

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") July 22, 2013 reconsideration decision in which the Ministry determined that the Appellant is no longer eligible for Child in the Home of a Relative ("CIHR") assistance because he is residing with a biological parent and stopped residing with other relatives, his grandparents, as required by the Child in the Home of a Relative Transition Regulation which replaced repealed section 6 of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation ("EAR") Section 6 repealed effective March 31, 2010.

Child in the Home of a Relative Transition Regulation.

PART E – Summary of Facts

The Ministry did not appear at the hearing. The Panel confirmed that the Ministry was provided with notice of the hearing and then proceeded in its absence, in accordance with section 86(b) of the EAR.

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that:

- The Appellant's grandfather received CIHR on the Appellant's behalf since December 2004.
- On June 10, 2013, the Ministry received information that the Appellant no longer lived with his caregivers, his grandparents.
- On June 26, 2013, the Ministry advised the Appellant's grandfather that because the Appellant no longer lived with him, the Appellant was no longer eligible for CIHR.

2. Letter from the Appellant to the Ministry, received by the Ministry on July 11, 2013, in which the Appellant wrote that his grandparents are a big part of his life, having raised him since he was a child. He stated that the CIHR should still go to them because they still support him. He wrote that they come every week with groceries, still buy his clothes, take him on trips to visit family and pay his cell phone bill every month. He also wrote that on July 5, 2013 they bought him a new bed.

3. Copy of a cell phone calling plan, copies of cell phone bills in the name of the Appellant's grandfather from October 2012 to June 2013, with handwritten notes indicating amounts attributable to the Appellant and to the grandfather.

4. Copies of the following cancelled checks: December 21, 2012 for \$100 payable to the Appellant from his grandfather, November 26, 2012 and December 27, 2012 each for \$300 payable to the Appellant's mother from the Appellant's grandfather.

5. Appellant's request for reconsideration with the following statement dated July 8, 2013 from his grandfather.

The grandfather wrote that despite being pensioners he and his wife have been the sole care-givers for the Appellant since the age of 4. They took on this task in their 60s not for financial gain or perks from the Minister, but to give the child a solid foundation and a chance at a normal childhood with hopes for a productive adulthood. To the best of their ability, they protected the child from becoming part of the foster-care system, saving the Minister thousands of dollars.

The grandfather wrote that, because they feared that the Appellant's risky behavior would result in addictions or participation in the local drug culture, they asked his biological mother to help keep him in school and away from negative influences. The Appellant's mother took him to another city so long as the grandparents continued to support him financially. The grandfather stated that they informed the Minister of their arrangement and were not told that they had done anything to jeopardize the Appellant's eligibility for CIHR assistance or that their actions were wrong. The grandfather wrote that they continued to support the Appellant at his mother's home (attached cashed checks to show payments to the mother) until Christmas 2012 when he was evicted by his mother.

The Appellant returned to the grandparents' home until about February 2013 when they made arrangements for the Appellant to live with his biological father and they provided financial support. The grandfather stated they again advised the Minister. The Minister had him complete his monthly reporting cards in advance of an overseas trip and assistance was provided during that time. The grandfather stated that he had no reason to believe that the arrangement they had for the Appellant was wrong and in fact he believed the Minister supported their efforts to keep the Appellant on track.

When they returned from their trip, the grandfather did not want to disrupt the Appellant's school semester, so the living arrangement remained the same. The Appellant is enrolled in summer school and may be able to finish Grade 12 by December 2013. The grandfather submitted that having the Appellant change his environment would be destructive. Even though the Appellant lives in another city, the grandfather wrote that they still support him financially. The grandfather submitted that he informed the Minister every step of the way. He asserts that the Minister made many administrative errors in this case and has been negligent in not providing the Appellant with the support he needs as a high risk youth who has ADD [attention deficit disorder]. The Appellant needs support now as he is very close to completing high school otherwise he will end up leaving school.

At the hearing, the Appellant and the grandfather both provided the same information as in their statements described above. The Appellant confirmed that he lived with his grandparents until about September 2012, then with his natural mother until late December 2012, then back with his grandparents, and then from late January 2013 until now he has been living with his natural father. The Appellant also confirmed that his grandparents still support him with visits every 2-3 weeks bringing groceries, clothes and even buying a new laptop. Therefore, they should still get Ministry support. The Appellant's grandfather confirmed that he told the Ministry about the change in living arrangements. He also stated that he still provides money for his grandson every month and pays for the cell phone he uses.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the testimony of the Appellant and his grandfather as evidence in support of the information the Ministry had at reconsideration because it confirms the information the Ministry had about the Appellant's living circumstances and financial assistance from his grandfather.

The Panel makes the following findings of fact:

1. From 2004 until about September 2012, the Appellant resided with his grandparents.
2. From September 2012 until late December 2012, the Appellant resided with his biological mother.
3. From late December 2012 until late January 2013, the Appellant resided with his grandparents.
4. From February 2013 until the present, the Appellant has been residing with his biological father.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is no longer eligible for CIHR assistance because he is residing with a biological parent and stopped residing with other relatives, his grandparents, as required by the Child in the Home of a Relative Transition Regulation which replaced repealed section 6 of the EAR.

Applicable Legislation

The following section of the EAR was repealed effective March 31, 2010:

Child in the home of a relative

6(1) in this section,

"child" does not include a person with disabilities;

"relative" in relation to a child, does not include the child's parent.

(2) Subject to subsection (2.1), a child is eligible for income assistance under section 11 of Schedule A, if (a) the 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.

(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.

The following regulation was enacted as a transition measure:

Child in the Home of a Relative 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

2. (a) a child in the home of a relative who was eligible to receive income assistance under section 6 of the Employment and Assistance Regulation, on March 31, 2010.

3. (b) a child whose application under section 6 of the Employment and Assistance regulation was received on or before March 31, 2010 and approved on or after that date, and

4. (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 Employment and Assistance Regulation as it read on March 31, 2010.

The Parties' Positions

The Appellant submits that changing his environment would be destructive. Without the CIHR financial support he will have to leave school. Even though he lives in another city, the CIHR should still go to his grandfather who supports him financially, brings him groceries, buys him clothes, takes him on trips, bought him a bed and laptop, and pays for his cell phone. Also, the grandfather informed the Minister every time the Appellant moved out of his grandparents' home. The Appellant asserts that the Minister made many administrative errors in this case and has been negligent in not providing him with the support he needs as a high risk youth.

The Ministry's position is that until March 31, 2010, under the provisions of the repealed section 6 of

the EAR, the Ministry provided income assistance to the Appellant who was eligible for such assistance as a child residing with his grandfather; that is, a relative but not a parent. Then under section 2(a) of the CIHR transition regulation, the Ministry continued to provide assistance to the Appellant because of his CIHR eligibility on or before March 31, 2010 and because he was living with his grandfather, a relative but not a parent. However, the Ministry argues that when it was advised, in about June 2013, that the Appellant was living with his biological father and not his grandparents, it determined that the Appellant was no longer eligible for CIHR assistance.

The Panel's Findings and Conclusion

The Panel finds that there is no dispute regarding who the Appellant lived with and when. Until about September 2012, the Appellant lived with his grandparents, not one of his parents. From then until about the end of December 2012 he lived with his biological mother and then went back to his grandparents. From about February 2013 until the present, the Appellant has been living with his biological father, not his grandparents. Therefore, the Panel finds that the Ministry reasonably determined, based on the information it had, that from February 2013 the Appellant has not been living with a relative, who is not his parent.

The Panel notes that the CIHR transition regulation basically continues the same criteria for CIHR assistance eligibility as in repealed section 6 of the EAR; that is, to continue to be eligible for income assistance, a child who qualified for CIHR assistance as of March 31, 2010, must continue to reside in the home of the relative who is not one of his natural parents. Based on the evidence which is not in dispute, the Panel finds that Ministry reasonably determined that the Appellant continued to be eligible for CIHR assistance from March 31, 2010 for as long as he resided with the relative, his grandfather, but not with one of his natural parents. The Panel further finds that the Ministry reasonably determined that the Appellant was no longer eligible for CIHR assistance under the provisions of the CIHR transition regulation since he has been residing with his natural father.

Having considered all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore, the Panel confirms that decision.