

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of April 11, 2013 in which the ministry discontinued the appellant's income assistance on the basis that he no longer met the citizenship requirements set out in s. 7 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 2 (eligibility of family unit) s. 4 (income assistance and supplements).

EAR, s. 7 (citizenship requirements)]

PART E – Summary of Facts

The appellant did not attend the appeal hearing. After confirming that the appellant had been notified, the hearing proceeded in accordance with s. 86(b) of the EAR.

The information before the ministry at the time of reconsideration included the following:

- A Request for Reconsideration signed by the appellant on March 21, 2014. The appellant wrote that on October 18, 2012, he made an application for leave and for judicial review after his refugee application was denied and that he has not received any correspondence from the Federal Court or Immigration Canada.
- An Application for Leave and for Judicial Review dated October 18, 2012 in which the appellant sought leave of the court to commence an application for judicial review of the decision of the Immigration and Refugee Board of Canada.
- A report from the Immigration Canada confirming that the appellant's removal order is both in force and enforceable dated March 7, 2013.

The appellant, in the Notice of Appeal dated April 29, 2013 wrote that he disagrees with the ministry's decision because it does not include any proof from the Immigration regarding an "Enforceable Deport Order".

At the appeal hearing the ministry relied on its reconsideration decision. The ministry submitted that the appellant was in receipt of income assistance since May 2009. The ministry discontinued his income assistance when the appellant's claim for refugee protection was denied and that the appellant received an enforceable deportation order effective October 18, 2012. The appellant filed for judicial review and as such his assistance was continued pending the outcome of the court. On March 7, 2013, the ministry received information from Canada Immigration indicating that the appellant's removal order was both in force and enforceable.

The appellant, in the request for reconsideration, submitted that he has not received any information from the Federal Court of Canada. In the Notice of Appeal, the appellant submitted that the ministry did not include any proof from Immigration regarding the "enforceable deport order".

PART F – Reasons for Panel Decision

The issue to be decided is the reasonableness of the ministry's reconsideration decision of April 11, 2013 which denied income assistance on the basis that the appellant no longer met the citizenship requirements set out in s. 7 of the EAR.

The relevant legislation is as follows:

EAA

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act...

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it...

EAR

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.

(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 each person in the family unit who is

(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 residence 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),

(f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed, or

(g) a dependent child.

The ministry's position, as set out in its reconsideration decision, is that the appellant does not satisfy the statutory citizenship requirements of EAR s. 7 as he is not a Canadian citizen and no longer has any status in Canada.

The appellant's position, as set out in his submission in the request for reconsideration and the Notice of Appeal, is that he has not received any correspondence from the Federal Court and that the ministry does not have any proof regarding his deportation order.

Panel Decision

The evidence demonstrates that the appellant does not satisfy the citizenship requirement of EAR s 7. The appellant is not a Canadian citizen, there is no evidence that he is authorized to take up permanent residence in Canada and he has been determined not to be a Convention refugee. The panel notes that the appellant's claim for refugee protection was adjudicated and that his application for judicial review was denied. The panel further notes that the Canada Border Service Agency (CBSA) has confirmed that the appellant's removal order is both in force and enforceable – the stay no longer applies.

Accordingly, the panel finds that the ministry's decision that the appellant does not satisfy the citizenship requirements of EAR s. 7 is reasonably supported by the evidence.

Conclusion

Based on the foregoing analysis, the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence, and is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision.