

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 26 February 2014 that found that the appellant was not eligible for income assistance pursuant to section 16 of the *Employment and Assistance Regulation*. The ministry determined that the appellant is enrolled as a full-time student in an unfunded program of studies at a university without prior approval from the ministry and therefore is not eligible for income assistance.

### PART D – Relevant Legislation

*Employment and Assistance Regulation (EAA)*, sections 1 and 16

*Canada Student Financial Assistance Regulations*, section 2

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. A Student Schedule/Bill from the appellant's university for Winter 2014, showing enrollment in 3 courses. Course numbers are in the range 001 to 099.
2. An (undated) university Adult Course Planner completed by the appellant, showing current (Winter term – 3 courses) and planned course enrollment, leading first to a Dogwood Diploma first and secondly to a social work certificate or degree.
3. From the ministry's files, as set out in the appellant's Request for Reconsideration and in the reconsideration decision:
  - 24 January 2014 – the appellant advised the ministry that she had begun upgrading her schooling and was still looking for work.
  - 03 February 2014 – the appellant attended the ministry office. She requested assistance with funding for courses at a university. The worker requested all documents relating to what type of school she was attending and how this was funded in order to determine her continued eligibility for assistance
  - 07 February 2014 – the appellant submitted confirmation to the ministry that she was attending an ABESAF (Adult Basic Education Student Assistance Program) unfunded upgrading program. She advised a ministry worker that she was about to start another set of 2 classes for a total of 5 classes. Upon review of this information the ministry determined that the appellant was a full-time student as she is currently attending three classes (60%); her books and tuition were paid for by ABESAP funding. She stated that she had started her classes on 06 January 2014. When asked, the appellant stated that she had not been referred or preapproved to attend the university by the EPBC contractor. She stated that she was no longer attending the EPBC program and that EPBC was not willing to support her educational goals so she had applied for the upgrading on her own. She advised that EPBC had told her that they would be closing her file.
  - 07 February 2014 – the appellant's EPBC case manager advised the ministry that in November 2013 the appellant and the case manager had an in-person discussion about looking into a "skills program" at the university. However the program lost funding shortly after and EPBC could no longer fund her attendance. The case manager also instituted a further conversation in January 2014 to discuss the situation; the appellant advised the case manager that she had decided to follow through with going to the university on her own. She advised the case manager that this was her path and she would not be able to participate in the EPBC program anymore and therefore would not attend any upcoming appointments. EPBC then sent a notification to the ministry to advise of the closure of her file.
  - 11 February 2014 – the ministry supervisor reviewed her file. It was determined that she was deemed no longer eligible for assistance. She is a full-time student in an unfunded program without prior approval of the ministry.
4. The appellant's Request for Reconsideration, dated 13 February 2014. Under reasons, the appellant writes that she will be focusing on full-time employment. The reason she is disturbed

by the decision is that she had a case worker who could have helped with staying on social assistance while she got credits for a GED through a program recommended by them. She seriously had no idea she would be cut off for going to school to fulfill her dream of becoming a social worker. She still needs help as she transitions into the workforce and will find a way to get her upgrading, including online. Now her priority is not to get homeless but stay safe and get a full-time job.

In her Notice of Appeal, dated 05 March 2014, the appellant writes:

"I'm sorry I didn't fully understand the consequences of me going to school to pursue a better life. I had the caseworker who I was working with, who really we didn't connect. I was working with [name] before and she was great. She offered solutions"

At the hearing, the appellant stated that when she first started with the EPBC contractor, she was assigned a case manager who was very helpful and supportive. This case manager left and she did not connect well with the next case manager. When she told this case manager that she wanted to upgrade her schooling and eventually work towards becoming a social worker, she was met with a "blank stare," as though the case manager did not believe that she would follow through with her plans. She stated that this case manager provided her with no encouragement or advice as to how she might take upgrading courses while still remaining on income assistance. As a result, she decided to follow her own path and enrolled at the university for courses beginning on 06 January 2014. On her own, she managed to obtain ABESAF funding for these classes. She stated that she did not feel it was fair that some of her classmates at the university received ministry assistance while she had been declared ineligible.

The appellant stated that she does not have high school graduation. The courses she enrolled in are towards obtaining a Dogwood Diploma. She hopes to obtain the necessary credits for this diploma by January 2015. She explained that of the three courses she was taking, one was a full course and the other two were half courses. She stated that her university did not consider her a full-time student.

The ministry stood by its position at reconsideration. The ministry representative explained that an Employment Plan (EP) was a "living document," that could be amended from time to time, but never retroactively, to take into account new client circumstances and opportunities. The ministry has clients with EPs that allow them to take upgrading courses with ABESAP funding for tuition and books, but only with the ministry's prior approval.

The panel finds that the information provided by the appellant in her oral testimony is in support of the evidence before the ministry when it made the decision under appeal. The panel therefore admits the information provided the appellant under section 22(4) of the *Employment and Assistance Act*.

#### *Findings of fact*

At the hearing, the ministry representative declined to confirm that it was the ministry's understanding that the courses taken by the appellant were upgrading courses, not at the post secondary level, stating that the level of courses was not relevant.

Considering that the appellant does not have high school graduation, that the courses she enrolled in were numbered in the range 001 to 099 (less than 100+ numbering usually associated with university

level courses), that these courses are for credit towards a Dogwood Diploma (the Province's high-school graduation diploma) and that tuition for these courses was funded by ABESAP for adult basic education or academic upgrading, the panel finds as fact that the courses in which the appellant enrolled were not at a post-secondary school level.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that the appellant was not eligible for income assistance pursuant to section 16 of the EAR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. More specifically, the issue is whether the ministry was reasonable in determining that the appellant is enrolled as a full-time student in an unfunded program of studies at a university without prior approval from the ministry and therefore is not eligible for income assistance.

The applicable legislation is from the EAR;

### Definitions

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;

"**unfunded program of studies**" means a program of studies for which a student enrolled in it is not eligible for student financial assistance.

### Effect of family unit including full-time student

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

And from the *Canada Student Financial Assistance Regulations (CSFAR)*:

2. (1) In the Act and these Regulations,

"course"

"course" means formal instruction or training that constitutes, or is determined by a designated educational institution to be equivalent to, an essential element of a program of studies at a post-secondary school level at that institution, but does not include any formal instruction or practical training required for acceptance in a professional corporation or for the practice of any trade or profession unless that formal instruction or practical training is necessary to obtain a degree, certificate or diploma from that designated educational institution;

"full-time student"

"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

(ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,

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

(c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be.

[These references relate to eligibility for obtaining a direct loan, continuing to be or again becoming a full-time student and obtaining a Canada student grant.]

The position of the ministry, as set out in the reconsideration decision, is that the appellant is enrolled as a full-time student in an unfunded program of studies at a university without prior approval from the ministry. The appellant is therefore not eligible for assistance pursuant to section 16 of the EAR. At the hearing, the ministry stated that the CSFAR is used because universities have varying definitions of what constitutes full-time status. Only the 60% benchmark from the CSFAR definition is applicable.

The appellant's position is that her university does not consider her a full-time student.

#### *Panel findings*

In determining the reasonableness of the ministry decision, the panel must review the application of the legislation to the facts before the panel. The panel has found as fact that the courses in which the appellant enrolled were not at a post-secondary school level. Section 16 of the EAR applies to an applicant or recipient who is a full-time student. The EAR defines "full-time student" as having the same meaning as in the CSFAR. The CSFAR defines "full-time student," in the case of a person, other than one with a permanent disability, who is enrolled in courses that constitute at least 60% of the course load recognized by the designated educational institution as constituting a full-time course load (and meets other criteria, including those relating to eligibility for Canada student loans and/or grants). In turn, the CSFAR also defines "course" as "formal instruction or training that constitutes.... an essential element of the program of studies at a *post-secondary school level* at that institution [panel emphasis]."

The ministry's position is that the reference to the CSFSR is meant only to import the "60% benchmark" into the EAR. The panel considers this interpretation to be unreasonably selective, as it only only that part of the definition of "full-time student" in the CSFSR. The EAR states that "full-time student" has the same meaning as in the CSFAR. It is clear that the meaning of "full-time student" in the CSFRA, taking into account the definition of "course," applies only to persons taking post-secondary school level studies.

The panel finds that, as the appellant was not enrolled in post-secondary school level studies, and as section 16 of the EAR applies only to a "full-time student" under the meaning of the CSFAR – that is, a student in a program of studies at a post-secondary school level – the ministry's decision that the appellant was not eligible for income assistance pursuant to section 16 of the EAR was not a reasonable application of the legislation in the circumstances of the appellant. The panel therefore rescinds the ministry's decision that the appellant was ineligible for income assistance because she was a full-time student.