

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development ("ministry") reconsideration decision dated January 22, 2013 which held that the Appellant was not eligible for Income Assistance because he:

- did not meet the financial independence requirement of 2 years; nor did he,
- fit any of the exemption criteria relevant to that requirement.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), Section 8  
Employment and Assistance Regulation (EAR), Section 18

## PART E – Summary of Facts

The evidence before the Ministry at Reconsideration included the following:

- A Ministry of Social Development Two Year Independence Assessment filled out by the Applicant on December 6, 2012.
- An Application for Income Assistance (Part 1) and (Part 2) filled out by the Appellant on December 6, 2012.
- A Request for Reconsideration signed by the Appellant dated January 15, 2013.
- An Employment and Assistance Reconsideration Decision dated January 22, 2013.
- Correspondence, from a Ministry Reconsideration Officer dated January 22, 2013, informing the Applicant of the Ministry's reconsideration decision.
- A 10 Day Notice to End Tenancy to the Appellant from the Appellant's landlord dated February 1, 2013.
- A Notice of Appeal dated February 1, 2013.

At the hearing, the Ministry submitted additional documentary evidence which consisted of a copy of Ministry policy entitled: Application for Discretion dated December 1, 2009.

At the hearing, the Appellant confirmed he had no objection to the Ministry's submission of this document to the panel.

The Panel accepted the document as admissible to the Panel under Section 22(4) of the Employment and Assistance Act (EAA) because the written evidence is in support of the information and records that were before the Minister when the Reconsideration Decision was made.

### FINDINGS of FACT:

At the hearing, the Appellant provided the following evidence:

- He had been residing on First Nations Reserve land and attending a Life Skills Program prior to October 2012.
- His prospect for employment on the Reserve was low; therefore, he chose to move off of the Reserve to a non reserve community.
- He had been in receipt of Band Assistance prior to his move in October 2012.
- That he has been separated from his spouse since July, 2012 and has no dependents.
- That he has been residing with his roommate and is responsible for sharing the cost of rent, hydro and food.
- That he has found it increasingly difficult to pay his shelter and food costs because he has no other source of financial help.
- That he has tried to make some money by cutting wood and selling it, shoveling snow from roofs and driveways and, doing odd jobs for cash. To date, it has not worked out well and he has not been able to keep up with his living expenses.
- That he recently received an eviction notice from his Landlord because he has unpaid rent due.

- He has had a historical problem with alcohol; however, he attends AA as often as he can to make his life better.
- He has been sick and has had no money to buy medicine or food and now he will not have a place to live because of his impending eviction; and, this is why he needs income assistance.

At the hearing, the Ministry provided the following evidence:

- The Ministry, as part of determining eligibility for income assistance, requires an applicant to meet a two year requirement for employment or financial independence; and, usually this process is aimed at a younger demographic of employable adults.
- Upon applying for Income Assistance, the Appellant was not able to confirm that he met the two year financial independence criteria; consequently, the Ministry determined that he was not eligible for income assistance.
- The Ministry referred to the Application for Discretion policy information submitted at the start of the hearing and indicated that the Appellant may have, after all, been exempt from the two year requirement for financial independence because of said policy.
- The Ministry stated that initially, it appeared the Appellant was not eligible for any of the exemptions to the requirement for two years of financial independence; however, upon closer review of the Appellant's application as it related to the abovementioned policy, it came to light that the Ministry should have assessed the Appellant's circumstances more fully at the time of his application for IA. Had they done so, they would have cued to the need for exercising more discretion with respect to the Appellant's application.
- The Ministry expanded on this by stating: The Application for Discretion Policy outlines specific situations, which are considered, by the Ministry, to be beyond an Applicant's control, where they may be exempt from the requirement of having to be financially independent two years prior. In the Appellant's situation, he had been residing, on a First Nations' Reserve, with little to no employment opportunities available to him. This resulted in him having to rely on government or Band financial assistance. According to the Discretion Policy and the examples cited therein, the Ministry is of the current opinion, that the Appellant would not have been able to achieve financial independence the two years prior to his application.
- The Ministry concluded their submission indicating that if the Ministry had applied more discretion in assessing the Appellant's case, the Appellant would have been eligible for Income Assistance at the time he applied.

The Panel finds that with respect to the Appellant's requirement for two years employment or financial independence:

- The appellant did not provide information that supported he had been employed for remuneration for at least 840 hours in each of the 2 consecutive years; Sec. 18(1)
- The appellant could not provide information in support of him earning remuneration in the amount of \$7000 in each of the 2 consecutive years; Sec. 18(2)
- The appellant is not under the age of 19; Sec. 18 (3)(a)
- The appellant is not pregnant; Sec. 18(3)(b)
- The appellant does not have a medical condition that precludes their ability to work; Sec. 18 (3) (c)

APPEAL #

- The appellant does not have dependent or foster children; Sec. 18 (3) (d) (f)
- The appellant has not been supported by a spouse for the last two years; Sec.18 (3) (g) (h)
- The appellant has not been incarcerated; Sec. 18 (3) (i)
- The appellant is not separating from an abusive spouse, or fleeing an abusive situation; Sec 18 (3) (k)
- The appellant has not be awarded a 2 year diploma, certificate or degree from a post secondary school; Sec. 18 (3) (l)
- The appellant does not have persistent multiple barriers to employment; Sec. 18 (3) (m)
- The appellant has not been providing care for an ill spouse. Sec 18 (3) (n)
- The Appellant, at the time of his application for Income Assistance, was situated in circumstances beyond his control in that he had a long term dependency on government assistance (Band Assistance). Furthermore, by residing on the First Nations' Reserve location, the locale did not offer the Appellant opportunities for employment so that he could achieve financial independence. Sec. 18(4)

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's Reconsideration Decision dated January 22, 2013 where the Ministry denied the Appellant's eligibility for Income Assistance because it determined that he:

- did not meet the financial independence requirement of 2 years; nor did he,
- fit any of the exemption criterion outlined in Section 18(3) and (4).

The legislation provides:

### 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.

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

Further to the Ministry Representative's submission at the hearing; and, also supported by documentary evidence presented at the hearing, the Panel sees no reference or indication that the Ministry had referred the Appellant's initial application information to a District Supervisor in order to determine if an Application for Discretion applied in this case. The Application for Discretion Policy presented clearly outlines examples of how the Ministry might have exercised discretion when applying the requirement of the 2 year financial independence to the Appellant.

While the Panel finds the Appellant did not meet the exemption criteria in Section 18(3) of the EAR, it does find the Appellant, when considered in light of the examples noted in the Application for Discretion, did meet the exemption outlined in Section 18(4) of the legislation in that due to circumstances beyond his control the Appellant has been prevented from searching for, accepting or continuing employment and could not have achieved financial independence prior to applying for income assistance, and the Appellant has experienced undue hardship as a result.

The Panel finds the Ministry's determination in the Reconsideration decision dated January 22, 2013, was not a reasonable application of the applicable enactment in the circumstances of the Appellant and rescinds the decision.