

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of March 1, 2013 which denied the appellant's request for child in the home of a relative (CIHR) assistance. The ministry determined that the appellant ceased to meet the eligibility criteria for CIHR assistance under s. 6 of the Employment and Assistance Regulation (EAR), as it read on March 31, 2010 prior to repeal, because she no longer resided with the relative under whose care CIHR assistance had been provided and therefore no longer met the requirement for the continued provision of CIHR under the transitional legislation, the Child in the Home of a Relative Program Transition Regulation ("the transitional regulation"). The ministry also determined that as CIHR assistance was no longer available under the Employment and Assistance Regulation, the appellant could not re-apply.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 6 [Repealed April 1, 2010]
Child in the Home of a Relative Program Transition Regulation

PART E – Summary of Facts

The evidence before the ministry at reconsideration was that the appellant, who is a minor, resided with both of her grandparents from February 2002 until 2010 at which time the appellant's grandfather passed away and the appellant remained in the care of her grandmother. In late September 2012, the appellant moved in with her aunt's family as the appellant's grandmother was ill and in palliative care. Unfortunately, the appellant's grandmother passed away on October 21, 2012. The ministry determined that the appellant, who had been in receipt of CIHR assistance from February 2002 through September 2012, was no longer eligible for CIHR as of October 2012.

At the appeal hearing, the appellant's representative – the aunt in whose care the appellant now lives – said that she and her husband received an interim custody order for the appellant in September 2012 and a final custody order in December 2012. It wasn't until after the final custody order that the ministry finally determined that the appellant was no longer eligible for CIHR assistance.

The ministry said that for the safety of the child, the ministry required a new application each time the child was placed in the care of a different relative, and each time a new adult moved into the home. The ministry otherwise relied on its reconsideration decision.

The new information provided by the parties gave the panel more detail with respect to the process which had occurred and the panel admitted the information into evidence in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision that the appellant ceased to meet the CIHR assistance eligibility requirements of s. 6 of the EAR as it read on March 31, 2010, thereby not meeting the requirements of the transitional regulation, because she no longer resided with the same relative is reasonably supported by the evidence or a reasonable application of the legislation. Also at issue is the reasonableness of the ministry's decision that the appellant could not re-apply for CIHR assistance.

The relevant legislation is set out below.

Section 6 of the EAR as it read on March 31, 2010

Part 2: Division 1 – Applications and Applicant Requirement

- 6(2) Subject to subsection (2.1), a child is eligible for income assistance under section 11 of Schedule A if
- (a) a child resides with his or her relative,
 - (b) the child's parent placed the child with the relative, and
 - (c) the child's parent does not reside with the relative.
- (2.1) A child is not eligible for income assistance under subsection (2) if
- (a) the child ceases to meet the conditions set out in subsection (2),
 - (b) the relative with whom the child resides has entered into an agreement under section 8 of the *Child, Family and Community Service Act* in relation to the child,
 - (c) the relative with whom the child resides or the parent of the child fails
 - (i) to provide accurate and complete information to the minister,
 - (ii) to provide all of the authorizations requested by the minister under section 4.4 or 34.1 within the time, if any specified by the minister,
 - (iii) to attend in person at the ministry office when required to do so by the minister under section 34.1(2)(c), or
 - (iv) to submit the form required by the minister under section 34.1(2)(a), within the time specified by the minister,
 - (d) the minister determines, based on a review of the application of the child provided on or after December 1, 2007 and information obtained under the authorization appended to the application, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child, or
 - (e) the minister has conducted an audit under section 34.1 and determines, based on information provided under the audit, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child.
- (3) If a child is eligible for income assistance under subsection (2), the minister may pay the income assistance to the relative for the child.

Section 1 of the Child in Home of a Relative Program Transition Regulation

1. The provisions referring to a child in the home of a relative, or otherwise applying in relation to such a child or the relative with whom such a child resides, of the Employment and Assistance Regulation, and of the Employment and Assistance for Persons with Disabilities Regulation, as those regulations read on March 31, 2010 continue to apply in relation to
 - (a) a child in the home of a relative who was eligible to receive income assistance under section 6 of the EAR on March 31, 2010,
 - (b) a child whose application under section 6 of the EAR was received on or before March 31, 2010 and approved after that date, and
 - (c) the family unit of a relative with whom a child referred to in paragraph (a) or (b) was residing on March 31, 2010, until the date the child ceases to be eligible for income assistance under section 6 of the EAR as it read on March 31, 2010.

* * *

The appellant's position is that she should continue to receive CIHR assistance because she remains in the care of a relative and that it is neither fair nor just to discontinue this benefit and penalize her because her grandparents died. The appellant's representative said it is the appellant who is eligible for the CIHR assistance, that she is still in the care of a relative, and that her needs haven't changed. The appellant further argues that the ministry should consider the circumstances of the appellant and that the ministry has an obligation to maintain this "grandfathered benefit" and honour its assurance of care for the appellant.

The ministry's position is that as of October 2012, the appellant ceased to meet the CIHR eligibility criteria when she no longer resided with her grandparent(s) and therefore, she no longer met the transitional requirement that she be eligible for CIHR assistance. Further, as CIHR assistance is no longer provided under the *Employment and Assistance Act* and EAR, re-application may not be considered.

Panel Decision

The transitional regulation provides that a child who was eligible to receive income assistance under section 6 of the EAR on March 31, 2010 remains eligible for CIHR following the repeal of section 6 of the EAR as long as the eligibility criteria of section 6 of the EAR continue to be met. Section 6(2) of the EAR sets out the criteria for eligibility for CIHR income assistance and subsection (2.1) sets out five specific circumstances under which a child is not eligible under section 6, including the failure to meet the criteria of subsection (2).

At issue is the meaning of s. 6(2), and whether the appellant continued to remain eligible under that provision. In the panel's view, the use of the term "the relative" rather than "a relative" in s. 6(2)(b) indicates that it is the specific relative into whose care the child is placed that must be considered to determine eligibility. This language indicates that the child remains eligible so long as she remains in the care of "the" relative, and that each time the child is placed with a different relative eligibility must be re-determined. In the appellant's case, as long as she remained in the care of her grandmother she maintained eligibility for the CIHR assistance, but once care shifted to her aunt and uncle the chain of eligibility was broken and a new determination of eligibility had to be made. Accordingly, the

panel concludes that the ministry reasonably determined that the appellant ceased to be eligible as of October, 2012. Once the appellant's eligibility ceased, section 1 of the transitional regulation confirmed that the CIHR assistance would end.

The panel also finds that the ministry has reasonably determined that the appellant cannot re-apply for CIHR assistance because as of April 1, 2010, CIHR assistance has only been available under the transitional regulation which requires continuing eligibility.

The panel acknowledges the unfortunate circumstances faced by the appellant. However, based on the foregoing analysis of the facts and the legislation, the panel concludes that the ministry reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant, and confirms the decision.