permit, which is not one of the exceptions under the Regulation. As such, the panel finds the Appellant is not eligible for IA under the Regulation and the

ministry's decision on this issue is reasonable.

The reconsideration decision also stated the appellant is not eligible for hardship assistance. Under the EAR the applicant must be ineligible for IA for one or more reasons set out in sections 41 to 47.1 The Appellant did not fall under any of those sections as a person who: failed to provide a social insurance number or proof of identity; failed to provide sponsorship information; failed to apply for income from another source; had excess income or assets; was involved in a strike or lockout; or, was ineligible for IA due to a conviction. Previous legislation, sec. 42 of the EAR, repealed in 2008, may have allowed someone in the Appellant's position to apply for hardship assistance, but as the section has been repealed it is no longer available. Further, sec 40(c) of the EAR imports the citizenship requirements of sec. 7, and as found above, the appellant does not meet those requirements. As such, she would not be eligible for hardship assistance and the ministry's decision on this issue is reasonable.

The tribunal finds that the Appellant is not eligible for IA or Hardship Assistance; it confirms the reconsideration decision on this issue, as it is reasonably supported by the evidence and is a reasonable application of the legislation. The Appellant is not successful in her appeal.