

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision dated January 9, 2014 which determined the appellant was not eligible for income assistance because he did not meet the two-year financial independence criteria as required under section 8 of the Employment and Assistance Act (EAA) and section 18 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 8
Employment and Assistance Regulation (EAR) and section 18

PART E – Summary of Facts

The ministry representative did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the EAR.

Evidence

The evidence outlined in the Request for Reconsideration section 2 from the ministry was the following:

- That in 2007 the appellant earned \$6623 however, the appellant was not able to meet the two-year independence requirement as CPP could not determine two consecutive years where the appellant made over \$7000;
- That the worker spoke with the appellant on the same day and advised him that he did not meet the two-year independence criteria, that the worker reviewed the exemptions with the appellant and advised him that he did not meet the exemptions, and that the worker outlined in the files that the appellant was upset and angry and disconnected the phone. As a result the intake for the appellant was not completed, there are no signed applications and eligibility was not determined;
- That the appellant connected with the local office on December 11, 2013 to continue with the application process; and
- That the Reconsideration of the decision was completed with no signed application as the intake process was not complete.

The evidence outlined in the Request for Reconsideration section 3 from the appellant was the following:

- That the appellant has been unable to maintain employment throughout his life up to now due to his upbringing, family background and life circumstances and that the most he was able to maintain work for was three months and that usually it is less than that;
- That the appellant has been "travelling" since he left home at 18 years, he was pushed through grades at school when he had not met the accepted education goals in each grade and that he has no more than grade 7 or 8 education;
- That he becomes easily frustrated with things that have happened to him, that he wishes to be working and making money, and that he seems to be lacking the skills and education necessary to accomplish this;
- That he has learned to be resourceful, accessing food banks and soup kitchens, that he does not have a mental health diagnosis and yet he recalls his mother being offered the option of medicine to help with his childhood behavior;
- That he believes that if he could get on income assistance to meet his basic necessities of life that he would have the option of being connected to an employment agency that may be able to help him;
- That he is not able to pay rent without income assistance being provided;
- That he has sent out resumes to local companies and has not yet secured employment; and
- That the appellant should not be penalized for "circumstances beyond his control".

Additional Evidence

In the Notice of Appeal dated January 13, 2014 the appellant states that the ministry failed to consider undue hardship that is occurring and will occur as a result of their decision; that they claimed not to have sufficient evidence about his life circumstances and he asked how can he "prove" life circumstances.

The ministry did not provide any additional evidence.

At the hearing, the appellant provided oral evidence as follows: that he was behind in his rent payments, has not been able to maintain employment he had two or three days of seasonal work and some cash under the

table work, that he no longer has family support, that he has grade 7 or 8 education, and that he has been living off of community resources such as food banks and shelters.

Also at the hearing, the advocate of the appellant provided additional written evidence dated February 3, 2014 as follows: that it would be difficult to prove life circumstances and background; that the ministry failed to consider that constitutionally it is obligated to provide the basic necessities of life to someone who requires it, not based on how much they have worked; that if an individual has not been able to prove that they have been unable to maintain employment this cannot and should not be a reasons to deny assistance; that the appellant has proven that he has been unable to be employed for those required number of hours for those required number of years because that is the reason the ministry used to deny him; that the appellant does not have a permanent address and does not have access to money to buy the basic necessities of life and that these things will clearly cause undue hardship if assistance is not provided; that at this point charity is scarce and the appellant's life is a risk if he does not receive income assistance.

The panel determined that the oral testimony from the appellant and the written information for the advocate was admissible under section 22 (4) of the EAA as it is in support of the information that was before the Ministry at the time of its reconsideration decision.

PART F – Reasons for Panel Decision

Issue to be Decided

The issue under appeal is whether the ministry's reconsideration decision, which denied the appellant income assistance because he failed to provide the requested information as required under section 8 of the EAA and section 18 of the EAR is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

Legislation

The applicable EAA legislation is as follows:
Requirement for 2 years employment

- 8** (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have
- (a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,
 - (b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or
 - (c) been employed for remuneration for a portion of two consecutive years and for the balance of those years either
 - (i) served a waiting period in respect of, or received benefits under, a claim under the *Employment Insurance Act* (Canada), or
 - (ii) received income under a public or private income replacement program or plan.
- (2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

Requirement for 2 years employment

- 18** (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.
- (2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7 000 in each of the 2 consecutive years.
- (3) Section 8 of the Act does not apply to the family units of the following categories of applicants:
- (a) applicants who have not reached the age of 19;
 - (b) applicants who are pregnant;
 - (c) applicants who have a medical condition that, in the opinion of the minister,
 - (i) will prevent the applicant from working for at least the next 30 days, or
 - (ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form;
 - (d) applicants with dependent children;
 - (e) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
 - (f) applicants who have a foster child;
 - (g) applicants who were supported by an employed spouse for at least 2 years;
 - (h) applicants who were supported by an employed spouse for a portion of a two year period and met a requirement of section 8 (1) of the Act for the balance of the two year period;
 - (i) applicants who were incarcerated in a lawful place of confinement for at least 6 months of

- the 2 year period immediately preceding the date of application for income assistance;
- (j) applicants who were in the care of a director under the *Child, Family and Community Service Act* or who had an agreement with a director under section 12.2 of the *Child, Family and Community Services Act* until the applicant's 19th birthday;
 - (k) applicants who
 - (i) have separated from an abusive spouse, or
 - (ii) changed place of residence to flee an abusive relative, other than a spouse, within the past 6 months if, in the minister's opinion, the applicant's ability to work is consequently impaired;
 - (l) applicants who have been awarded a 2 year diploma or certificate, a bachelors degree or a post-graduate degree from a post-secondary institution;
 - (m) applicants who have persistent multiple barriers to employment;
 - (n) applicants who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the applicant from leaving home for the purposes of employment;
 - (o) applicants who are providing care for a child under an agreement referred to in section 8 of the *Child, Family and Community Service Act*;
 - (p) applicants who are providing care for a child under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.
- (4) Section 8 of the Act does not apply to the family units of applicants if, in the minister's opinion,
- (a) the applicant, due to circumstances beyond the applicant's control, has been prevented from searching for, accepting or continuing employment, and
 - (b) the family unit will otherwise experience undue hardship.

Ministry's Position

The ministry argues that in order for the appellant to be considered for income assistance that he must meet the criteria for the two-year financial independence requirement or one of the legislated exemptions. In order to meet the criteria of the EAA section 8 (1) and the EAR sections 18 (1) to (4), the appellant must have had paid employment for at least 840 hours or have earned \$7000 in each of two consecutive years. The appellant did not provide this information to the ministry.

Section 18 (3) of the EAR outlines that an applicant is exempt from the two-year independence requirement if they fall within one of the exemption categories. The ministry outlined that the appellant during the eligibility interview indicated that he did not meet any of the exemptions listed.

Section 18 (4) of the EAR also provides that Section 8 of the EAA does not apply if in the minister's opinion the applicant due to circumstances beyond the applicant's control has been prevented from searching for, accepting or continuing employment, and the family unit will otherwise experience undue hardship. Even though the appellant stated that he had no education or skills for employment, that being eligible for assistance would help him to connect with an employment agency and that due to life circumstances he has been unable to maintain employment up to now, the ministry finds that there is insufficient information to establish that he has been prevented from accepting, maintaining or searching for employment. The ministry also finds that there is no indication that the appellant will face undue hardship if assistance is not provided and does not waive the two-year financial independence requirement.

The ministry concluded that the appellant did not meet the criteria under section 8 of the EAA nor did he meet any of the exemption categories under Section 18 of the EAR and therefore he is not eligible for income assistance.

Appellant's Position

The appellant argues that he has been unable to maintain employment throughout his life up to now due to his upbringing, family background and life circumstances and that the most he was able to maintain work for was three months and that usually it is less than that. He also argues that if he could get on income assistance to meet his basic necessities of life, he would have the option of being connected to an employment agency that may be able to help him as he is not able to pay rent without income assistance being provided. Further, the appellant's advocate argues that the ministry failed to consider that constitutionally it is obligated to provide the basic necessities of life to someone who requires it, not based on how much they have worked. She outlines that if an individual is not able to prove they have been unable to maintain employment that this should not be a reason to deny assistance. She points out that the appellant has not submitted the information because he is unable to prove that he has been unable to be employed for those required number of hours for those required number of years.

Panel Decision

While the appellant's advocate raises concerns that the ministry failed to consider the constitutional obligations, the panel does not have the jurisdiction over constitutional questions as outlined in section 19.1 of the EAA and section 44 (1) of the Administrative Tribunal Act.

The panel finds that appellant did not provide the requested information of two-year financial independence as required under section 8 of the EAA. Given that the record stated that the appellant indicated to the ministry in the eligibility interview that he did not meet any of the exemptions listed, the panel determines that he was not exempt from the two-year independence requirement because he did not fall within one of the exemption categories outlined in Section 18 (3) of the EAR.

The panel also finds that the ministry was reasonable in its view of insufficient information to establish that the appellant was prevented from searching for, accepting or continuing employment as outlined in Section 18 (4) (a) of the EAR. The panel finds that the ministry was reasonable to determine that there is insufficient information to establish that the appellant will face undue hardship if assistance is not provided as outlined in Section 18 (4) (b) of the EAR.

The panel finds that the decision of the ministry declaring the appellant ineligible for income assistance was a reasonable application of the enactment in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision.