

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated July 8, 2013 which found that the appellant was not eligible for income assistance as he had failed to complete the five week work search for employment as required by the *Employment and Assistance Regulation* (EAR) section 4.1.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 1 and 2
Employment and Assistance Regulation (EAR), section 4 and 4.1

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration dated June 25, 2013 (RFR) with stating that his bail conditions do not allow him to complete a work search; that he is under house arrest 24 hours per day, seven days per week, has no internet access and the process "*looks like it's going to be a while*"; and
- 2) Recognizance dated April 21, 2013 setting out the appellant's bail conditions which include a condition that the appellant remain in his residence or on its grounds 24 hours a day, seven days a week and not to use or be in possession of any computer, smart phone or any other similar device.

In his Notice of Appeal the appellant states that he disagrees with the reconsideration decision because he is being told by one branch of the government not to work and in the ministry's side he cannot complete his job search. The appellant states ... "*how can a tax payer like myself get help when I need it the most*"?

At the hearing, the appellant stated that he was released from remand on various conditions, that require him to be on house arrest 24 hours per day, seven days per week except for medical or other emergencies or unless he is required to attend court. At the hearing, it became apparent that although pages one and three of the appellant's Recognizance was included in the appeal records, page two, containing some of the appellant's bail conditions was missing. The appellant had his original Recognizance with him so the missing conditions which were the rest of number four through 11 were read aloud so that all parties were aware of the conditions. The missing conditions were not entered as new evidence as

were not relevant to the issue upon appeal.

The appellant stated that _____ had a successful business but as his release conditions preclude him from leaving the residence and using a computer or smart phone he is unable to search for work or leave the house to work. The appellant also stated that while his lawyer is trying to apply for a variance so that he is able to leave the residence to work, that has not yet occurred and there have been numerous delays in the court process.

The appellant stated that he is fortunate that his parents took him in during this time as he has lost everything. The appellant stated that his parents are supporting him, and while there was no agreement regarding room and board when he was first released from custody to his parents home, the court process is taking considerably longer than expected, and his father requires room and board of at least \$500 per month as his parents cannot continue supporting him.

The appellant stated that he cannot understand why, at this time, when he most needs assistance the ministry will not help him. The appellant also stated that he is fighting for others who might be in a similar position but have no parents to take them in.

The ministry relied on the reconsideration decision and submitted no new information. By way of further explanation, the ministry representative explained that the exemption of the work search requirement if a recipient is prohibited by law from working in Canada relates to citizenship requirements. The ministry stated that the appellant is prohibited from leaving his residence, using a computer or smart phone and while that may make his job search difficult, his bail conditions do not

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state that he is prohibited from working.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for income assistance as he had not completed a five week employment search within the 30 day period prior to the date of application for income assistance as required by EAR section 4.1 was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the legislation are as follows:

EAA

Interpretation

1. (1) In this Act:

"**applicant**" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

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.

EAR

Process for assessment of eligibility for income assistance

4 The eligibility of a family unit for income assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2. (B.C. Reg. 304/2005)

Application for income assistance - stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (2). (B.C. Reg. 304/2005)

(2) The applicants for income assistance in a family unit

(a) must complete and submit to the minister an application for income assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 7 (2), and (B.C. Reg. 197/2012)

(ii) the information, authorizations, declarations and verifications specified by the minister, as required in the application for income assistance (part 1) form,

(b) subject to subsections (4) and (6) must (B.C. Reg. 85/2012) (B.C. Reg. 197/2012)

(i) complete searches for employment as directed by the minister for the applicable period under subsection (2.1) immediately following the date of the application under paragraph (a), or (B.C. Reg. 197/2012)

(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),

and in either case provide information about and verification of the searches for employment, in the form specified by the minister. (B.C. Reg. 98/2009)

(2.1) The applicable period for the purposes of subsection (2) (b) (i) is

(a) 3 weeks, if any applicant in the family unit is a former recipient, and

(b) 5 weeks in any other case.

(B.C. Reg. 197/2012)

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act. (B.C. Reg. 304/2005)

(4) Subsection (2) (b) does not apply to a person who

(a) is prohibited by law from working in Canada,

(b) has reached 65 years of age,

(c) Repealed (B.C. Reg. 48/2010)

(d) has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister,

(e) is fleeing an abusive spouse or relative, or

(f) Repealed. (B.C. Reg. 6/2008)

(5) Repealed (B.C. Reg. 6/2008) (B.C. Reg. 197/2012)

(6) Subsection (2) (b) does not apply to a sole applicant who

(a) has a dependent child, or

(b) provides care to a foster child or a child in their care under an agreement referred to in sections 8 or 93 (1) (g)

(ii) of the *Child, Family and Community Service Act* (B.C. Reg. 48/2010)

if the child has not reached 3 years of age. (B.C. Reg. 99/2009)

Application for income assistance - stage 2

4.2 (1) In this section, "**applicant orientation program**" means a program established by the minister to ensure that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of

- (a) rules about eligibility for income assistance or supplements,
- (b) the process of applying for disability assistance,
- (c) required employment search activities, community based job search resources and ministry and community programs,
- (d) mutual obligations of the minister, applicants and recipients,
- (e) employment plans,
- (f) the minister's authority to collect and verify information, and
- (g) the availability of alternate resources, such as, federal programs and other Provincial programs. (B.C. Reg. 304/2005)

(2) The second stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (3). (B.C. Reg. 304/2005)

(3) Subject to section 47.2 (2), on completion of the first stage process provided for in section 4.1, the applicants for income assistance in the family unit must complete and submit to the minister an application for income assistance (part 2) form and must include as part of the application (B.C. Reg. 197/2012)

- (a) proof of the identity of the persons in the family unit and of their eligibility under the Act,
- (b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and (B.C. Reg. 85/2012)

(c) the information, authorizations, declarations and verifications specified by the minister as required in the application for income assistance (part 2) form. (B.C. Reg. 304/2005)

(4) Subsection (3) does not affect the minister's powers under section 10 of the Act. (B.C. Reg. 304/2005)

(5) Subsection (3) (b) does not apply to a person who

- (a) Repealed (B.C. Reg. 48/2010)
- (b) has reached 65 years of age,
- (c) is not described in 7 (2) [*citizenship requirements*] and is in a family unit that satisfies the requirement under section 7 (1), or (B.C. Reg. 198/2012)

(d) has a physical or mental condition that, in the minister's opinion, precludes the person from completing an applicant orientation program. (B.C. Reg. 304/2005)

The ministry's reconsideration states that as a single employable appellant with no dependants, the appellant is required, pursuant to EAR section 4.1 to demonstrate that he has completed a 5 week search for employment and provide information about and verification of that employment search to the minister. The reconsideration decision states that while the ministry recognizes that the appellant's release conditions require that he remain home 24 hours per day, 7 days a week, there is no exemption for the work search requirement for a person on house arrest. The ministry's position is that as the appellant does not meet the criteria of a person who does not have to complete a 5 week employment search and as the appellant has not provided information to demonstrate that he has completed a 5 week job search, he is not eligible for income assistance.

The appellant's position is that his release conditions do not allow him to complete the work search requirement as he is under house arrest 24 hours per day, seven days per week and is restricted from using the internet or a smart phone. The appellant states that it is unfair that one branch of the government tell him not to work at the same time as the ministry requires him to complete a job search.

Panel Decision

EAR section 4.1(2)(b)(ii) requires that an applicant for income assistance must demonstrate that he or she has completed a search for employment satisfactory to the minister within the 30 day period prior to the application and provide information about and verification of the searches for employment, in the form specified by the minister. EAR section 4.1(2.1) states that the applicable job search period is 5 weeks if an applicant is not a former recipient of income assistance.

EAR section 4.1(4) provides that that the job search requirement does not apply to a person who is prohibited by law from working in Canada, is 65 years of age or older, has a physical or mental condition that in the minister's position precludes the person from searching for employment, is fleeing an abusive spouse or relative, is a sole applicant who has a dependent child or provides care to a foster child or who has a child in their care under an agreement referred to section 8 or 93 of the *Child, Family and Community Service Act* and has not reached three years of age.

The panel notes that appellant's release conditions require that he remain in his residence or on its grounds 24 hours a day, seven days a week except for medical or other emergencies or to attend court, and that he is restricted from using the internet, smart phone or other similar device. The panel also notes that in the reconsideration decision, the ministry notes that the appellant previously advised that his lawyer would be applying for a variance of the appellant's release conditions that would allow him to work, but this has not yet happened.

As the appellant remains under house arrest 24 hours per day, seven days per week and is restricted

from using the internet or phone, it would clearly be difficult for him to complete the 5 week job search requirement but it is also clear that he could look for jobs using the newspaper, use a landline telephone to call potential employers and submit handwritten job search applications. While the appellant's release conditions limit his ability to search for and participate in employment, his bail conditions do not prohibit him from working in Canada so he does not fall into the exemption criteria set out in EAR section 4.1(4)(a).

The appellant does not meet the other exemption criteria set out in EAR section 4.1(4)(b), (d) or (e) or 4.1(6) as he is not 65 years of age or older, does not have a physical or mental condition that in the minister's position precludes him from searching for employment, is not fleeing an abusive spouse or relative, is not a sole applicant who has a dependent child or providing care to a foster child or who has a child in their care under an agreement referred to section 8 or 93 of the *Child, Family and Community Service Act* and has not reached three years of age.

Accordingly, the panel finds the ministry decision that the appellant was not eligible for income assistance pursuant to section 4.1 of the EAR for failing to complete the work search requirement at application was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the ministry decision.