

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated January 27, 2014 which found that the appellant was not eligible for income assistance prior to December 30, 2013 as he had not completed part 2 of his application for income assistance until December 30, 2013 as required by *Employment and Assistance Regulation* (EAR) section 26(2)(a).

PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), section 26 and Schedule A

## 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 January 14 2014 (RFR) which states that he would like to have his income assistance paid for the full month of December 2013 and pro-rated back to November 15, 2013, the date of his initial online application (the "Online Application"). The appellant states that his bank statements demonstrate that he has not received any money since early October 2013 and that he had waited until he felt "financial duress" before he applied for income assistance. The appellant states that he was informed in early December that he had missed a telephone call from the ministry and that his application had been cancelled. He states that he felt considerable despair over this because the small amount of money he would have received was important to him. The appellant states that he met the criteria to receive income assistance on January 9, 2014 and he would have met the criteria as at November 15, 2013 if his application had not been eliminated. In the RFR, the appellant reports that as a result of his financial situation he spent a few nights sleeping outside. He states that his phone was disconnected so he had to contact the ministry every day to ensure that he did not miss the interview to have his claim established. The appellant states that he spent a poverty stricken Christmas in a shelter. He states that the pro-rated assistance for November 15-30, 2013 and the December income assistance he seeks is not a huge amount of money but it is significant to him to remove barriers to him to help pay his telephone bill and transportation costs. The appellant states that he should not have to bear the entire onus of missing the one phone call from the ministry that resulted in his application being cancelled. He states that the ministry ought to have left him a voice mail message or tried to call him again.
- 2) Online Application with the appellant's handwritten note indicating that it was received November 15 2013
- 3) Employment Program of British Columbia Employment Readiness Information Questionnaire signed by the appellant on December 5, 2013
- 4) Employment Program of British Columbia Action Plan signed by the appellant on December 27, 2013
- 5) Application for Income Assistance (Part 2) signed by the appellant on December 30, 2013

In his Notice of Appeal the appellant states that he disagrees with the reconsideration decision because the ministry failed to contact him earlier based on the Online Application and does not even mention the Online Application in the reconsideration decision. The appellant states that Part 2 of his income assistance application should have been obtained within the first ten days of December based on the Online Application. The appellant states that because he missed the initial phone call from the ministry, the result is that he receives no income assistance for six weeks which is not fair. The appellant states that while the reconsideration decision indicates that there were no documents on file to confirm contact with the appellant prior to December, that statement is not accurate given that the Online Application had his phone number listed. The appellant states that he believed that the appeal process empowered a ministry official discretion to intervene rather than repeat back policy and legislation. The appellant states that he hopes that the "...tribunal is empowered enough to "lift the gate" to supercede policy and legislation, on this occasion". The appellant provided another

copy of the Online Application with his Notice of Appeal.

Prior to the hearing the appellant provided a written submission. The appellant did not include any new information with his submission but reiterated that he initially submitted the Online Application, missed a telephone call from the ministry resulting in his application being cancelled which meant he had to reapply for income assistance and his application was delayed. The appellant also notes that the Online Application contains a lot of personal data and information covered under the *Freedom of Information and Protection of Privacy Act*. He states that he does not feel that his personal information, missed phone call to invite him to attend part 2 of the income assistance application was appropriately disclosed to him as the request to complete part 2 was not done in a timely manner.

The appellant states that section 6(1) of the *Freedom of Information and Protection of Privacy Act* states that the head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely. The appellant states that one phone call, which was missed, does not meet the criteria of "*accurately and completely*" making reasonable effort to assist applicants.

As the appellant's written submission did not contain new evidence the panel accepted it as a written submission.

The ministry relied on the reconsideration decision and submitted no new information.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

[ ]

## 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 prior to December 30, 2013 because he had not completed part 2 of the application until December 30, 2013 as required by EAR section 26(2)(a) was reasonable.

The relevant sections of the legislation are as follows:

### EAR

#### **Effective date of eligibility**

**26** (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1) a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable. (B.C. Reg. 340/2008) (B.C. Reg. 264/2013)

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form, (B.C. Reg. 304/2005)

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and (B.C. Reg. 304/2005)

(c) for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form, (B.C. Reg. 400/2007)

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

### **EAR Schedule A**

#### **Maximum amount of income assistance before deduction of net income**

**1** (1) Subject to this section and section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of (B.C. Reg. 48/2010) (B.C. Reg. 197/2012)

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and*

*Community Service Act.*

(3) If

(a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,

(b) the family unit is found eligible for income assistance, and

(c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*,

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

(B.C. Reg. 197/2012)

### **Monthly support allowance**

2 (0.1) For the purposes of this section:

"**deemed dependent children**", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"**maximum adjustment**", in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

(a) the family unit were entitled to receive the national child benefit supplement for the calendar month,

(b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and

(c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act (Canada)*;

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(B.C. Reg. 73/2010) (B.C. Reg. 197/2012)

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit. (B.C. Reg. 197/2012)

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

*Position of the Parties*

The ministry's position is that the appellant completed part 2 of his application on December 30, 2013 and his eligibility was established January 7, 2014. The ministry prorated his support for December 30 and 31, 2013 for the amount of \$15.16 and provided full support for the month of January 2014. The appellant did not receive any shelter allowance as the appellant did not submit any actual shelter costs for December or January.

The ministry's position is that the prorated amount of \$15.16 is the maximum allowable for December 2013 as the appellant is only eligible for prorated support for the final 2 days of December as he signed part 2 of his application on December 30, 2013, based on support of \$235/month / 31 x 2 as per EAA section 26(2)(a) and Schedule A.

The ministry's position is that they are unable to provide support for any period before December 30, 2013 as the appellant did not complete part 2 of his application until December 30, 2013. The ministry's position is that the legislation does not provide for any eligibility for a period prior to the date that part 2 of the application is submitted. The ministry states that the earliest paperwork that they have on file indicates a date of December 5, 2013, but there are no documents on file to confirm any contact prior to December 5, 2013. The ministry also states that initial contact with the ministry does not establish the date of eligibility. The ministry's position is that there was no information provided to establish that the ministry was at fault for the delay or that administrative fairness was not provided.

The appellant's position is that he submitted the Online Application so part 2 of his income assistance application should have been completed within the first ten days of December 2013 resulting in him being found eligible as of early December 2013 at the latest. The appellant states that the reconsideration decision is not accurate in stating that there were no documents in the ministry file to confirm contact prior to December as the Online Application was submitted on November 15, 2013 and provided his contact information. The appellant's position is that the ministry ought to have made more than one attempt to contact him after receiving the Online Application and that they ought to have left a message for him advising him of an appointment. The appellant's position is that it is not fair that he should have to bear the sole onus of missing an appointment and that the principles of fairness should be applied to pro-rate his income assistance back to the date of his Online Application which was November 15, 2013 or early December 2013 at the latest.

*Panel Decision*

The EAR section 26(2)(a) requires that an applicant for income assistance becomes eligible for a support allowance under section 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.

The panel notes that the appellant states that the Online Application was received by the ministry on November 15, 2013 but there is no corresponding confirmation from the ministry as to receipt of the Online Application on that date. However, even accepting that the Online Application was submitted on November 15, 2013, the panel finds that the appellant did not follow up with the ministry to find out if his application was accepted or not. The legislation is clear that that an applicant becomes eligible for support on the date that part 2 of the income assistance application is completed. As the appellant did not complete part 2 of the income assistance application until December 30, 2013 the panel finds that the ministry reasonably determined that he was not eligible for income assistance until that date.

The appellant states that the ministry ought to have made further efforts to contact him in order that he could complete part 2 of the application. However, the panel finds that the appellant could have made more efforts to follow up with the ministry to ensure that the Online Application was received and the onus is on the appellant to provide the information necessary to establish his eligibility.

The legislation is quite clear that an applicant becomes eligible for support allowance on the date that part 2 of the income assistance application was completed. Although the appellant states that he hopes that the tribunal is empowered to supersede policy and legislation, the tribunal's jurisdiction is limited to the issue on appeal and to a determination as to whether the ministry's application of the legislation in the circumstances of the appellant was reasonable or not. Although the tribunal appreciates that the appellant has faced some difficult circumstances and was required to stay in a shelter and sleep outside and that the additional income assistance he is requesting prior to December 30, 2013 would be very helpful to him, the tribunal does not have the authority to supersede the policy and legislation.

Accordingly, the panel finds the ministry decision that the appellant was not eligible for income assistance pursuant to section 26(2)(a) of the EAR and schedule A for November and December as he had not completed part 2 of the application form until December 30, 2013 reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the ministry decision.