

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s reconsideration decision dated May 21, 2013 denying the appellant's request for income assistance because she did not meet the citizenship requirements in section 7(1) of the *Employment and Assistance Regulation* or the requirements for hardship assistance in sections 39 and 41 to 47.2

## PART D – Relevant Legislation

*Employment and Assistance Act* (EAA) sections 1, 2, 4  
*Employment and Assistance Regulation* (EAR), section 1, 7, 7.1, 39, 41 and 47.2

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

- 1) The appellant's Request for Reconsideration dated April 29, 2013 (RFR) in which the appellant states that there is no "...date or decision of my removal or deportation and till then I need to support myself and my son"; and
- 2) Ministry case note dated March 19, 2013 indicating that Canada Border Service Agency (CBSA) provided information that the appellant is a failed refugee claimant and that there is an enforceable removal order (March 2013 Case Note).

In her Notice of Appeal the appellant states that no decision has been made about her leaving the country. The appellant states that she has no other income and cannot support herself and her son. The appellant requests that she be provided with income assistance until she receives information from immigration.

At the hearing the appellant, through her translator, stated that she is single, has no job and has to support herself and her child. She stated that she is still in "refugee status" and although she had a lawyer helping her with her refugee claim, she has not spoken to her lawyer in approximately one month and has not received any documents from Federal Court since she went to court approximately two months ago. She also stated that she has not been given any documentation indicating that she has to leave the country. The appellant also stated that although she has a work permit, she has never worked in Canada and that barriers to her employment include her limited English and need for daycare for her 2 ½ year old son.

At the hearing, the ministry relied on the reconsideration decision. The ministry also submitted a document containing a case note dated January 10, 2013 noting communications from CBSA indicating that the appellant is a failed refugee claimant, that a removal order came into force on November 17, 2012 but was stayed due to filed litigation (January 2013 Case Note). The January 2013 Case Note also indicates that the appellant has a valid work permit until April 13, 2014.

### *Admissibility of New Information*

The appellant did not object to the January 2013 Case Note. The panel has admitted the January 2013 Case Note into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the panel finds that the January 2013 Case Note relates to the history of the appellant's refugee claim and her citizenship.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for income assistance because she did not meet the citizenship requirements in section 7(1) of the EAR or the requirements for hardship assistance in section 39(1) of the EAR.

The relevant sections of the legislation are as follows:

### *EAA*

#### *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 the regulations, and
  - (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act or the regulations.

#### *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.

### *EAR*

#### *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 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); or
  - (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed.

### *Exemption from citizenship requirements*

**7.1** (1) Despite section 7 (1), a family unit that does not satisfy the requirement under that section is eligible for income assistance if the minister is satisfied that all of the following apply:

- (a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;
- (b) the applicant or recipient has one or more dependent children who are Canadian citizens;
- (c) the applicant or recipient has separated from an abusive spouse;
- (d) the applicant or recipient has applied for status as a permanent resident under the *Immigration and Refugee Protection Act* (Canada);
- (e) the applicant or recipient cannot readily leave British Columbia with the dependent children because
  - (i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,
  - (ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or
  - (iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

### *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 47.2, and (B.C. Reg. 102/2008) (B.C. Reg. 197/2012)
- (b) must not be ineligible for income assistance for any other reason. (B.C. Reg. 161/2004)

EAR sections 41 to 47.2 relate to the following:

- 41 – Applicants who do not meet requirement for social insurance number or proof of identity
- 42.1 – Applicants who fail to provide sponsorship information
- 43 – Applicants who had applied for income from another source
- 44 – Family units that have excess income

45 – Applicant on strike out or locked out

46 – Family units that have excess assets

47 – Family units ineligible or declared ineligible under section 38[*consequences for conviction, etc.*]

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

### Citizenship Requirement - EAR section 7(1)

The ministry's position is that as the appellant does not meet the criteria of EAR section 7(1)(a) to (f). In particular, the ministry states that the appellant is not a Canadian citizen she does not meet the citizenship requirements of EAR section 7(1)(a) and as her refugee claim has been denied, she does not meet the requirements of EAR section 7(1)(e).

As set out in the reconsideration decision, the ministry states that the appellant arrived in Canada from Hungary in April 2010 and moved to British Columbia in September 2010. As the appellant was a refugee claimant, she was determined eligible for income assistance in British Columbia on September 24, 2010 and her dependent son was born on October 25, 2010.

On January 2013, CBSA informed the ministry that the appellant's refugee claim was denied and although a removal order came into force on November 17, 2012, the removal order was stayed as the appellant had filed an appeal. On March 19, 2013, CBSA informed the ministry that the appellant's appeal had been denied and that the deportation or removal order became enforceable on that date.

The ministry's position is that the appellant is not a Canadian citizen and her refugee claim has been denied, so she does not meet the citizenship requirements of EAR section 7(1).

The appellant's position is that she has not been advised of any removal date, is still in the refugee claim process, has no other income to support herself or her son so she requires income assistance until a decision is made regarding her claim.

### *Panel Decision*

There is no dispute that the appellant is not a Canadian citizen so the appellant does not meet the requirements of EAR section 7(1)(a). The appellant did not provide any information to indicate that she is authorized under an enactment of Canada to take up permanent residence in Canada so she does not meet the requirements of EAR section 7(1)(b). The appellant is not a convention refugee and she is not in Canada under a temporary residence permit so she does not meet the requirements of EAR section 7(1)(c) or (d).

Although the appellant states that her refugee claim is still in process, the ministry states that the information from CBSA indicates that the appellant's refugee claim was denied and a removal order is now enforceable. Although the appellant states that she has not received any documentation from immigration, Federal Court or her lawyer indicating that the removal order is now enforceable and that her refugee claim was denied, the appellant did not provide any documentation to confirm that her refugee claim is still in process. The panel finds that the ministry's decision relying on the information provided from CBSA indicating that the appellant's refugee claim was denied supports the ministry's decision that the appellant is not in the process of having her claim for refugee protection

determined as would be required to qualify for citizenship requirements under EAR section 7(1)(e).

The appellant is not subject to a removal order that cannot be executed so EAR section 7(1)(f) is not applicable.

As the appellant does not meet the requirements of EAR section 7(1)(a) to (f), the panel finds that the ministry reasonably concluded that the appellant was not eligible for income assistance pursuant to section 7(1) of the EAR.

#### Exemption from Citizenship Requirements – EAR section 7.1(a) to (e)

The ministry's position is that as the appellant does not satisfy all of the exemption requirements of EAR section 7.1(a) to (e), she is not eligible for income assistance.

The ministry was satisfied that the appellant is a sole recipient of income assistance and has a dependent son that was born in Canada so EAR section 7.1(1)(a) and (b) are met. However, the ministry was not satisfied that EAR section 7.1(1)(c-e) were met. In particular, the ministry states that the appellant lives with family, and that her son's father lives in Hungary and there is no information provided to indicate or confirm that the appellant has separated from an abusive spouse as required by EAR section 7.1(c). The ministry's position is that the appellant had not provided any information to confirm that she has applied for status as a permanent resident so EAR section 7.1(d) is not met. The ministry's position is that EAR section 7.1(d) is not met because there is no information provided to confirm that she cannot readily leave the province with her son because of a custody arrangement, or because she or her son are being treated for a medical condition that leaving BC would result in imminent danger to health.

The appellant's position is that she has no other income and needs income assistance to support herself and her son.

#### *Panel Decision*

To qualify for income assistance under the citizenship exemption criteria, the appellant must satisfy all of the criteria of EAR section 7.1(1)(a) to (e). There is no dispute that the appellant meets 7.1(1)(a) and (b) but as she has not separated from an abusive spouse, section 7.1(1)(c) is not met. As the appellant has not applied for permanent resident status, EAR section 7.1(1)(d) has not been met. As the appellant has not provided any information to confirm that she cannot readily leave the province with her son because of a custody arrangement, or because she or her son are being treated for a medical condition that leaving BC would result in imminent danger to health, EAR section 7.1(1)(e) has not been met.

As EAR section 7.1(1)(c-e) have not been met the panel finds that the ministry reasonably concluded that the appellant was not eligible for income assistance pursuant to section 7.1 of the EAR.

#### Hardship assistance

The ministry's position is that the appellant is not eligible for repayable hardship assistance as she is not ineligible for income assistance as she does not meet the criteria of EAR section 39(1). In particular the ministry's position is that the appellant is ineligible for income assistance due to one of the legislated criteria set out in EAR sections 41 to 47.2 as required by EAR section 39(1)(a). In addition, as the appellant is ineligible for income assistance as she does not meet the citizenship requirements, the criteria of EAR section 39(1)(b) is not met.

The appellant's position is that she has no other income and is unable to support herself and her son. The appellant states that if she is not provided with income assistance she will be unable to pay rent or buy food and she does not know what she and her son will do.

#### *Panel Decision*

The panel finds that the ministry reasonably determined that the appellant does not fall within any of the circumstances defined in EAR section 41 to 47.2. In addition, the panel finds that the ministry reasonably determined that the appellant is not eligible for hardship assistance pursuant to section 39(1)(b) as the appellant is ineligible for income assistance for another reason that is, she does not meet the citizenship requirements in EAR section 7.

#### Conclusion

The panel finds the ministry's reconsideration decision that the appellant was not eligible for income assistance pursuant to sections 7(1) or 7.1 of the EAR as she did not meet the citizenship requirements or hardship assistance as she did not meet the requirements of EAR section 39 was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances.

The panel therefore confirms the ministry's reconsideration decision.