

### PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated March 7, 2013 in which the Ministry of Social Development (the "ministry") denied the appellant's application for income assistance due to her failure to complete the employment search requirements. The ministry held that, pursuant to section 4.1 of the *Employment and Assistance Regulation*, the appellant was required to complete searches for employment over a 3-week period and provide the ministry with confirmation of employment search activities. The appellant failed to provide the ministry with confirmation of and employment search activities.

### PART D – Relevant Legislation

*Employment and Assistance Regulation (EAR), section 4.1*

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing under section 86(b) of the *Employment and Assistance Regulation*.

The written evidence before the ministry on reconsideration was comprised of the following:

1. blank 2-page Work Search Activities Record form (the "Record");
2. blank 2-page Reasonable Work Search Activities Guidelines (the "Guidelines");
3. 3-page Application for Income Assistance (Part 1) (the "Application, Part 1");
4. 5-page Application for Income Assistance (Part 2) (the "Application, Part 2"); and
5. the appellant's statement forming Section 3 of the Employment and Assistance Request for Reconsideration in which the appellant stated "I am currently seeking employment" but did not elaborate on that statement.

In the Notice of Appeal the appellant's sole statement was "I would like to explain in person".

The Record expressly includes the notation that it is "a mandatory form" ... that "must be returned to the ministry". The Guidelines provide detailed information to assist applicants in performing employment search activities and in completing the Record.

The information the appellant provided the ministry in the Application, Part 1 included the following:

1. she was homeless; and
2. there was no outstanding warrant for her arrest for any offence which could be prosecuted by indictment.

The Application, Part 1 set out the conditions of eligibility for income assistance which included, in the appellant's circumstances, that she complete "a search for employment as directed by the minister during the period immediately following [November 15, 2012]" and that she use the Record to record those employment search activities. The Application, Part 1 set out the conditions which, if any of them applied to the appellant, would exempt her from the requirement that she conduct an employment search. The Application, Part 1 also included the statement "It is my responsibility to conduct a search for employment as directed by the minister". The appellant signed and dated the Application, Part 1 on November 15, 2012.

The information the appellant provided the ministry in the Application, Part 2 included the following:

1. she was a single person, born in 1988;
2. she did not have any dependents;
3. she was not fleeing an abusive spouse or relative;
4. she was not in receipt of assistance in order to gain acceptance in a recovery facility;
5. she did not have an immediate need for urgent medical attention;
6. she was not in receipt of assistance as a Person with Persistent Multiple Barriers nor was she considering applying for designation as a Person with Multiple Disabilities;
7. she had moved to B.C. from another province shortly before she applied for income assistance; and
8. she had an immediate need for food and shelter.

The appellant provided no financial information in the Application, Part 2 and, indeed, left a significant number of questions unanswered. She signed it on November 15, 2012;

The ministry led no evidence at the hearing of the appeal other than to highlight certain statements in the Reconsideration Decision. These statements included:

1. After completing and signing the Application, Parts 1 and 2, the appellant was required to attend a "touchback" session scheduled for December 6, 2012. She did not attend.
2. The appellant next attended at the ministry office on January 22, 2013 at which time the importance of complying with the employment search requirements was brought to her attention. At the same time, the appellant was advised to submit a "medical employability report if applicable".
3. The appellant next attended at the ministry office on February 18, 2013. The appellant said she did not have a medical condition.
4. The appellant never submitted any work search information.

In response to questions from the panel the ministry confirmed that:

1. In November, 2012 the appellant applied for, and received, hardship assistance. She likely attended at the office of the ministry on January 22 and February 18, 2013 seeking further hardship assistance.
2. At the time of submitting the Application, Parts 1 and 2, the ministry would have discussed with the appellant the requirements for engaging in employment search activities and the manner in which those activities were to be reported using the Report. The ministry would also have questioned the appellant to ascertain whether any of the exemptions found in subsections 4.1(4) or (6) of the EAR applied to her. It was clear that none of the exemptions applied.

The panel found as facts:

1. The appellant is a single person, born in 1988, and has no dependants.
2. The appellant was in receipt of hardship assistance at the time she applied for income assistance.
3. The appellant applied for income assistance on November 15, 2012 by completing (to the limited extent that she did so) the Application, Parts 1 and 2 and signing them.
4. The appellant failed to attend at the ministry office on December 6, 2012 for a follow-up meeting, she attended on January 22, 2013 at which time she was reminded of the mandatory requirement that she provide employment search reports, and she attended on February 18, 2013 at which time she was again reminded of these matters.
5. The appellant never provided the ministry any employment search information. In particular, the appellant did not submit to the ministry the mandatory form referred to herein as the Record.
6. The appellant, in signing the Application, Parts 1 and 2, was aware of the employment search obligations she had taken on and the mandatory nature of the Report.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether or not the ministry reasonably determined that the appellant was not eligible for income assistance because she had failed to complete the employment search requirements set out in section 4.1 of the EAR –both as to engaging in employment search activities and as to reporting on those activities - and none of the exemptions found in that section exempted the appellant from completing those requirements.

The relevant legislation is as follows:

### EAR

#### Application for income assistance — stage 1

- 4.1 (1) The first stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (2).
- (2) The applicants for income assistance in a family unit
- (a) must complete and submit to the minister an application for income assistance (part 1) form and must include as part of the application
    - (i) the social insurance number of each applicant in the family unit except a person who is not described in section 7 (2), and
    - (ii) the information, authorizations, declarations and verifications specified by the minister, as required in the application for income assistance (part 1) form, and
  - (b) subject to subsections (4), (5) and (6), must
    - (i) complete searches for employment as directed by the minister for the 3 weeks immediately following the date of the application under paragraph (a), or
    - (ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),
 and in either case provide information about and verification of the searches for employment, in the form specified by the minister.
- (3) Subsection (2) does not affect the minister's powers under section 10 of the Act.
- (4) Subsection (2) (b) does not apply to a person who
- (a) is prohibited by law from working in Canada,
  - (b) has reached 65 years of age,
  - (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
  - (d) has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or
  - (e) is fleeing an abusive spouse or relative.
  - (f) Repealed. [B.C. Reg. 6/2008, s. 1.]
- (5) Repealed [B.C. Reg. 197/2012]
- (6) Subsection (2) (b) does not apply to a sole applicant who

- (a) has a dependent child, or
- (b) provides care to a foster child or a child in their care under an agreement referred to in section 8 or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*

if the child has not reached 3 years of age.

The position of the appellant on appeal was that she was "currently seeking employment". As the appellant did not attend the hearing of the appeal, she was unable to provide particulars to assist the panel in understanding what she meant by this statement.

The position of the ministry on appeal was that the reconsideration decision arrived at the only result that the legislation permitted. The appellant was required to engage in employment search activities and to submit the Report. There was no evidence (other than the appellant's unsupported statement referred to in the previous paragraph) before the ministry on reconsideration that the appellant had engaged in any employment search activities and, even if she had, clearly she had not provided the ministry with confirmation that she had done so. Further, there was no evidence that any of the conditions that would have exempted the appellant from the requirement to engage in, and report on, employment search activities had been satisfied. Indeed, the appellant had specifically stated in the Application, Parts 1 and 2 that none of the exemptions applied to her. Accordingly, the appellant had failed to establish her eligibility for income assistance.

In the absence of any evidence other than the appellant's unelaborated statement that she was "currently seeking employment", the panel concluded that the appellant had not engaged in employment search activities of the sort and quantity contemplated by the first criterion set out in section 4.1 of the EAR. Accordingly, subject to what is afterwards discussed in this decision with regard to the exemptions, the panel concluded that the reconsideration decision was a reasonable application of this regulation to the applicant with respect to the first criterion.

Further, the panel concluded that neither was the second criterion for eligibility for income assistance satisfied. The appellant had not complied in any manner with the requirement to, in the words of section 4.1(2)(b), "provide information about and verification of the searches for employment, in the form specified by the minister [that is, the Report]". Accordingly, whether or not the appellant had engaged in any employment search activities during the 3-week period she was obliged to do so (or, for that matter, afterwards), the appellant's uncontroverted, non-compliance with the mandatory reporting requirement was sufficient for the panel to find, again subject to the exemptions, that the reconsideration decision was a reasonable application of this regulation to the applicant in respect to the second criterion.

The panel reviewed the exemptions set out in the provisions of section 4.1 of the EAR to determine whether any of them applied to the appellant and, if so, whether any of them would render the reconsideration decision unreasonable in the appellant's circumstances. Those provisions are as follows:

1. 4.1(4)(a) – "is prohibited by law from working in Canada" – by signing the Application, Part 1 the appellant said this provision does not apply to her;
2. 4.1(4)(b) – "has reached 65 years of age" – the appellant was born in 1988;
3. 4.1(4)(d) – "has a physical or mental condition ... that precludes from ... search for employment" – the appellant responded in the Application, Part 2 that she had no urgent

medical condition; further, she specifically informed the ministry on February 18, 2013 that she had no medical condition;

4. 4.1(4)(e) – “is fleeing an abusive spouse” – by signing the Application, Part 1 the appellant said this provision did not apply to her;
5. 4.1(6)(a) – “has a dependent child” – the appellant has no dependents.

The foregoing summary confirms that section 4.1(2)(b) of the EAR– the obligation to engage in employment search activities and to report on those activities in the mandated fashion – applied to the appellant. None of the exemptions had any application to the appellant.

Accordingly, the panel concluded that the decision of the ministry – that the appellant was not eligible for income assistance because she had failed to complete, and report on, the employment search activities required by s. 4.1 of the EAR – was reasonably supported by the evidence and was a reasonable application of the relevant statutory provision in the circumstances of the appellant. The March 7, 2013 reconsideration decision is confirmed.