

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated August 30, 2013 which found that the appellant was not eligible for income assistance because she is a full-time student pursuant to section 4 of the *Employment and Assistance Act (EAA)* and section 16 of the *Employment and Assistance Regulation (EAR)*. The Ministry determined that the appellant is enrolled as a full-time student in a funded program of studies and therefore ineligible for assistance from the first day of the month following the month in which classes commence until the last day of the month in which exams in the relevant program of studies are held.

PART D – Relevant Legislation

Section 4 of the Employment and Assistance Act (EAA)
Section 1 of the Employment and Assistance Regulation (EAR)
Section 16 of the Employment and Assistance Regulation (EAR)
Canada Student Financial Assistance Regulations

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- Copies of letters from an employment society dated May 5, and May 27, 2011 advising the appellant that she was approved to participate in a training program;
- A copy of the appellant's program certificate with an expiry date of November 30, 2011;
- A copy of the Medical Report – Employability signed by a physician on April 23, 2013;
- A copy of a letter signed by the appellant's physician dated May 21, 2013. The physician reported that the appellant has hallux valgus involving both feet and is currently unable to work because she is unable to purchase suitable footwear to perform her job;
- A copy of a Student Loan Record for March, April and May 2013;
- A copy of the Ministry's letter to the appellant dated June 12, 2013 requesting information and documentation;
- A copy of the Employment and Assistance Review signed by the appellant on June 28, 2013;
- A copy of the Ministry's letter to the appellant dated July 3, 2013 requesting information about her current rent receipt and expenses, bank profile letter, bank statement, school registration and student loan documents;
- A copy of a fax from a college confirming the appellant's student enrollment. The document is signed by the appellant on March 12, 2013 and indicates that the appellant has registered as a full-time student for an 18 weeks program;
- A copy of the Ministry's letter to the appellant dated July 12, 2013 informing her of a possible over-payment of \$1,810.00 between May 1, and July 31, 2013. The Ministry requested an in person meeting on July 26, 2013;
- Overpayment Chart for the months of May, June, and July 2013;
- A copy of a letter from the college to the Ministry dated July 23, 2013 confirming that the appellant is a full-time student with a course load of 12 hour per week;
- The Ministry's decision dated July 26, 2013;
- Request for reconsideration dated August 10, 2013 stating that the appellant would be submitting her {appeal information} by August 23, 2013.

In the request for reconsideration dated August 23, 2013 the appellant wrote that for the last 20 years she has been on and off social assistance and that she worked in various jobs. The appellant wrote that in September 2012 she decided to register for some evening courses, 3 nights per week after she was told that taking evening courses would not affect her eligibility for income assistance. The appellant stated that she is in temporary need to get back on her feet, she does not feel that she has an overpayment owed to the Ministry and that she has been abused and misled by the Ministry's staff.

In the Notice of Appeal the appellant wrote that she was advised by the Ministry's staff to submit the information.

At the appeal hearing, the appellant said that all she wants to do is to go to school, receive training and be employable. The appellant said that last December she was going to school and had an interview to be employed but she broke her foot and was unable to work. She said that she is still suffering from the injury and is waiting to see an orthopedic surgeon. The appellant said that after speaking to one of the Ministry's staff and receiving confirmation that she could go back to school to

receive training, she enrolled in another school but was taking the same program. The appellant said that the staff told her she could register in courses as long as they don't interfere with her search for employment. The appellant said that she was going to school three evenings a week for a total of 12 hours a week and continued to search for employment. In late July she received a call requesting to contact one of the Ministry staff. She made several attempts to contact the staff unsuccessfully. The appellant said that the Ministry contacted her place of residence and her school which caused her embarrassment and as a result she lost her home.

The appellant said that in July, she was asked to go to the Ministry and sign several documents in order to receive her income assistance. She said that at the time, she was told that all she needed to do was to sign the documents and provide a document from school indicating that she was enrolled in their programs. She said after signing the documents, the Ministry began contacting her school causing embarrassment for her. The Ministry told her she was not eligible for income assistance. The appellant stated that she was told that she could register in the program as long as it does not interfere with her searching for employment. She said that no one in the Ministry explained to her why she was not eligible for income assistance.

The Ministry relied on the reconsideration decision submitting that pursuant to section 16 of the EAR the reconsideration decision is reasonable and that the appellant is not eligible for income assistance because she is enrolled in a funded program as a full-time student. The Ministry further said that pursuant to the Canada Student Financial Assistance Regulation a full time student means a person who, during a confirmed period within a period of studies, is enrolled in at least 60% of a course load recognized by the designated educational institution as constituting a full-time course load. The Ministry said that based on the documents submitted by the appellant's educational institution, she is a full-time student and is taking 60% course load and that she is registered in the program from May to November 2013

PART F – Reasons for Panel Decision

The issue under this appeal is the reasonableness of the Ministry's decision dated August 30, 2013 which found that the appellant was not eligible for income assistance because she is a full-time student in a funded program of studies pursuant to section 4 of the EAA and section 16 of the EAR

Legislation**EAA**

Pursuant to section 4 of the EAA 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

Section 1 of the EAR states that full-time student has the same meaning as in the Canada Student Financial Assistance Regulations (CSFAR).

Section 16 of the EAR deals with effect of family unit including full-time student and states that a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student

(a) in a funded program of studies, or

(b) in an unfunded program of studies without the prior approval of the minister.

(2) The period referred to in subsection (1)

(a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and

(b) is not longer than one year.

CSFAR

Full-time student means a person

(a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute

(i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or

(b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses.

The Ministry's position is that the appellant is a full-time student in a funded program of studies and is not eligible for income assistance.

The appellant said that she understands the legislation; however, no one in the Ministry took time to tell her why she was not eligible for income assistance. She said that last March, she was called to the Ministry's office to sign some documents and was told that all she needed to do was to provide information regarding the hours of her courses. She was told that she could go to school as long as the courses were in the evening. She said she was confused and harassed by the Ministry.

The panel accepts the appellant's evidence that she was not given the correct information about her eligibility for assistance taking evening classes. The panel notes that the issue would have been resolved back in April if the appellant was given the correct information. However, the panel finds that the appellant signed an application for student enrollment on March 12, 2013 indicating that she was registering as a full-time student for an 18 weeks program. Furthermore, the educational institution provided information that the appellant is a full-time student with a course load of 12 hour per week.

Section 1 of the EAR states that the definition of the full-time student in this regulation has the same meaning as the CSFAR.

Pursuant to the CSFAR full-time student means a person who, during a confirmed period within a period of studies, is enrolled in courses that constitute at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses.

Section 16 of the EAR states that a family unit is not eligible for income assistance if an applicant or a recipient is enrolled as a full-time student in a funded program of studies.

The appellant agreed that she is enrolled in a 12 hour evening courses and that she has applied and is receiving a student loan as a full-time student. The panel finds that based on the evidence the Ministry reasonably determined that the appellant is a full-time student.

Accordingly, the panel finds that the Ministry was reasonable in concluding that the appellant was not eligible for income assistance from the first day of the month following the month in which classes commence until the last day of the month in which exams in the relevant program of studies are held she is enrolled as a full-time student. The panel finds that the reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant, and therefore, confirms the decision.