

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (“the ministry”) dated May 10, 2013 that denied the appellant’s request for income assistance for a two month ineligibility sanction period under sections 13 of the EAA and section 29 of the EAR. Specifically, the ministry determined that the appellant had been dismissed from employment for just cause, and as a consequence was not eligible for income assistance for 2 calendar months following his dismissal.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 13
Employment and Assistance Regulation (EAR) section 29

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the EAR.

The information before the ministry at reconsideration consisted of the following:

1. The appellant's Request for Reconsideration dated April 26, 2013. Under Reason for Request, the appellant writes that *he made the effort to look for and find a job at the beginning of the month only to lose it in the first 10 days thus his check was \$380 not even enough for rent. Welfare is his only source of income coming out of foster care. It is a completely backwards way of running a social care program to cut someone off welfare for losing a job, especially youth on welfare looking for work. The system is in place to protect youth from poverty is it not?*
2. A Service Canada Record of Employment dated April 22, 2013.
3. Ministry records report that:
 - the appellant is a single person who has been receiving Income Assistance. His file was re-opened on September 27, 2012.
 - on April 24, 2013 the appellant attended the ministry office and stated that he had recently lost his job. He was asked to provide pay stubs and his Record of Employment (ROE).
 - on April 25, 2013 the appellant returned to the ministry office and submitted the requested ROE. The ROE indicated that the appellant had been dismissed from his position. The appellant stated that the reason for his dismissal was due to not being a "fast enough" worker but when the ministry spoke with the contact listed on the ROE he stated that the appellant was dismissed for failure to attend the scheduled shifts.
 - the appellant was advised that he was ineligible to receive income assistance for two full calendar months as per EAA section 13 and EAR section 29.

At the hearing, the ministry reviewed the background to their determination as explained on page 8 of the appeal record. The ministry explained that on April 24, 2013, the appellant had informed the ministry that he had lost his job. He was asked to obtain his ROE and present it to the ministry. He returned the following day with his ROE which indicated that he had been dismissed from his job by the employer. The ministry noted that the ROE shows that the appellant was dismissed by the employer.

The ministry explained that their standard practice is to check with the employer to determine the reasons for dismissal. The appellant had said that the reason for dismissal was that he wasn't fast enough. Had that been the case the ministry would not have applied a sanction. In cases where the ministry is satisfied that a person receiving assistance was dismissed during a probationary period because they were not well suited to doing the job, then no sanction would be applied.

In the case of the appellant however, the employer explained that dismissal was due to the appellant having missed scheduled work shifts. The ministry explained that missing work shifts is not

something employers could be reasonably expected to accept and therefore dismissal in this case was determined by the ministry to be for just cause. The appellant was given an opportunity to explain to the ministry if there were any mitigating factors (such as possible transportation problems in getting to work) but he offered none.

Since the appellant was determined by the ministry to have been dismissed for just cause, the ministry applied EAA section 13 and EAR section 29 to the effect that the appellant did not receive income assistance for the months of May and June of the present year.

In response to a question from the panel, the ministry expanded upon the conversation with the employer's contact regarding the reasons for the appellant's dismissal. The ministry explained that the standard practice is to simply ask the employer to explain why the employee was dismissed, without any indication from the ministry as to the reasons advanced by the appellant. The employer referred only to the appellant having missed schedule work shifts.

The ministry indicated that they are also concerned in those cases where the appellant suggests that there may have been some conflict with the employer, or some bias toward the appellant on the part of the employer. But the appellant in this case had not indicated to the ministry that such concerns applied.

The panel admitted the ministry's testimony as being in support of the information before the ministry at reconsideration, in accordance with section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for income assistance for 2 calendar months based upon EAA section 13 and EAR section 29, because he had been dismissed from employment for just cause. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the EAA:

Consequences of not meeting employment-related obligations

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

(a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has

- (i) failed to accept suitable employment,
- (ii) voluntarily left employment without just cause, or
- (iii) been dismissed from employment for just cause, or

(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.

(2) For the purposes of subsection (1),

(a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

(3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

From the EAR:

Consequences of failing to meet employment-related obligations

29 (1) For the purposes of section 13 (2) (a) [*consequences of not meeting employment-related obligations*] of the Act,

(a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later of the following dates:

- (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;

- (ii) the date the default occurred, and
- (b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:
- (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.
- (2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [*consequences of not meeting employment-related obligations*] of the Act.
- (3) For the purposes of section 13 (2) (b) [*consequences of not meeting employment-related obligations*] of the Act, the period of ineligibility for income assistance lasts
- (a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:
 - (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
 - (ii) the date the default occurred, and
 - (b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:
 - (i) the family unit has been ineligible for income assistance for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.
- (4) Section 13 [*consequences of not meeting employment-related obligations*] of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:
- (a) Repealed. [B.C. Reg. 116/2003, Sch. 1, s. 2 (a).]
 - (b) sole applicants or sole recipients who have at least one dependent child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
 - (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
 - (d) sole applicants or sole recipients who have a foster child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

- (e) persons who receive accommodation and care in a special care facility or private hospital;
- (f) applicants or recipients admitted to hospital because they require extended care;
- (g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
- (h) applicants or recipients in a family unit that includes only applicants or recipients who are
 - (i) Repealed. [B.C. Reg. 160/2004, s. 2.]
 - (ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,
 - (iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
 - (iv) persons not described in section 7 (2) [*citizenship requirements*];
 - (v) persons who have persistent multiple barriers to employment; or
 - (vi) persons who have reached 65 years of age;
- (i) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [*agreements with child's kin and others*] of the *Child, Family and Community Service Act* for a child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [*other powers and duties of directors*] of the *Child, Family and Community Service Act* for a child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment.

In his request for reconsideration the appellant argued that he had made the effort to look for and find a job only to lose it in the first ten days. The \$380 that he earned during that employment was not even enough to pay his rent and welfare is his only source of income since coming out of foster care. He feels that this is a backwards way of running a social welfare program when someone is cut off welfare for losing a job, especially youth who are on welfare and looking for work. He argues that the system is in place to protect youth from poverty.

In his notice of appeal, the appellant noted that he is 19 with no mother or father to look to for financial help. He owes his landlord because of this ordeal. He argued that social service is for helping the poor get on their feet and not to put them in a situation where one may go homeless on welfare if they lose work. Welfare is his only source of income and he has been without (income) for 2 months working for his landlord just to pay off some rent.

The ministry argued that the appellant was dismissed from employment for just cause due to missing work shifts. The ministry further argued that the appellant has offered no explanation for why the work shifts were missed despite having had an opportunity to do so. In addition, the ministry argued that the appellant offered no other mitigating explanation for his dismissal from employment, such as possible conflict with the employer or possible bias toward him by the employer. Consequently, the ministry determined that section 13(1)(a)(iii) and section 13(2)(b) of the EAA and section 29(3)(a)(ii) of the EAR applied to these circumstances since the appellant had been dismissed from employment for just cause.

The panel noted that the appellant submitted no evidence to refute the ministry's claim that he had been dismissed from employment for cause. Moreover, the appellant provided no explanation for the reasons leading to dismissal, apart from his initial explanation that it was due to being too slow in his work. The appellant offered no reasons to suggest that the dismissal was unfair or unjust, and the appellant did not contest the employer's explanation that the appellant had been dismissed for missing work shifts. The panel therefore concluded that the appellant had been dismissed from employment for just cause.

Having reviewed and considered all of the available evidence and the relevant legislation, the panel found that the ministry's decision that denied the appellant income assistance for a 2 month ineligibility sanction due to being dismissed from employment for just cause was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry decision.