

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of November 13, 2012 of the Ministry of Social Development (the "Ministry") which determined that the Appellant was ineligible for income assistance ("IA") because the Ministry found that the Appellant had not met the two-year financial independence requirement under s. 8(1) of the EAA, nor had he met any of the exemption categories under section 18 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act ("EAA") Sections 1, 8 and 24

Employment and Assistance Regulation ("EAR") Sections 1 and 18.

PART E – Summary of Facts

This was a written hearing.

The Appellant did not provide any written submissions to support his Notice of Appeal dated November 13, 2012.

Information provided to the Panel indicated that there would be no submission provided by the Ministry, as it was relying solely on its Reconsideration Decision dated November 13, 2012. ("RD")

The evidence before the Ministry at reconsideration was:

- Appellant's Request for Reconsideration (4 pages) dated October 23, 2012 ("RR"), which sets out the initial denial by the Ministry for eligibility, (Section 2) and the Appellant's reasons for requesting reconsideration (Section 3),
- Application for Income Assistance (Part 2) signed by Appellant and dated October 17, 2012 (5 pages),
- Two Year Independence Assessment signed by Appellant and dated October 17, 2012 (2 pages),
- Interim Provincial Court Order re access to daughter by Appellant dated December 5, 2011 (1 page),
- Final Provincial Court Order re access to daughter by Appellant dated March 6, 2012 (1 page),
- Decision Report prepared by Ministry dated October 18, 2012 (14 pages), and
- Custody Agreement between Appellant and the mother of his daughter dated November 7, 2012 (1 page) ("CA").

The evidence of the Appellant in the RR was that:

- He had his daughter for three days a week.
- If he loses his residence, he will lose custody of his daughter.
- He is actively looking for work and has submitted his resume to no fewer than six businesses.

The evidence of the Appellant in the Application for Income Assistance was that:

- He worked only seasonally.
- He did not have an immediate need for shelter nor urgent medical attention.
- The rent he pays is not shared.
- He lists his daughter as a dependent.

The evidence of the Appellant in the Two Year Independence Assessment was that:

- His described medical condition of ADHD does not prevent him from working.
- He was in the care of the Ministry of Children and Family Development when he turned 19 years of age.

The evidence of the Appellant in both the Interim and Final Court Orders was that:

- He had custody of his daughter less than 50% of the time.

The evidence of the Appellant in the more recent CA was that:

- He had custody of his daughter 50% of the time.

The evidence of the Appellant in the Notice of Appeal was that:

- He has his daughter half and half with her mother.
- He needs a place to live in order to raise his daughter.
- He had been on welfare; found a job, which he believed to be full time, and then the business shut down.

The evidence of the Ministry in the Decision Report was that:

- The Appellant has not completed a search for employment as directed by the Minister and is not exempt from this work search requirement.
- The Appellant's daughter is not a dependent child.
- The Appellant does not satisfy any exemption set out in section 18 of the EAR.

The evidence of the Ministry in the RD was that:

- The Appellant acknowledged that he did not meet the 2-year financial independence requirement under EAA section 8(1).

- The Appellant has not provided any documentation to establish that his medical condition recently or currently precludes him from employment.
- The Appellant has not provided any documentation to establish that he was in the care of the Ministry of Children and Family Development ("MCFD") when he turned 19 years of age and the Appellant's mother advised the Ministry that the Appellant was not in care.
- The Appellant provided a CA signed by the mother of his daughter stating that he has his daughter for 50% of the time.
- The Appellant has provided no evidence to establish that he meets any of the exemption criteria in EAR s. 18.
- The Appellant has provided no evidence to establish that there are circumstances beyond his control preventing him from accepting and maintaining employment.

The Panel finds that:

- It was not disputed that the Appellant was not employed for remuneration for at least 840 hours nor did he earn at least \$7,000 in each of two consecutive years
- The Appellant has custody of his daughter 50% of the time.
- The Appellant was not in the care of the MCFD when he turned 19 years of age.
- The Appellant does not have a medical condition which prevents him from working.

PART F – Reasons for Panel Decision

The issue to be decided is the reasonableness of the Ministry's reconsideration decision which concluded that the Appellant was not eligible for income assistance under section 8 of the EAA.

Sections 1 and 8 of the EAA and sections 1 and 18 of the EAR provide as follows:

Employment and Assistance Act – Section 1

Interpretation

"dependant child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2).

Employment and Assistance Act -- 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.

Employment and Assistance Regulation – Sections 1 and 18

Definitions

- 1 (2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under:
- (a) an order of a court in British Columbia,
 - (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
 - (c) an agreement filed in a court in British Columbia,
- the child is a dependant child of the parent who is designated in writing by both parents.

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) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
 - (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.

Given that the parties have concluded that the Appellant does not meet the criteria under section 8(1), the focus of the argument by the parties is whether there is any applicable exemption which would exempt him from the two-year independence requirement altogether.

The Appellant argues firstly that section 18(3)(d) of the EAR which requires that he have a dependent child applies in his circumstance as follows:

- His daughter is a dependent child and that he is responsible for her 50% of the time by mutual agreement with her mother as evidenced by the CA;
- He needs to receive IA in order to afford a place to live and to provide a home for his daughter.
- He is concerned that if he loses his place of residence he will then lose custody of his daughter through MCFD.
- He is trying to do right by his daughter and is fighting for the opportunity to bring her up properly.

The Ministry argues that although the Appellant has established that he has custody of his daughter 50% of the time, section 1 of the Regulation requires that a dependent child lives with their parent for more than 50% of the time. This however is not what section 1 of the EAR states, rather section 1(2) deals with the application of a dependent child for the purposes of the EAA and the EAR and provides that if a child resides with each parent for 50% of each month under (a) an order of a court of British Columbia, (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or (c) an agreement filed in a court in British Columbia, then the child is a dependent child of the parent who is designated in writing by both parents. The Panel suspects that the Reconsideration Officer meant to reference section 1 of the EAA rather than the EAR but the Ministry's stated reliance on this particular section of the EAR while referencing a different section of the EAA means the RD cannot be confirmed. While the CA provided on this appeal does not appear to be filed with the court and a written designation by both parents of the daughter as a dependant of the Appellant has not been provided, as required by section 1(2) of the EAR, the Panel finds that the requirements to meet the prescribed definition of "dependent child" have not been properly set out by the Ministry in order to afford the Appellant an opportunity to respond to these issues on the appeal.

The Panel finds that the Ministry's reference to incorrect provisions of a section of the EAR in its reconsideration decision is confusing and does not properly describe the requirements to meet the prescribed definition of "dependent child" and was not a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The Appellant argues secondly that section 18(4) of the EAR, which allows the minister to waive the two-year financial independence requirement if the minister is satisfied that due to circumstances beyond the Appellant's control, the Appellant has been prevented from searching for, accepting or continuing employment, and the family unit will otherwise experience undue hardship if not assisted, applies in his circumstance as follows:

- He acknowledges that he is not prevented from searching for work, for he has tried on every occasion to find employment as evidenced by his submission of resumes to numerous businesses.
- He is doing his best to find work and will continue to put his resumes out.
- He acknowledges that he is not prevented from accepting work, except for the fact there have been virtually no offers.
- He acknowledges that he was prevented from continuing work, for when he finally secured work at a store, the store closed down which was entirely beyond his control and put him in a difficult position.
- He needs to receive IA in order to afford place to live and to provide a home for his daughter.

- He is concerned about not having a place to live in the winter weather.

The Ministry argues that section 18(4) which allows the minister to waive the two-year financial requirement does not apply as the Appellant has failed to establish that circumstances beyond his control prevent him searching, accepting or continuing employment and that his family unit would otherwise experience undue hardship.

Although the Appellant may have established both a difficulty in being able to secure full or part time employment despite his efforts and a degree of undue hardship, the Panel finds that the Ministry's decision regarding section 18(4) of the EAR was reasonably supported by the evidence.

Overall, the Panel finds that the Ministry's reconsideration decision did not properly consider an exemption to the two-year financial independence requirement and was, therefore, not a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and rescinds the Ministry's decision.