

PART C – Decision under Appeal

The Decision under Appeal is the Reconsideration Decision dated March 18, 2013 where the Ministry found that the Appellant was not eligible for Income Assistance (IA) as she did not meet the citizenship requirements of the Employment and Assistance Regulation, Section 7, because her refugee claim had been denied by Immigration Canada and she has an enforceable removal order. The Ministry also found that the appellant would not qualify for Hardship assistance under Sec. 5 (1) of the Employment and Assistance Act.

PART D – Relevant Legislation

EAA	Employment and Assistance Act, Sections 2, 4 and 5.
EAR	Employment and Assistance Regulation, Sections 7, 39, and 41- 47.1

PART E – Summary of Facts

The evidence before the ministry showed the appellant was in receipt of IA since September 2009 when the appellant applied for Income Assistance and submitted an IMM 1442 document from Citizenship and Immigration Canada confirming her as a Refugee Protection Claimant. On October 01, 2012 the ministry received information from Immigration Canada that the appellant's refugee claim was denied and an unenforceable removal order was issued. October 18, 2012 the appellant had submitted an application for a judicial review to the Federal Court against denial of her refugee claim. On October 25, 2012 the appellant submitted copies of court documents to the Ministry showing a judicial review under process. On November 21, 2012 the Ministry received information from Immigration Canada that the removal order was stayed due to the appeal that the appellant had submitted. On March 08, 2013 Immigration Canada confirmed that the appellant's refugee claim was denied and an enforceable removal order was now in place. On March 15, 2013 the ministry contacted the appellant and advised that the appellant was no longer eligible for income assistance because of the enforceable removal order. The ministry advised the appellant to contact Immigration Canada for further information.

On March 19 the appellant asked the ministry for a reconsideration stating that she had appealed to the federal court on Oct. 18 and had not received any correspondence from the court or Immigration since then. She asked for reconsideration on humanitarian grounds as she and her children would "go to the street."

The Reconsideration Decision found that the Appellant was not eligible for IA as she did not meet the citizenship requirements of the EAR, Section 7. Further, the decision also found the appellant was not eligible for any hardship assistance under the Act. It was again recommended that she contact Immigration if she did not have a copy of the final appeal decision.

The Appellant filed a Notice of Appeal, on April 04, 2013 where the appellant stated that she disagreed with the ministry's reconsideration decision in view of the fact that the ministry did not include any proof from Immigration Canada regarding an enforceable deportation order.

At the tribunal hearing the appellant attended with a friend who acted as a translator for her.

At the hearing the Appellant stated that her refugee claim had been denied and that she appealed to the Federal Court. She would like to go further with an appeal. She believes there is a further appeal through a third party she believes is called PRA. She was told that as she has three minor children she can apply thru PRA up to a year after the denial of her refugee claim. She wishes to stay in Canada. She has requested from the ministry a copy of her deportation order and as far as she knows she has no such order. The appellant did not ask Immigration for this information. If she is cut off IA she does not know how she will feed her children. The appellant acknowledged that she had been advised her appeal to the federal court had been denied, but she was not notified of a deportation order. She wants to file within the year through PRA but this has not yet happened. She said she is currently going to school and learning English to find an employment. She does not want to be dependent on income assistance. However, her English is not up to a standard that would obtain her job at this time. She argues that she has not seen an enforceable deportation order, has not been informed of one and that if she does not receive IA she will be on the streets with her kids.

The ministry explained that after the appellant had received income assistance for about 2 years when the ministry's liaison officer from Immigration Canada informed them that the appellant's refugee claim was denied and she had an unenforceable deportation order. The ministry continued to issue benefits to the appellant until March 2013 when the ministry was informed that the appellant was now under an enforceable deportation order. At the hearing on the 26th of April, 2013 ministry's representative said he had contacted the liaison officer on April 25th, 2013 and it was confirmed that the enforceable deportation order issued against the

appellant remained in effect. The ministry stated that they issue IA on a month to month basis as long as eligibility remains. Applicants are advised on their initial application that they must keep the ministry updated on the status of their refugee claims. When asked by the appellant if the ministry had a copy of a deportation order the ministry advised they did not but they accept what the liaison officer tells them is correct. Further, it is the client's obligation to provide appropriate information to the ministry to prove eligibility and this is information the appellant can get from her lawyer or Immigration Canada. The ministry argued the appellant did not qualify as she did not meet the requirements of sec. 7. If there was documentation available to show that the appellant was not under an enforceable removable order she should and could obtain and provide that to the ministry for consideration.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably determined the Appellant was not eligible for IA as she did not meet the citizenship requirements of the EAR and whether she qualified for Hardship Assistance under the EAA.

The relevant Legislation is as follows:

Employment and Assistance Act:

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.

...

Hardship assistance

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Employment and Assistance Regulation:

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.

(3) If a family unit includes a person who is not described in subsection (2),

(a) the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for assistance, except as otherwise provided in this regulation, and

(b) the family unit is not eligible for any income assistance under Schedule A, hardship assistance under Schedule D or supplements under Division 1, 2, 3 or 5 of Part 5 of this regulation on account of or for the use or benefit of that person.

...

Part 4 — Hardship Assistance

Hardship assistance — eligibility and limitations

39 (1) For a family unit to be eligible for hardship assistance, the family unit

- (a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.1, and
 - (b) must not be ineligible for income assistance for any other reason.
- (2) A family unit that is eligible for hardship assistance must be provided with hardship assistance
- (a) in accordance with Schedule D,
 - (b) only for the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, and
 - (c) subject to section 4 (2) of Schedule D, only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance.
- (3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in
- (a) section 41, 44 or 46, or
 - (b) section 43, unless the source is employment insurance,
- is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 consecutive calendar months of receipt.

[en. B.C. Reg. 161/2004, s. 1; am. B.C. Regs. 304/2005, s. 6; 102/2008, s. 1.]

Rules about applications, payments, etc.

40 Subject to this Part, the following sections apply in respect of hardship assistance:

- (a) section 4 [*application and applicant orientation requirements*];
- (a.1) section 4.1 [*application for income assistance - stage 1*];
- (a.2) section 4.2 [*application for income assistance - stage 2*];
- (b) section 5 [*applicant requirements*];
- (c) section 7 [*citizenship requirements*];
- (d) section 8 [*effect of applying for other sources of income*];
- (e) section 9 [*requirement to apply for CPP benefits*];
- (f) section 10 [*limits on income*];
- (g) section 11 [*asset limits*].

[am. B.C. Reg. 313/2007, s. 1 (b).]

Applicants who do not meet requirement for social insurance number or proof of identity

41 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because of the failure to provide a social insurance number or proof of identity required under section 4.1 (2) (a) (i) or 4.2 (3) (a) if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the social insurance number or proof of identity.

[am. B.C. Reg. 313/2007, s. 1 (c).]

Repealed

42 Repealed. [B.C. Reg. 69/2008, s. 1 (c).]

Applicants who fail to provide sponsorship information

42.1 The minister may provide hardship assistance to the family unit of an applicant described in section 7 (1) (a) or (b) [citizenship requirements] that is not eligible for income assistance because of the failure to provide the information and verifications required under section 4.2 (3) (c) for the minister to determine whether unearned income described in paragraph (v) of the definition in section 1 (1) of "unearned income" is available to the family unit, if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the information and verifications.

[en. B.C. Reg. 161/2004, s. 2; am. B.C. Reg. 313/2007, s. 1 (d).]

Applicants who have applied for income from another source

43 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant has applied for income from another source if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

Family units that have excess income

44 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the income of the family unit exceeds the limit under section 10 [limits on income] if

(a) the minister considers that undue hardship will otherwise occur,

(b) the applicant provides the type of security specified by the minister for the repayment of the hardship

assistance,

(c) the family unit includes one or more dependent children, and

(d) the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

Applicant on strike or locked out

45 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because an applicant is on strike or locked out if

(a) the minister considers that undue hardship will otherwise occur,

(b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, and

(c) the applicant satisfies the minister that the financial assistance that the applicant who is on strike or locked out is eligible for from his or her trade union, combined with the other resources of the family unit, is inadequate to meet the basic needs of the family unit.

Family units that have excess assets

46 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the assets of the family unit exceed the applicable limit under section 11 (2) [*asset limits*] if

(a) the minister considers that undue hardship will otherwise occur,

(b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,

(c) the applicant satisfies the minister that

(i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and

(ii) every effort has been made and continues to be made to sell the assets, and

(d) the family unit

(i) includes one or more dependent children, or

(ii) includes only persons who have reached 65 years of age or persons who have persistent multiple barriers to employment.

Family units ineligible or declared ineligible under section 38 [*consequences for conviction, etc. under a former Act*]

47 The minister may provide hardship assistance to a family unit that is ineligible or declared ineligible under

section 38 [consequences for conviction, etc. under a former Act] if

- (a) the family unit includes one or more dependent children,
- (b) the minister considers that undue hardship will otherwise occur, and
- (c) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

Family units ineligible or declared ineligible in relation to convictions or judgments

47.1 (1) In the circumstances described in subsection (2), the minister may provide hardship assistance to a family unit that under section 15 (5) (a) [consequences for conviction or judgment in relation to Act] of the Act is not eligible for income assistance because it includes only

- (a) persons convicted of an offence under the Criminal Code, this Act or the Employment and Assistance for Persons with Disabilities Act in relation to obtaining money under this Act or the Employment and Assistance for Persons with Disabilities Act by fraud or false or misleading representation,
- (b) persons convicted of an offence under this Act or the Employment and Assistance for Persons with Disabilities Act, or
- (c) persons in respect of whom
 - (i) a court has given judgment in favour of the government in an action for debt for obtaining income assistance, hardship assistance or a supplement under this Act or disability assistance, hardship assistance or a supplement under the Employment and Assistance for Persons with Disabilities Act, for which he or she was not eligible, and
 - (ii) the minister has made a declaration under section 15 (3) of the Act.

(2) The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise

- (a) the family unit will experience undue hardship, and
- (b) the physical health of a person in the family unit will be in imminent danger.

[en. B.C. Reg. 102/2008, s. 2.]

The ministry's position is that the appellant's claim for refugee protection was denied by the Immigration and Refugee Board of Canada and that she has an enforceable deportation order. This results in her not meeting the citizenship requirements under the section 7 of EAR which is pre-requisite for income assistance. Further, she does not qualify for Hardship Assistance. The appellant's position is that she has not received an enforceable removal order and that she has another appeal process she can rely on to stay in Canada. She also pleaded that she has three minor children and if the assistance is denied it means she would end up in the street. The appellant requested the ministry to reconsider the decision on humanitarian ground so that she receives benefits.

There is no evidence before the tribunal that the Appellant fits under any of the requirements of sec. 7(1) of the EAR. The evidence, as confirmed by the Appellant, was that her application for refugee status had been denied. She confirmed that she was aware her file at the federal court had been closed. She had been advised by the ministry to contact Immigration but had not done so. If she was not under an enforceable removal order she could supply documentation to confirm this; she has not done so. Under sec. 7(1) there was no evidence she was a Canadian citizen or a permanent resident. There was no evidence she was a convention refugee or in Canada under a temporary residence permit or minister's permit. She has a work permit but this is not one of the exceptions under the Regulation. The ministry was advised by their liaison officer at Immigration Canada that she was subject to an executable removal order. The appellant, to be eligible for IA, must demonstrate that she qualifies under the legislation; she has not done so. The panel finds the ministry decision that the appellant is not eligible for IA, because she does not meet the citizenship requirements of sec. 7(1), is reasonable.

The reconsideration decision also stated the appellant is not eligible for hardship assistance. Under the EAR the applicant must be ineligible for IA for one or more reasons set out in sections 41 to 47.1. The Appellant did not fall under any of those sections as a person who: failed to provide a social insurance number or proof of identity; failed to provide sponsorship information; failed to apply for income from another source; had excess income or assets; was involved in a strike or lockout; or, was ineligible for IA due to a conviction. Further, sec. 40(c) of the EAR imports the citizenship requirements of sec. 7, and as found above, the appellant does not meet those requirements. As such, she would not be eligible for hardship assistance and the ministry's decision on this issue is reasonable.

The tribunal finds that the Appellant is not eligible for IA or Hardship Assistance; it confirms the reconsideration decision on this issue, as it is reasonably supported by the evidence and is a reasonable application of the legislation. The Appellant is not successful in her appeal.