

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of July 29th, 2013 wherein the ministry determined the appellant was ineligible for income assistance because she is a full time student in a funded program of studies as set out in section 16 Employment and Assistance Regulation (EAR) and the ineligibility extends from the 1st day of the month following the month in which classes commenced, October 1st, 2012, and continues until the last day of the month in which exams are held.

The ministry's decision is based on the fact that she is a full-time student in a program for which student funding may be provided and not based on her income, how much student loan funding she received or that she withdrew from student loan funding.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 1 and 16

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Letter dated December 17th, 2012 from the educational institution where the appellant enrolled in studies advising the appellant was a full-time student but “has now dropped out” and is no longer pursuing her studies.
- Letter from National Student Loan Center advising the appellant has received a student loan for the school year beginning in September 2012 and ending in 2013;
- Letter from education institutional dated March 26th, 2013 advising the appellant is enrolled as a full-time student from September 10th, 2012 to September 27th, 2013.
- Request for Reconsideration dated July 19th, 2013.

The appellant has been in receipt of income assistance as a single parent since 2012. In June of 2013 an investigative officer (IO) for the ministry commenced a review of the appellant's file as the appellant's name appeared on a Student Loan data-match. The information indicated the appellant was a full-time student in funded program of studies. The IO contacted the appellant and advised her that her name was brought to the ministry's attention due to a student loan data-match. The appellant informed the IO that she was not attending school; that she had withdrawn from school in the fall of 2012 and had provided written confirmation of this to the ministry. The IO advised the appellant that the ministry had received documents from an anonymous source that confirmed the appellant has been attending school as of September 2012 and that her school program would finish in September 2013. The appellant told the IO that her ex-spouse has not been providing child support; that she has no other means of financial support and needs the financial assistance from the ministry to pay her rent or she cannot attend school. The IO informed the appellant that she has not been eligible for income assistance since October 1st, 2012 and will not be eligible for assistance until her schooling ends. The ministry's file does not have a copy of the appellant's letter of withdrawal from her studies on file. A letter from the college dated March 26th, 2013 and received by the ministry on June 21st, 2013 confirmed that the appellant is enrolled in a full-time program of studies that commenced in September 2012 and will end in September 2013. On July 29th, 2013 the IO confirmed directly with the college that the appellant is still registered in her program.

Before the hearing commenced the appellant forwarded a letter from the National Student Loan Service Center dated October 17th, 2012 to the Employment and Assistance Tribunal (EAAT). The letter is addressed to the appellant and states, “We recently received your notice that you have withdrawn from school or have reduced your course load below the minimum required to remain as a full-time student. We have updated our records to reflect your new period of study end date of September 30, 2012. Due to your change in status as a student, the funding you received for this school year has been reviewed. As a result, you must repay the grant funding you were previously awarded...”

The panel finds the letter submitted by the appellant is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) of the Employment and Assistance Act (EAA).

The ministry did not attend the hearing and, being satisfied the ministry was notified of the date and time, the hearing proceeded under section 86(b) EAR.

At the hearing the appellant testified that she is a single mom who went back to school to further her education to facilitate her getting employment and so she could provide support to herself and her son and get off assistance. The appellant told the panel her ex-husband is not paying support and she has no extra money and is depending on the ministry for support. The appellant told the panel she had received a student loan for her studies but withdrew from the student loan program when she withdrew from her school program at the end of September. The appellant testified that she had no intentions of doing anything wrong; that although

she searched she could not find a job and needed to improve her education and needed assistance from the ministry. The appellant testified that without the education she could not get off assistance.

In response to questions from the panel, the appellant testified her course studies began on September 10th, 2012 and at the end of September she withdrew from her program until November 12th when she returned again for approximately two weeks before leaving the program again. The appellant told the panel that she returned to school in January 2013 where she remains in her program attending as a full time student. The appellant told the panel her program of studies will end in September 2013.

The panel finds the appellant's testimony is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

The panel makes the following finding of fact:

1. The appellant is enrolled in a funded program of studies.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of July 29th, 2013 wherein the ministry determined the appellant was ineligible for income assistance because she is a full time student in a funded program of studies as set out in section 16 Employment and Assistance Regulation (EAR) and the ineligibility extends from the 1st day of the month following the month in which classes commenced, October 1st, 2012, and continues until the last day of the month in which exams are held.

Legislation considered: EAR

Definitions

Section 1 (1) In this regulation:

full-time student - has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

funded program of studies - means a program of studies for which student financial assistance may be provided to a student enrolled in it;

student financial assistance - means funding provided to students under the *Canada Student Financial Assistance Act* (Canada);

Effect of family unit including full-time student

Section 16

(1) 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. (B.C. Reg. 284/2003)

In the reconsideration decision the ministry argued that section 16 EAR stipulates that a person is not eligible for income assistance from the first day of the month following the month in which classes commenced, October 1st, 2012, and continues until the last day of the month in which exams in the relevant program of studies are held. The ministry argued the letter dated March 26th, 2013 from the appellant's school confirmed the program is full-time and that on July 29th, 2013 the ministry also confirmed the appellant is still registered in that program. The ministry argued that a copy of the letter regarding her withdrawal from student loans was not on her file.

The appellant argued that she did enroll in a program as a full-time student which commenced September 10th, 2012 and was to end in September 2013. The appellant argued that she withdrew from her program at the end of September and did not return to school until November 12, 2012; withdrew again for the month of December and returned to full-time studies in January 2013. The appellant argued that she did receive a student loan to attend school but withdrew from this program as well. The appellant argued that in the letter from the student loan program it stated "we recently received notice that you have withdrawn from school or have reduced your course load below the required minimum required to remain as a full-time student. We have updated your records to reflect your new period of study end date of September 2012." The appellant argued that her ex-spouse was not providing her with child support and needs assistance to pay her rent and other bills or she will be forced to quit school.

The panel finds section 16 EAR states that a family unit is not eligible to receive income assistance if the recipient is enrolled as a full-time student in a funded program of studies. The ministry's position is that the appellant is enrolled as a full-time student in a funded program of studies from September 2012 until end of

September 2013 which was confirmed with her school. The appellant's position that she did receive a student loan to attend school but that she was not a full-time student during the period of September 2012 through December 2012 is supported by her testimony, the letter dated December 17th, 2012 from her school, and the letter from the National Student Loan Program dated October 17th, 2012. The panel accepts the appellant's testimony that she withdrew from the school program at the end of September and November 12, 2012 and again for the month of December returning sometime in January 2013. The letter from the National Student Loans dated October 17th, 2012 and the letter from the appellant's school support the appellant's position that she was not a full-time between September 2012 and January 2013. There is no evidence before the panel that the ministry confirmed that the appellant was a full-time student in her course of studies between September 2012 and January 2013, therefore the panel relied on the appellant's testimony and the letters from the two institutions. There is no dispute that the appellant was a full-time student commencing January 2013.

The panel finds that the appellant was enrolled, intermittently, in a funded program of studies from September 1st, 2012 through December 31st, 2012.

The panel finds the documentary evidence supported the appellant's testimony and therefore, the panel finds that the appellant was not a full-time student between September 1st, 2012 and December 31st, 2012.

Although the evidence, including the appellant's own testimony, establishes that the appellant was enrolled as a full-time student in a funded program of studies for some of the time period at issue, and therefore ineligible for income assistance accordingly, the panel finds the ministry's decision that the appellant was ineligible for assistance from October 1st, 2012 was not reasonable and is not supported by the evidence.

Therefore the panel rescinds the ministry's reconsideration decision in favour of the appellant pursuant to section 24(1)(a) and section 24(2)(b) EAA and refers the matter back to the ministry.