

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated January 14, 2013 which held that the appellant is not eligible for income assistance pursuant to Section 16 of the Employment and Assistance Regulation (EAR) since he is enrolled as a full-time student in a funded program of studies.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 16(1) and (2) and Section 1- Definitions
Canada Student Financial Assistance Regulations (CSFAR), Section 2- Definitions

PART E – Summary of Facts

With the consent of the parties this appeal was conducted in writing in accordance with s. 22(3)(b) of the Employment and Assistance Act (EAA).

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Application for Admission/ Student Enrolment Contract dated June 26, 2012 between the appellant and a College for admission into its Diploma in Immigration and Consultant program ("the Program") for a total fee of \$4,900 for September 17, 2012 through January 15, 2013;
- 2) Notification of Assessment dated July 10, 2012 stating in part that the appellant is eligible to receive \$5,440 composed of \$1,870 in BC student loan and \$3,570 in Canada student loan and that his unmet need is \$4,525;
- 3) Online Bookstore Order dated September 4, 2012 for books totaling \$267.79;
- 4) Letter dated October 10, 2012 from the ministry to the appellant stating in part that the income assistance cheque for October 24, 2012 will be held until all documentation and information regarding his schooling has been received;
- 5) Payment History dated October 18, 2012 indicating \$150 paid as a first deposit on June 27, 2012 and \$5,100 paid by student loan on September 17, 2012;
- 6) Letter dated October 19, 2012 from the College 'To Whom It May Concern' confirming that the appellant is registered as a full-time student in the Program at the College. He commenced studies on September 17, 2012 and anticipated completion is January 15, 2013;
- 7) Receipt dated October 22, 2012 from the College for \$150 in application fee, \$4,900 in tuition fees, \$267.79 for text books and \$200 in student material fees;
- 8) Letter dated October 22, 2012 from the appellant to the ministry stating in part that the requested documents are enclosed, including a letter with his enrollment details with the College, the receipts from the College for payment of the tuition and for books, a copy of the student loan documentation. The appellant stated that he is attending the program on a full-time basis every day from 8:30 a.m. to 12:30 p.m. so that he might increase his employability opportunities and, after school, he is actively searching for work; and,
- 9) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided a written submission dated January 22, 2013 regarding the circumstances surrounding his enrolment in the College. The panel accepted the submission as argument containing no new evidence.

In his Request for Reconsideration, the appellant stated that at the beginning of 2012 he was involved with a service provider of the ministry to increase his employability skills and to find employment through career counseling. The appellant stated that although he has a master's degree from a BC university he has been unable to find employment and he requires further training. The appellant was advised by the service provider to seek other sources of funding because it does not have the funding for training. The appellant obtained a student loan from the BC government to cover his tuition fees for an immigration diploma. The appellant stated that he notified both the service provider and the ministry that he was enrolled in the Program. The appellant stated that an investigative officer with the ministry reviewed his file and the documents he provided regarding his schooling and told him that he would receive income assistance since he was not receiving a living allowance from his student loan and the training would make him more employable. The appellant stated that the student loan was spent on tuition fees and he did not receive a living allowance. He sought support from financial institutions but was denied funds so he had no other choice but to seek the support of the government through income assistance. The appellant stated that the reason he is attending the Program is to increase his employability options. He only attends school from 8:30 a.m. until 12:30 p.m. and he is currently actively searching for work.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision. The decision did not properly consider the fact that he attended the 4 month professional diploma Program

from September 17, 2012 until January 15, 2013 so he would increase his employability options. The schooling was part of his active job search plan and he continued to search for work while attending school.

In his submission dated January 22, 2013, the appellant added that in assessing his school enrolment and the circumstances of his financial disadvantage, the ministry reconsideration decision should have been more than a plain, literal representation of the BC legislation. He stated that, by denying him vital income assistance, he believes the ministry is punishing him for trying to improve his skills. He stated that the most important reason for enrolling in the Program was that he was not receiving support or training from the ministry's service provider that would help him to obtain employment.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant is not eligible for income assistance, pursuant to Section 16 of the Employment and Assistance Regulation (EAR), since he is enrolled as a full-time student in a funded program of studies.

Effect of family unit including full-time student

- 16 (1) A family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student
- (a) in a funded program of studies, or
 - (b) in an unfunded program of studies without the prior approval of the minister.
- (2) The period referred to in subsection (1)
- (a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and
 - (b) is not longer than one year.

Section 1 of the EAR:

"full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

"funded program of studies" means a program of studies for which student financial assistance may be provided to a student enrolled in it;

Canada Student Financial Assistance Regulations (CSFAR)

"full-time student"

"full-time student" means a person

- (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute
 - (i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
 - (ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,
- (b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and
- (c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be.

Pursuant to Section 16(1) of the EAR, a family unit is not eligible for income assistance for a defined period if an applicant or a recipient is enrolled as a full-time student in a funded program of studies or in an unfunded program of studies without the ministry's prior approval. "Full-time student" is defined in Section 1 of the EAR as having the same meaning as that defined in the Canada Student Financial Assistance Regulations (Canada) as "...a person (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute (i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or (ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case, (b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies of those courses, and (c) who complies with the requirements of subsection 5(1), 6(1) or 7(1) or section 33, as the case may be.

Section 1 of the EAR also defines "funded program of studies" as a program of studies for which student financial assistance may be provided to a student enrolled in it. Section 16(2) of the EAR provides that the defined period of ineligibility for income assistance extends from the first day of the month following the month

in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held and is not longer than one year.

The ministry's position is that the appellant was enrolled as a full-time student in a funded program of studies from September 17, 2012 to January 15, 2013 and that he is, therefore, ineligible for income assistance for the period from October 1, 2012 through January 31, 2013, under Section 16 of the EAR. The ministry points out that the College outlined in a letter that the appellant is registered as a full-time student in the Program. The ministry argues that the Program is a fundable program of studies through Student Loans BC, and it, therefore, fits the definition of a funded program of studies under Section 1 of the EAR.

The appellant does not dispute that he was registered as a full-time student in the Program which runs from September 17, 2012 through January 15, 2013. The appellant argues that he attended the 4 month professional diploma program so he would increase his employability options, that the schooling was part of his active job search plan, and he continued to search for work while attending school. The appellant points out that he only attended school from 8:30 a.m. until 12:30 p.m. and he also actively searched for work. The appellant also does not dispute that he obtained a student loan from the BC government to cover his tuition fees. The appellant argues that the ministry told him that he would receive income assistance since he was not receiving a living allowance from his student loan and the training would make him more employable. The appellant argues that the student loan was spent on tuition fees and he did not receive a living allowance.

The panel finds that the appellant was enrolled as a full-time student in a program of studies for a Program diploma which runs from September 17, 2012 to January 15, 2013. The appellant provided some evidence that the schooling was part of his overall job search plan and, in his letter dated October 22, 2012 to the ministry, he stated that he is attending the program every day from 8:30 a.m. to 12:30 p.m. and that, after school, he is actively searching for work. Part of the definition of full-time student, as set out in the CSFR, means a person whose 'primary occupation' during the confirmed periods within that period of studies is the pursuit of studies in those courses. There was no detail provided by the appellant about the amount of time he spent each day actively searching for work, whether it was more than the time spent in class and doing class work, and the details of his activities considered to be part of his job search plan and the panel, therefore, finds that insufficient evidence was provided to establish that the appellant's 'primary occupation' was other than the pursuit of studies in the Program.

The appellant does not dispute that he obtained funding from a BC student loan for his program of studies but argues that the ministry told him that he could still receive income assistance since he was not receiving a living allowance from his student loan. The appellant argues that the student loan was spent on tuition fees and he did not receive a living allowance. However, the definition of "funded program of studies" means a program for which student financial assistance 'may' be provided to a student enrolled in it and the panel finds that the definition does not make a distinction based on the purpose for the student financial assistance, whether for tuition or a living allowance, and does not require that the student actually be in receipt of any funds. The panel finds that the ministry has reasonably concluded that Section 16 of the EAR applies in the appellant's circumstances and that the appellant is, therefore, not eligible for income assistance for the prescribed period.

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