

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) Reconsideration Decision of March 5, 2014 in which the ministry denied income assistance (IA) to the appellant for failing to complete the employment search requirement for a new applicant for assistance, as required by Sections 4 and 4.1 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sections 1 and 2
Employment and Assistance Regulation (EAR) Sections 4, 4.1 and 47.2

PART E – Summary of Facts

The evidence before the ministry at the time of the Reconsideration Decision consisted of the following documents:

1. Letter dated November 4, 2013 from the appellant's family physician stating that the appellant suffers from a shoulder injury that impairs his ability to perform labour-type work.
2. Ministry form "Reasonable Work Search Activities Guidelines" signed by the appellant on November 19, 2013 with a 14-day work search review date of December 9, 2013;
3. Hand-printed record detailing 35 job search activities for the period November 10, 2013 to an unknown date in December;
4. Ministry form "Work Search Review" (2 pages) dated January 29, 2014;
5. Request for Reconsideration dated February 20, 2014 with the following attachments:
 - i. One-page handwritten letter written by the appellant which stated that:
 - he has been actively looking for work but has severe shoulder and arm pain, migraine headaches and poor circulation
 - his only transportation is a bicycle which he cannot ride in cold weather
 - he had trouble printing the necessary documents from a borrowed computer
 - he has been told by two companies that he will be called for work but so far has not been called
 - ii. Doctor's note dated February 20, 2014 indicating that the patient suffers from a shoulder injury and a possible hernia, and is unable to do labour work for the next 3-6 weeks at which time he should be re-evaluated by his general practitioner.
6. Undated handwritten letter (3 pages) from the appellant addressed "To Whom It May Concern" in support of his request for reconsideration advising as follows:
 - He has been actively searching for work through daily faxes, calls, messages for 2 months before Christmas
 - He was hired for light-duty ceiling work
 - He has fractures to his foot, wrist and collarbone, a separated shoulder, hernia and intestinal problems that cause severe testicular pain and can't afford pain medication
 - The combination of job searching, medical appointments and ministry appointments have been very stressful
 - He gets his food from the food bank and garbage bins
 - His phone has been cut off, and he needs a bus pass and a swimming pool pass for his rehabilitation.
7. Eviction notice for non-payment of rent dated February 17, 2014 from the appellant's landlord.

The Reconsideration Decision is summarized as follows:

- The appellant is a sole recipient of hardship assistance (HA) with no dependants.
- On November 13, 2013 he submitted a doctor's note which stated that due to an injured shoulder the appellant was unable to continue in his previous line of work, which was in drywalling and other strenuous labour-type work.
- Also on November 13, 2013 a ministry employee telephoned the appellant to explain work search guidelines and expectations and to advise him to search for work outside of the labour sector.
- On November 19, 2013 the appellant failed to complete the 5 week employment search requirement for a new IA applicant. Because he faced eviction and the possibility of being homeless he was deemed eligible for HA pending completion of the 5 week employment

search requirement.

- On November 21, 2013 the appellant attended the ministry office and received a copy of the Work Search Guidelines, which required a minimum of 25 hours of effort per week using a variety of work search activities, minimum contact with 15 employers per week, consistent use of at least 5 different work search activities, and a demonstrated search for employment opportunities in all occupations and at all wages.
- On December 9, 2013 the ministry advised the appellant that he had to complete his 5 week employment search before being eligible for assistance.
- On December 18, 2013 the ministry advised the appellant that he would not be eligible for February assistance unless he submitted his 5 week employment search record.
- On January 16, 2014 the ministry discontinued assistance cheque production for the appellant because he had not submitted his 5 week employment search record.
- On January 29 the appellant submitted a one-page employment search record which in the opinion of the ministry did not satisfy the criteria for a 5 week employment search record. The appellant was therefore denied assistance because he failed to demonstrate that he had completed a 5 week search for employment and to provide search-related information and verification that was satisfactory to the minister, as required by sections 4 and 4.1 of the EAR.

In his Notice of Appeal dated March 12, 2014 the appellant stated that he disagreed with the ministry's decision because he was having surgery soon, needs help, and that his doctor's note should exclude him from a work search at the present time.

No additional documentary evidence was submitted at the hearing. In his oral evidence the appellant stated that in May 2012 he separated his shoulder in a work-place accident while living and working at an orchard, in an effort to support himself. He has little experience with doctors and no experience with the ministry, so he did all his medical work in a rush. He is awaiting surgery for his separated shoulder and needs surgery for an intestinal hernia and in the meantime experiences extreme shoulder and testicular pain. He acknowledged that the work search requirement had been explained to him briefly, but felt he was not given enough time to talk to a ministry employee about the details, and was instead just referred to Work BC for assistance with his resume, job searching strategies and available programs. He realizes that he missed an important appointment, but he was unable to get to the ministry office because the weather was too cold to ride his bicycle, he did not have transportation or money for the bus. In describing the work search record that he submitted to the ministry he explained that there were two more pages of work search documentation that he was unable to retrieve from the computer. He is now four months behind in his rent and is facing imminent eviction. When asked why the work search record he submitted to the ministry consisted only of attempts to find work in labour-related fields he stated that he was "lost" when it came to getting the certificates and qualifications necessary for lighter work, adding that he had to deal with his migraine pain first. He obtained the "Serving It Right" training book and other pamphlets from Work BC, but "nothing panned out".

The oral evidence provided by the appellant at the hearing was not new evidence, but was a reiteration of the evidence he provided in his Request for Reconsideration, specifically in his letters to the ministry which are noted on Page 3 of this decision, Numbers 5 (i) and 6.

The ministry relied on its Reconsideration Decision and provided a written submission which included the following points:

- The appellant received a pro-rated HA of \$508.17 for the month of November, 2013 and

\$610.00 HA monthly in December, 2013 and January, 2014

- The appellant did not meet the criteria for a work search set out in the Work Search Guidelines that he received when he applied for IA, including:
 - a minimum of 25 hours of search effort per week using a variety of search activities;
 - contact with at least 15 potential employers per week;
 - consistent use of at least 5 different work search activities such as speaking with a job counselor, taking a course, preparing a resume, looking online, perusing the phone book, and going door to door;
 - consideration of all types of employment, and
 - consideration of all wages, including minimum wage.
- Although the appellant submitted two letters from physicians, he did not submit any information from his doctor advising that he is unable to complete light duty employment or attend employment programs or workshops which could assist him with his work search and becoming more employable.
- The appellant was not considered for HA when he submitted his February 17, 2014 notice of eviction because he had been denied IA on January 29th due to the absence of a satisfactory employment search and was therefore no longer eligible for HA.

In closing submissions the appellant's advocate argued that the appellant had a lack of understanding of what he needed from the doctor, and that his chronic pain got in the way of his attending workshops and undertaking work search activities. The appellant does not have a regular physician, which made it more difficult for him to obtain the information he needed. The appellant added that his shoulder injury is one of the worst the doctor has seen, and that the doctor advised him to tape his shoulder against his body, which precludes most types of physical work.

The ministry relied on the reconsideration decision and on its written submission tendered at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision which denied income assistance (IA) to the appellant for failing to complete the employment search requirement for a new applicant for assistance, as required by Sections 4 and 4.1 of the Employment and Assistance Regulation (EAR).

The relevant legislation is as follows:

EAA:

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

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

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.

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).

(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

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

(b) subject to subsections (4) and (6), must

(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

(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.

- (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.
- (3) Subsection (2) does not affect the minister's powers under section 10 of the Act.
- (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, Sch. 1, s. 1 (b).]
 - (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, or
 - (e) is fleeing an abusive spouse or relative.
 - (f) Repealed. [B.C. Reg. 6/2008, s. 1.]
- (5) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 3 (e).]
- (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 section 8 or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*
- if the child has not reached 3 years of age.

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.
- (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).
- (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
- (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
 - (c) the information, authorizations, declarations and verifications specified by the minister as required in the application for income assistance (part 2) form.
- (4) Subsection (3) does not affect the minister's powers under section 10 of the Act.
- (5) Subsection (3) (b) does not apply to a person who
- (a) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
 - (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
 - (d) has a physical or mental condition that, in the minister's opinion, precludes the person from completing an applicant orientation program.

Applicants who do not meet work search requirements

- 47.2** (1) The minister may provide hardship assistance to a family unit that is ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, if
- (a) the applicants who submitted the application for income assistance (part 1) form also submit to the minister an application for income assistance (part 2) form that, subject to this section, complies with section 4.2, and
 - (b) the minister considers that
 - (i) any person in the family unit has an immediate need for food or shelter or needs urgent medical attention, and
 - (ii) undue hardship will occur if the hardship assistance is not provided.
- (2) An applicant may submit an application for income assistance (part 2) form under

subsection (1) (a) for the purpose of applying for hardship assistance even though the requirements under section 4.1 (2) (b) respecting the completion of searches for employment have not been satisfied.

The appellant argues that he suffers from serious health issues, including a separated shoulder, hernia, migraine headaches and poor circulation. He is in constant pain, and because of his physical impairments and pain he has been unable to complete his 5 week employment search requirement, to the satisfaction of the ministry. He did not understand what information he needed from his doctor to demonstrate the severity of his injuries and other physical impairments that may preclude him from completing searches for employment. He has no transportation other than his bicycle, and cannot ride on cold days. He has had difficulty retrieving his complete work search records from the computer in which he stored them. He is unable to work in the labour sector and has not been able to complete the certificate courses that might help him in finding a less strenuous job. He is now four months behind in his rent and is facing imminent eviction.

The ministry argues that the appellant did not follow the criteria for a work search set out in the Work Search Guidelines that he received when he applied for IA, in addition to blank Work Search Activities Records which could be filled in by hand as he completed specific activities. Upon review of the work search record submitted by the appellant the ministry is not satisfied that he has completed the 5 week employment search required for a new applicant applying for assistance. Further, he did not provide evidence from his doctor advising that he is unable to work at light labour jobs or attend employment programs that will assist him in finding employment. Because he failed to complete the 5 week employment search required by EAR Section 4.1 and does not meet the work search exemptions set out in EAR Section 4.1 he is not eligible for income assistance.

Decision of the Panel

The panel finds that the appellant did not provide sufficient evidence from his doctor to indicate that he is unable to complete light duty employment or attend employment programs or workshops which could assist him in his work search and in becoming more employable. The panel finds also that the ministry reasonably determined that the appellant does not meet the criteria set out in Section 4.1 (4) of the EAR of a person who does not have to complete a 5 week employment search because of a physical or mental condition that precludes him from completing a search for employment. The appellant is therefore required to complete a 5 week employment search and provide information about and verification of his employment search that is satisfactory to the minister.

The panel finds that the employment search record submitted to the ministry by the appellant does not meet the criteria set out in the Work Search Guidelines. Therefore the panel finds that the ministry reasonably determined that the appellant failed to complete and submit a search for employment satisfactory to the minister as required by EAR Section 4.1 and as a result is ineligible for income assistance.

Accordingly this panel finds that the decision of the ministry to deny income assistance to the appellant for failing to complete a 5 week employment plan and search requirements is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision of the ministry.