

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's ("the ministry") reconsideration decision dated April 9, 2013 which determined that the appellant was ineligible for income assistance benefits pursuant to section 5 of the Employment Assistance Regulation as she was under the age of 19 and a dependent youth residing full time with her parents.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), sections 1, 2, 4 and 24
Employment and Assistance Regulation (EAR), sections 1 and 5

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of the appellant's Request for Reconsideration dated March 28, 2013 attaching one page of written submissions ("RFR").

In the RFR, the appellant states in her submissions that she fully understands the basis for the ministry's denial of Income Assistance but she believes section 5 of the EAR discriminates against her on the basis of family composition and contravenes the B.C. Human Rights Code. She argues the legislation prevents her obtaining financial assistance for herself and daughter because:

- the ministry will not provide financial assistance to her mother as the appellant resides with her
- her mother is not in receipt of Income Assistance Benefits
- if she resided independently she could receive income assistance even though 18 years of age
- if she were 19 years of age she could reside with her mother and daughter and apply for financial assistance

The appellant states she receives Employment Insurance Maternity Benefits bi-weekly of \$338.00 and notes the consequent difficulty of finding suitable accommodation.

In her Notice of Appeal dated April 16, 2013, the appellant states that she agrees that the ministry's decision to deny her income assistance benefits follows the applicable legislation and that her request for reconsideration provides the ministry with an opportunity to review its three-generational family policy prior to a complaint being filed with the BC Human Rights Tribunal. The appellant submits that ministry policy discriminates against her based on her family composition. The appellant argues that she has been working and attending school since the age of 15 and she has always contributed to her parents' household expenses and that she is now receiving maternity benefits. The appellant states that she does not request that taxpayers pay for her support but rather she requires help in meeting expenses relating to her daughter.

At the hearing, the appellant submitted that she had given birth to her child and relied on her mother and step-father for support. The appellant stated that she was receiving federal employment insurance benefits and living with her mother and step-father and that she could not apply for provincial housing assistance because she is still 18 years of age. The appellant noted that if she could afford to live on her own, she could then apply for income assistance benefits. The appellant conceded that the reconsideration decision was reasonable based on the applicable legislation but argued that it is not fully accessible and that the reconsideration decision was an unfair application of the legislation given her personal circumstances.

In response to a question from the panel, the appellant confirmed that she and her child live with her mother and stepfather full-time.

The panel finds that the oral testimony of the appellant is in support of the information and records that were before the minister when the decision being appealed was made and is therefore admissible pursuant to section 22(4)(b) of the EAA.

The ministry relied on the reconsideration decision and submitted no new information. The ministry stated at the hearing that for a family unit to be eligible for income assistance benefits, the appellant would have to be living outside of her mother and step-father's home. However, as she is not, she is considered to be a dependent child and a minor and her mother and step-father are expected to support her financially. The ministry noted further that for the purposes of the EAR, the appellant's mother is the parent of the appellant and her child and that they all make up the family unit.

In response to a question from the panel, the ministry stated that the appellant meets the definition of "dependent child" in the EAR and that as her mother is the parent and an adult in the family unit, she must apply for income assistance and be subject to the legislative eligibility criteria.

APPEAL #

The panel finds that the oral testimony of the ministry is in support of the information and records that were before the minister when the decision being appealed was made and is therefore admissible pursuant to section 22(4)(b) of the EAA.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision which determined that the appellant was ineligible for income assistance benefits pursuant to section 5 of the Employment Assistance Regulation as she was under the age of 19 and a dependent youth residing full time with her parents was reasonable.

The applicable section of the EAA in this appeal is as follows:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"business day" means a day other than Saturday or a holiday;

"chair" means the chair of the tribunal appointed under section 19 [*employment and assistance appeal tribunal*];

"child" means an unmarried person under 19 years of age;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"dependent youth" means a dependent child who has reached 16 years of age;

"employment plan" means a plan required under section 9 [*employment plan*] and includes an amended employment plan;

"family unit" means an applicant or a recipient and his or her dependants;

"former Act" means

- (a) the *BC Benefits (Income Assistance) Act*,
- (b) the *BC Benefits (Youth Works) Act*, or
- (c) the *BC Benefits (Appeals) Act*;

"hardship assistance" means an amount for shelter and support provided under section 5 (1) [*hardship assistance*];

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

"panel" means a panel, appointed under section 22 (1) [*panels of the tribunal to conduct appeals*], of the tribunal;

"person with disabilities" has the same meaning as in the *Employment and Assistance for Persons with Disabilities Act*;

"recipient" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided under

this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"spouse" has the meaning in section 1.1;

"supplement" means any form of assistance specified by regulation, other than income assistance, hardship assistance or financial assistance provided under section 6 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

"tribunal" means the Employment and Assistance Appeal Tribunal established under section 19 [*Employment and Assistance Appeal Tribunal*].

(2) The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

(3) For the purpose of the definition of "dependant", spouses do not reside apart by reason only that a spouse is employed or self-employed in a position that requires the spouse to be away from the residence of the family unit for periods longer than a day.

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.

Decision of panel

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The applicable section of the EAR in this appeal is as follows:

Definitions

1 (1) In this regulation:

"Act" means the *Employment and Assistance Act*;

"assistance" means income assistance, hardship assistance or a supplement;

"parent", in relation to a dependent child, includes the following other than for the purposes of sections 20 and 65 of this regulation and section 6 of Schedule A of this regulation:

(a) a guardian of the person of the child, other than

(i) a director under the *Child, Family and Community Service Act*, or

(ii) an administrator or director under the *Adoption Act*;

- (b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);
(c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child;

"parenting dependent child" means a dependent child who is the parent of a dependent child;

"sole", in relation to an applicant or a recipient, means the applicant's or recipient's family unit includes no other applicant, recipient or adult dependant;

Applicant requirements

5 (1) For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless

(a) the family unit does not include an adult, or

(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

(2) A child who is not residing with his or her parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child.

(3) If a family unit includes a parenting dependent child, an application under subsection (1) may include in the family unit both the parenting dependent child and his or her dependent child.

(4) Despite subsection (1), if

(a) a parenting dependent child is a dependent youth residing with his or her parent, and

(b) the parent of the dependent youth is a recipient under the Act or a recipient within the meaning of the *Employment and Assistance for Persons with Disabilities Act*,

the dependent youth may apply for income assistance or a supplement for a family unit composed of the dependent youth and any dependent of that dependent youth.

(5) The minister may provide income assistance or a supplement to a family unit described in subsection (4) if the minister considers that this is appropriate in the circumstances.

(6) If income assistance or a supplement is provided to a family unit described in subsection (4), the minister may not provide income assistance or a supplement on account of a person in that family unit as part of any other family unit.

Analysis

In this appeal, the appellant agrees that the ministry decision to deny her income assistance benefits is based on a proper application of section 5 of the EAR but that the operation of this provision and the three-generational family policy is unfair and offends her human rights.

Conversely, the ministry argues that the appellant is 18 years of age and therefore a dependent child living full time in a family unit with her mother and step-father and that an adult in that family unit must apply for income assistance benefits.

Section 24 of the EAA provides that the role of the panel is to determine whether the reconsideration decision is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel is unable to make a determination as to whether the enactment offends the appellant's human rights pursuant to section 46.3 of the *Administrative Tribunals Act*

and section 19.1 of the EAA.

Section 5(1) of the EAR provides that for a family unit to be eligible for income assistance, an adult in the family unit must apply for the income assistance unless the family unit does not include an adult or the spouse of the adult applicant has not reached 19 years of age in which case that spouse must apply with the adult applicant.

In the present case, the appellant, her child, her mother and step-father all reside together on a full-time basis thus creating a family unit. The appellant is 18 years of age and therefore not an adult. The appellant satisfies the definition of "dependent child" and "dependent youth" as provided in section 1 of the EAA and she also meets the definition of "parenting dependent child" as provided by section 1 of the EAR. As the appellant is not an adult and a dependent living full-time in the family unit, section 5(1) of the EAR operates to prohibit the appellant from applying for income assistance benefits as only an adult is able to do so for the family unit.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for income assistance benefits was a reasonable application of the applicable enactment and the panel therefore confirms the reconsideration decision.