

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of September 18, 2012 in which the ministry determined the appellant is ineligible for income assistance because she had not met the 2-year financial independence criteria under section 8 of the Employment and Assistance Act (EAA) nor any of the exemption categories under Section 18 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Section 8 of the Employment and Assistance Act (EAA)

Section 18 of the Employment and Assistance Regulation (EAR)

PART E – Summary of Facts

The appellant was not in attendance at the oral teleconference hearing. After confirming that the appellant was notified, the hearing proceeded under EAR section 86 (b).

The evidence includes:

• The appellant's Two-Year Independence Assessment, dated September 4, 2012 and signed by the appellant, in which the appellant answered No to all of the following questions:

1. Were you employed for 840 hours in each year of any consecutive two-year period?
2. Was your income from employment at least \$7,000 in each year of any consecutive 2-year period?
3. If you were employed and paid for work performed only for a portion of a consecutive two-year period, for the remaining balance:

a) were you waiting for or receiving benefits under the Employment Insurance Act (Canada)?
OR

b) were you receiving income under a private or public income replacement plan?

Other (Complete only if ALL answers to questions 1-3 are NO.)

4. Are you pregnant?
5. Do you have a medical condition?
6. Have you been supported by an employed spouse for a consecutive two-year period?

If less than two years, for the remaining balance:

- a) Were you working?
- b) Were you waiting for or receiving benefits under the Employment Insurance Act (Canada)? OR
- c) Were you receiving income under a private income replacement plan?

7. In the past two years, were you incarcerated in a lawful place of confinement for a total of six months?

8. When you turned 19 years of age:

- a) Were you in the care of the Ministry of Children and Family Development? OR
- b) Had you entered into a youth agreement?

9. In the past six months, from the date of this application, did you separate from an abusive spouse, or leave an abusive relative?

10. Have you been granted a two-year certificate diploma, or a bachelor's degree (or higher) from a post secondary institution?

11. Are you providing care for a child under the *Child, Family and Community Act*?

12. Are you receiving assistance for a child who resides with you under an agreement under the Child in the Home of a Relative Program?

- The appellant's Reason for Request for Reconsideration, dated September 6, 2012, in which the appellant states she is having a hard time trying to find work and is looking for help to pay her rent until she finds work.
- The ministry's reconsideration decision, dated September 18, 2012, which states that the appellant is not currently in receipt of income assistance and summarizes the appellant's answers to the 12 questions in the Two-Year Independence Assessment as indicated above.
- The appellant's Reasons for Appeal, dated September 24, 2012, in which she again states that she is looking for help to be able to pay rent until January.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision that the appellant is ineligible for income assistance was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined the appellant is ineligible for income assistance because she had not met the 2-year financial independence criteria under section 8 of the Employment and Assistance Act (EAA) nor any of the exemption categories under Section 18 of the Employment and Assistance Regulation (EAR).

EAA Section 8: Requirement for 2 years employment

8 (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have

(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.

(2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

EAR Section 18 Requirement for 2 years employment

18 (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.

(2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7 000 in each of the 2 consecutive years.

(3) Section 8 of the Act 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) applicants who have a child in the home of a relative;
- (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 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*.

(4) Section 8 of the Act does not apply to the 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.

[am. B.C. Regs. 331/2003, s. 1; 304/2005, s. 4; 279/2009; 48/2010, Sch. 1, s. 1 (b).]

The ministry's position is that the appellant signed a Two-year Independence Assessment in which she answered "no" to all questions in the assessment. She therefore did not meet the criteria under Section 8 of the EAR nor any of the exemption categories under Section 18 of the EAR and is therefore not eligible for income assistance.

The ministry points out that in order to meet the criteria under section 8(1) and 8(2) of the EAA, which is further defined in section 18 of the EAR, the appellant must have been in paid employment for at least 840 hours or have earned at least \$7000 in each of 2 consecutive years. The ministry notes that the appellant indicated in her assessment that she does not meet these criteria.

The panel finds that in answering "no" to questions 1 and 2 on the Two-Year Independence Assessment the appellant indicated that she was not in paid employment for at least 840 hours and did not earn at least \$7000 in each of 2 consecutive years. Therefore the panel find that the ministry's determination that the appellant did not meet the criteria under section 8(1) and 8(2) of the EAA, which is further defined in section 18 of the EAR, was reasonable.

Further, the ministry states that because the appellant answered "no" in the Two-Year Independence Assessment to all the questions related to exemption categories, the appellant does not meet the criteria of section 18(3) of the EAR.

The panel finds that in answering "no" to questions 4 to 12 on the Two-Year Independence Assessment the appellant indicated that she did not meet any of the exemptions under section 18(3) of the EAR. Therefore the panel finds that the ministry's determination that the appellant did not meet the criteria under section 18(3) of the EAR was reasonable.

The ministry also determined that the appellant does not meet the criteria of section 18(4) of the EAR. The ministry's position is that the appellant did not indicate that she is or was unable to accept, maintain or search for employment.

The appellant's position, as stated in her Reason for Request for Reconsideration, is that she is having a hard time finding work and she is looking for help to pay rent until she finds work.

The panel notes that section 18(4) of the EAR states that section 8 of the EAA does not apply to the 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.

With respect to section 18(4)(a) of the EAR the panel notes that there is no evidence that the appellant is or was unable to accept, maintain or search for employment due to circumstances beyond her control.

The panel notes that the ministry in its reconsideration decision does not provide an opinion with respect to section 18(4)(b) of the EAR, though it does refer to the undue hardship subsection. However, the panel notes that although the appellant indicated she needs help to pay her rent until she finds work, there is no evidence that she will experience undue hardship if she does not receive assistance.

Therefore, given the panel's findings with respect to section 18(4)(a) and (b), the panel finds that the ministry's determination that the appellant does not meet the criteria of section 18(4) of the EAR is reasonable.

The panel finds that the ministry's determination that the appellant does not meet the criteria under section 8(1) and 8(2) of the EAA, and sections 18 (1)-(4) of the EAR was reasonable. The panel therefore finds that the ministry's determination that the appellant is not eligible for income assistance is reasonably supported by the evidence and confirms the ministry's decision.