

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 12, 2012 whereby the appellant was found to be ineligible for income assistance as he did not meet the citizen requirements under Section 7 of the Employment and Assistance Regulation (EAR), and does not qualify for the exemption from the citizenship requirements as set out in Section 7.1.

The ministry further found that the appellant was not eligible for hardship assistance under Section 39 of the EAR as he is not ineligible for income assistance for one of the reasons set out in Sections 41 to 47.2 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 7, 7.1, 39, and 41 through 47.2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of the Request for Reconsideration dated September 13, 2012.

The appellant stated that he had not received the Appeal Book as it was sent to his previous residence, from which he was evicted on November 9, 2012. During the hearing, the appellant admitted that he had received "a large booklet" in the mail, which had been confirmed by Canada Post as delivered on November 8, 2012, but he stated that he did not understand what was written because of his poor English language skills. When asked by the panel whether he wished to proceed with the hearing, as translated by the appellant's friend who attended the hearing as his representative, the appellant stated a desire to proceed with the hearing and that he understood the issue to be decided on the appeal.

In his Notice of Appeal, the appellant stated that he disagrees with the ministry's decision because he did not receive a removal Order from Immigration and he is looking at his options for staying in Canada as an immigrant. The appellant stated that he does not have any money for food and shelter. The appellant stated that he is actively looking for employment but has been unsuccessful so far due to lack of English.

At the hearing, the appellant stated that he has been evicted from his last place of residence and he is in a difficult situation. The appellant stated that as far as he knows, he is a refugee. The appellant stated that he has no money for food, he does not have a home or a place to stay and he cannot go to work, so he is beginning to think he would prefer to return to his home country. The appellant stated that he is aware that he was not successful on the hearing, but he has not received a deportation Order yet and until he does receive it, he should be able to eat or have a place to sleep. The appellant stated that he knows that the hearing with Immigration occurred on July 31, 2012, but he does not know the date of removal from Canada. In response to a question, the appellant stated that when he stated that he was looking at his options for remaining in Canada, it was whether he would appeal the decision of Immigration to the Federal Court. The appellant stated that he does not have any children.

The appellant's advocate added that it is a difficult situation for the appellant and his friends who are now having a very bad experience in Canada. They are waiting to receive the date for their removal and they have been evicted from their accommodation, they are going here and there and they have no money for food. The advocate stated that the appellant has been found ineligible for income assistance because of his lack of status in Canada, and he cannot appeal this decision by Immigration because he does not have the funds to do so. The advocate explained that the time period for bringing an appeal had passed, and when the appellant considered requesting an extension of the time period for appeal, he discovered that it was too costly. The advocate stated that the appellant does not have the finances available to appeal.

The ministry's evidence included that the appellant is currently receiving income assistance as a sole recipient with no dependent children. His file opened in June 2009. On August 29, 2012, information was received from Citizenship and Immigration Canada, through the ministry's Immigration liaison, that the appellant is a failed refugee claimant with an enforceable and executable removal Order. The appellant's hearing was held on July 31, 2012 with a negative outcome and the removal is now in force. On September 4, 2012, information was verified with the Immigration liaison that the appellant has an enforceable removal order with no Pre-Removal Risk Assessment (PRRA) available to him and no appeal process in place. At the hearing, the ministry clarified that the Pre-Removal Risk Assessment process is part of the appeal process that allows for a review of the removal Order for a potential stay. This process is available for those from certain listed countries and the appellant's home country is not one of the listed countries so this process is not available to him. The ministry stated that the appellant is eligible for appeal benefits pending the determination of this appeal so that he has some funds at least for his support, as he would only receive an amount for shelter if he had a place of residence.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which concluded that the appellant is ineligible for income assistance as he did not meet the citizen requirements under Section 7 of the Employment and Assistance Regulation (EAR) and he is not eligible for hardship assistance under Section 39 of the EAR as he is not ineligible for income assistance for one of the reasons set out in Sections 41 to 47.2 of the EAR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 7(1) of the EAR provides:

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. . . .

Section 7.1 of the EAR provides:

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.

Section 39(1) of the EAR provides:

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.

Sections 41 through 47.2 of the EAR provide:

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.

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.

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.

Applicants who do not meet work search requirements

- 47.2 (1) The minister may provide hardship assistance to a family unit that is ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1(2)(b)

- respecting the completion of searches for employment, if
- (a) the applicants who submitted the application for income assistance (part 1) form also submit to the minister an application for income assistance (part 2) form that, subject to this section, complies with section 4.2, and
 - (b) the minister considers that
 - (i) any person in the family unit has an immediate need for food or shelter or needs urgent medical attention, and
 - (ii) undue hardship will occur if the hardship assistance is not provided.
- (2) An applicant may submit an application for income assistance (part 2) form under subsection (1)(a) for the purpose of applying for hardship assistance even though the requirements under section 4.1(2)(b) respecting the completion of searches for employment have not been satisfied.

The ministry's position is that the appellant is a failed refugee claimant with an enforceable and executable removal Order and he does not meet any of the citizenship criteria under Section 7 of the EAR. The ministry argues that the exemption set out in Section 7.1 of the EAR came into force as of October 1, 2012 and as the appellant's Request for Reconsideration occurred before October 1, 2012, the new section does not apply. The ministry also argues that Section 7.1 of the EAR applies to sole recipients with dependent children and the appellant has no dependent children. The ministry's position is that not meeting the citizenship requirements is not included as one of the valid reasons for consideration for hardship assistance under sections 39 and 41 through 47.2 of the EAR.

The appellant's position is that he did not receive a removal Order from Immigration and he was looking at his options for staying in Canada as an immigrant. The appellant argues that he does not have any money for food and shelter and that the lack of finances is the reason that he was not able to appeal the Immigration Order. The appellant argues he has not received a deportation Order yet and until he does receive it, he should be able to eat or have a place to sleep.

Pursuant to the citizenship requirements set out in Section 7(1) of the EAR, for a family unit to be eligible for income assistance at least one applicant or recipient in the family unit must fall within one of the categories listed in sub-sections (a) through (f), including being in the process of having his or her claim for refugee protection determined or decided under the *Immigration and Refugee Protection Act (Canada)* [Section 7(1)(e)] or being subject to a removal order under the *Immigration and Refugee Protection Act (Canada)* that cannot be executed. [Section 7(1)(f)]. The panel finds that the appellant's file with the ministry opened in June 2009 and, on August 29, 2012, the ministry received information from Citizenship and Immigration Canada that the appellant is a failed refugee claimant with an enforceable and executable removal Order. The appellant admitted that he is aware that there is a removal Order, that the time period for appeal of the removal Order had expired, and that he does not have the funds available to bring an application to the court requesting an extension of the time for appeal. The ministry confirmed that the process for Pre-Removal Risk Assessment is not available to the appellant because his home country is not one of the eligible countries. The panel finds that the appellant's claim for refugee protection has been determined, that it is no longer "in process", and that the ministry reasonably determined that the appellant does not fall within the category set out in Section 7(1)(e) of the EAR.

The panel finds that it is not disputed that the appellant has an enforceable and executable removal order, with no Pre-Removal Risk Assessment available to him and no appeal in process. The appellant points out the Order has not yet been received by him, but he does not claim that the Order cannot be executed due to a stay or a pending appeal or some other legal bar to enforcing the removal Order. The panel finds that the ministry reasonably concluded that there is an enforceable and executable removal Order and that the appellant does not fall within the category set out in Section 7(1)(f) of the EAR. The appellant's Request for Reconsideration is dated September 13, 2012 and the appellant did not dispute that the exemption set out in Section 7.1 of the EAR does not apply to his reconsideration, as this section of the legislation came into force

as of October 1, 2012. However, the ministry proceeded to consider the applicability of Section 7.1 of the EAR and the panel finds that the ministry reasonably concluded that that since the appellant does not have dependent children, the exemption from the citizenship requirements is not available to him as all the criteria in the section must be met.

Under Section 39 of the EAR, for a family unit to be eligible for hardship assistance, the family unit must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.2 of the EAR and must not be ineligible for income assistance for any other reason. Sections 41 to 47.2 set out a number of reasons that a family unit is not eligible for income assistance, including because of the failure to provide requested information, or for having applied for income from another source or having assets in excess of the legislated limit, or being on strike or lockout, or being under the consequences for conviction or a judgment, and the panel finds that the ministry reasonably determined that these sections do not include ineligibility for income assistance for not meeting the citizenship requirements of Section 7 of the EAR. The ministry also canvassed Section 47.2 of the EAR and, while this section came into force as of October 1, 2012, the panel finds that the ministry reasonably concluded that it does not apply to the appellant in any event as it describes ineligibility for income assistance for not meeting work search requirements and not for failing to meet the citizenship requirements. The panel finds that the ministry reasonably concluded that the appellant is not eligible for hardship assistance under Section 39 of the EAR as he is ineligible for income assistance as a result of another reason, namely for failing to meet the citizenship requirements of section 7 of the EAR, and not as a result of a reason set out in sections 41 to 47.2 of the EAR.

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.