

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of May 3, 2013, which held that the appellant did not meet the legislative criteria for income assistance under s. 8 of the *Employment and Assistance Act (EAA)* and s. 18 of the *Employment and Assistance Regulation (EAR)*. The ministry determined that the appellant does not meet the test of 2 years financial independence as she has not been employed for at least 840 hours in each of two consecutive years; she did not earn at least \$7000 from employment in each of two consecutive years and was not employed for a portion of two consecutive years. The ministry further determined that the appellant has not provided information to establish that circumstances beyond her control have prevented her from searching for, accepting or continuing employment.

**PART D – Relevant Legislation**

*Employment and Assistance Act – Section 8*  
*Employment and Assistance Regulation – Section 18*

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration consisted of:

- Two Year Independence Assessment signed by the appellant on March 19, 2013;
- A receipt from a travel agency in the amount of \$701 for an air ticket dated December 25, 2012;
- Request for reconsideration dated April 19, 2013.

In the request for reconsideration, the appellant wrote that she has never gone to school. She has never learned any skills to support herself and that she could not live on her own. The appellant wrote that she has difficulty learning new languages and new culture. She lives with her disabled brother who is not able to support her. The appellant wrote that in December 2012, she had to leave Canada to visit her brother and when she came back she was told that she needed to reapply for income assistance.

In the assessment form completed and signed by the appellant she answered "No" to the following questions which are relevant to this appeal:

- 1- Were you employed for 840 hours in each year of any consecutive two-year period?
- 2- Was your income from employment at least \$7,000 in each year of any consecutive two –year period?

The appellant answered yes to the question; do you have a medical condition? The appellant described the medical condition as high blood pressure and wrote that her medical condition is stabilized by diet and medication.

In the Notice of Appeal, the appellant wrote that she does not have any other sources to survive and has to pay for food, telephone and hydro. She wrote that her friend's son loaned her some money that she has to repay. The appellant requested to have an interpreter assisting her at the appeal hearing.

The ministry had an observer in attendance with the appellant's consent.

At the hearing, the appellant's friend attended as a support person and as an interpreter. The appellant said that she has never worked as her family did not let her to go to school or work. She said that prior to coming to Canada she stayed with her parents and took care of them. The appellant said that she can't work because:

1. She does not speak or understand English;
2. She has medical problems; ulcer and high blood pressure; and,
3. Three evenings in a week she goes to an English (ESL) classes.

The appellant said that she has been in Canada for two years and was receiving income assistance for 7 or 8 months. She decided to go and visit her brother outside of the country for two months and when she returned she was told that she had to re-apply for income assistance. This time the ministry denied her application. She has no resources and no money and can't survive without receiving assistance. The appellant further said that the information on the Assessment regarding her medical condition is not correct. She has high blood pressure and ulcer and has been taking

many medications.

The panel admitted the evidence of the appellant regarding her misunderstanding the question in the interview and accepts the appellant's evidence that the appellant is under the treatment for her high blood pressure, and the panel admitted the evidence of the appellant that she is suffering from ulcer under subs. 22(4) of the EAA as being in support of the evidence that was before the ministry on reconsideration. However, the panel noted that the appellant has not provided any medical report indicating that she is unable to work due to her medical conditions.

The ministry relies on the reconsideration decision stating that the appellant completed her eligibility interview on March 19, 2013. The ministry submitted that there is no information from a medical doctor indicating that the appellant is not able to work and that there was no information before the ministry that the appellant was suffering from ulcer. The appellant stated that she has high blood pressure which is stabilized by medication and diet. Based on the available information, the ministry concluded that the appellant does not meet the requirement for two years of financial independence and that she does not meet any of the legislated criteria for exemptions from this requirement. Furthermore, the appellant has not provided information to establish that circumstances beyond her control have prevented her for searching for, accepting or continuing employment.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's reconsideration decision dated May 3, 2013 to deny Income Assistance to the appellant as she does not meet the 2-year financial independence criteria of section 8(1) of the EAA and Section 18(1)(a) of the EAR. The ministry determined that the appellant does not meet the test of 2 years financial independence as she has not been employed for at least 840 hours in each of two consecutive years; she did not earn at least \$7000 from employment in each of two consecutive years and was not employed for a portion of two consecutive years. The ministry further determined that the appellant has not provided information to establish that circumstances beyond her control have prevented her from searching for, accepting or continuing employment.

In this appeal the appellant sought the minister's approval for income assistance. For income assistance, the criteria that the appellant had to satisfy are set out in s. 8 of the EAA and s. 18 of the EAR.

### EAA

#### Requirement for 2 years employment

- 8 (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have
- (a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,
  - (b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or
  - (c) been employed for remuneration for a portion of two consecutive years and for the balance of those years either
    - (i) served a waiting period in respect of, or received benefits under, a claim under the *Employment Insurance Act* (Canada), or
    - (ii) received income under a public or private income replacement program or plan.
- (2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

### EAR

#### Requirement for 2 years employment

- 18 (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.
- (2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7 000 in each of the 2 consecutive years.
- (3) Section 8 of the Act does not apply to the family units of the following categories of applicants:
- (a) applicants who have not reached the age of 19;
  - (b) applicants who are pregnant;

- (c) applicants who have a medical condition that, in the opinion of the minister,
  - (i) will prevent the applicant from working for at least the next 30 days, or
  - (ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form;
- (d) applicants with dependent children;
- (e) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (f) applicants who have a foster child;
- (g) applicants who were supported by an employed spouse for at least 2 years;
- (h) applicants who were supported by an employed spouse for a portion of a two year period and met a requirement of section 8 (1) of the Act for the balance of the two year period;
- (i) applicants who were incarcerated in a lawful place of confinement for at least 6 months of the 2 year period immediately preceding the date of application for income assistance;
- (j) applicants who were in the care of a director under the *Child, Family and Community Service Act* or who had an agreement with a director under section 12.2 of the *Child, Family and Community Services Act* until the applicant's 19th birthday;
- (k) applicants who
  - (i) have separated from an abusive spouse, or
  - (ii) changed place of residence to flee an abusive relative, other than a spouse,
 within the past 6 months if, in the minister's opinion, the applicant's ability to work is consequently impaired;
- (l) applicants who have been awarded a 2 year diploma or certificate, a bachelors degree or a post-graduate degree from a post-secondary institution;
- (m) applicants who have persistent multiple barriers to employment;
- (n) applicants who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the applicant from leaving home for the purposes of employment;
- (o) applicants who are providing care for a child under an agreement referred to in section 8 of the *Child, Family and Community Service Act*;
- (p) applicants who are providing care for a child under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(4) Section 8 of the Act does not apply to the family units of applicants if, in the minister's opinion,

- (a) the applicant, due to circumstances beyond the applicant's control, has been prevented from searching for, accepting or continuing employment, and
- (b) the family unit will otherwise experience undue hardship.

[am. B.C. Regs. 331/2003, s. 1; 304/2005, s. 4; 279/2009; 48/2010,

Sch. 1, s. 1 (b).]

The panel notes that the ministry denied the appellant's request because:

- a) the appellant did not meet the test of 2 years financial independence; and
- b) she has not provided information to establish that circumstances beyond her control have prevented her from searching for, accepting or continuing employment.

### **The position of the parties**

The appellant's position is that the information that was originally provided to the ministry in her Assessment regarding her medical condition is incorrect and that the interpreter misunderstood her. She is suffering from ulcer; however, she cannot work because she doesn't speak the language and does not know how to apply for a job. The appellant said that she has never worked prior to coming to Canada because she was not allowed to work and in this country, she does not speak or understand the language and does not know how and where to look for a job. The appellant further submitted that currently she does not have any documents to indicate that she is unable to work and or any documents indicating that she was unable to work prior to coming to Canada. The appellant said that she would prepare the relevant documents and re-apply for income assistance.

The ministry's position is that the reconsideration decision is reasonable based on information provided by the appellant. The appellant is a sole applicant with no dependant and she does not meet the 2-year financial independence criteria of the legislation. The ministry submits that the appellant's medical condition has been managed by medication and diet and that there is insufficient evidence before the ministry that the appellant is unable to work for the next 30 days or unable to work for six months of the two years preceding her application for assistance. The ministry also submitted that there is insufficient evidence before the ministry that the appellant, due to circumstances beyond her control, has been prevented from searching for, accepting or continuing employment.

### **Analysis**

Section 8 (1) of the EAA and s. 18 of the EAR deal with the eligibility for income assistance and states that at least one applicant in the family unit must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years or must have earned remuneration for employment of at least \$7000 in each of the 2 consecutive years.

The panel notes that the appellant, in the Two Year Independence Assistance, said that she was not employed for 840 hours in each of any consecutive two-year period. Furthermore, the appellant said that she did not have at least \$7000 income from employment in each year of any consecutive two-year period.

Section 18(3) states that s. 8 of the EAA does not apply to the family unit if the applicant has a medical condition that, in the opinion of the minister, has prevented the applicant from working.

The panel notes that the appellant, in the Two Year Independence Assistance said that she has high blood pressure that is stabilized by diet and medication. The appellant stated language barrier as the reason for not being able to work.

The panel accepts the evidence of the appellant that she is suffering from ulcer; however, the panel notes that the appellant has not provided any medical report indicating that she is unable to work due to her medical conditions.

Section 18(4) of the EAR states that an exemption from the financial independence requirement may be applied if the applicant has been prevented from searching for, accepting or continuing employment and the family unit will otherwise experience undue hardship.

The panel notes the appellant has not provided sufficient information to establish that circumstances beyond her control have prevented her from searching for, accepting or continuing employment.

### **Conclusion**

As there are no documents before the panel as to the appellant's employment history or confirmation that her medical condition prevents her from working, the appellant does not meet the legislative criteria set out in section 8(1) of the EAA and section 18(1) of the EAR or the exemption to the criteria set out in section 18(3)(c)(i). Furthermore, there is no evidence before the panel that indicates the appellant was prevented from searching for, accepting or continuing employment pursuant to section 18(4).

Based on the evidence and the information contained in the Assessment it was reasonable for the ministry to conclude that the appellant has not met the legislative criteria. Accordingly, the panel finds that the ministry's decision that the appellant does not meet the test of 2 years financial independence and has not provided information to establish that circumstances beyond her control have prevented her from searching for, accepting or continuing employment is a reasonable application of the legislation in the appellant's circumstances.

In conclusion, the panel confirms the Ministry's decision.