

### PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) May 15, 2014 reconsideration decision in which the Ministry determined that the Appellant was not eligible for income assistance because she did not meet any of the eligibility criteria or exemptions in section 8 of the Employment and Assistance Act and section 18 of the Employment and Assistance Regulation.

### PART D – Relevant Legislation

Employment and Assistance Act (“EAA”) Section 4 and 8.

Employment and Assistance Regulation (“EAR”) Section 18.

## PART E – Summary of Facts

The Appellant did not appear at the hearing. The Panel confirmed that the Appellant was provided with notice of the hearing. Then, in accordance with section 86(b) of the EAR, the Panel proceeded with the hearing in the Appellant's absence.

For its reconsideration decision, the Ministry had the following evidence:

1. Information from Ministry records that the Appellant:

- Applied for income assistance as a sole applicant and completed a Two Year Independence Assessment.
- On March 25, 2014, advised the Ministry that she received funding for school in 2013, which included a living allowance.
- On April 3, 2014, provided to the Ministry her 2012 Income Tax Notice of Reassessment showing \$11,686 net income, \$6,430 deductions from net income and \$5,256 taxable income.
- Provided to the Ministry her 2013 Tax Return Summary showing \$4,514.41 employment income and \$6,137 other income which the Appellant stated was her funding for school.

2. Appellant's request for reconsideration, dated April 30, 2014 with the following documents:

- The same 2012 Notice of Reassessment.
- Her 2013 Tax Notice of Assessment showing \$10,651 total net and taxable income.
- Acceptance letter, dated March 24, 2014, from a local college accepting the Appellant into a health career program, starting September 2014.
- Letter from the same college, dated April 7, 2014, stating that she completed a diploma program to complete high school. It started April 2013 and ended March 2014.
- Her work search activities record from March 18, 2014 to March 24, 2014 detailing types of activity, location of activity, contact name and phone number, and results.
- Several examples of her application for various positions.
- Contact information for an employer for whom she worked as a casual
- Her written argument, which included information related to her circumstances.

In her request for reconsideration, the Appellant referred to her 2012 notice of assessment showing total income of \$11,686 and net income of \$11,686 and to her 2013 notice of assessment showing total income of \$10,651 and net income of \$10,651. She also stated that she completed employment searches and submitted the required documents (attached to her submission). The Appellant wrote that she was never told that her employment search was not acceptable. She has had several job interviews but has not been successful in getting employment. The Appellant stated that she has done everything in her ability to seek employment. She added that she was working as a casual worker while attending school full time, but her employer was unable to provide her with work. She asked her employer for a letter to explain the circumstances of her employment or lack of employment due to a slow season. The Appellant stated that the employer was unable to comment.

The Appellant also wrote that she attended school during the past year full time, working towards a degree in the health field. She needed to fulfill certain course requirements before being accepted into the degree program. The Appellant stated that she completed her first year and has been accepted into college to begin her second year in September 2014. She wrote that she needs funding for this degree and has made several attempts to get financial support. It is critical that she has stable housing and basic food support until she begins school in September 2014.

The Appellant stated that denying her the basic safety support of income assistance puts her at great risk of homelessness and other safety issues if she has to live on the streets. She wrote that it is her understanding that income assistance is in place to support people like her who need immediate assistance and to support people transitioning to employment or school. The Appellant stated that she has done everything in good faith and completed every school course she has enrolled in to pursue higher goals. She is only asking for a helping hand for a short period of time.

In her notice of appeal, the Appellant wrote that for section 8 she received income from a public/private program. She wrote that she was attending school full time and working part time. Under section 18(4), she was prevented from searching and accepting employment due to full time school and will experience undue hardship if not assisted.

Because the Appellant did not appear at the hearing, the Panel will consider the Appellant's submissions with her request for reconsideration and for this appeal to be her submissions for the appeal.

At the hearing, the Ministry reviewed and reaffirmed the reconsideration decision.

The Panel makes the following findings of fact:

1. From April 2013 through March 2014, the Appellant attended school to complete her high school diploma, but not for post-secondary studies.
2. The Appellant was not employed for remuneration for at least 840 hours during 2012, 2013 or 2014.
3. The Appellant's income from employment for remuneration in 2013 was \$4,514.41.
4. The Appellant's total taxable income in 2013 was \$10,651, of which \$6,137 was funding for school.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for income assistance because she did not meet any of the eligibility criteria or exemptions in section 8 of the EAA and section 18 of the EAR.

The following section of the EAA applies to this appeal:

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

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.

The following section of the EAR applies to this appeal:

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;

(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 Services Act* and 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 bachelor's 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 Services 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 Services 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.

The Panel will consider the parties' positions with respect to the sections of the EAA and EAR at issue in this appeal.

#### **Section 8(1)(a) and (c) EAA and Section 18(1) EAR**

The Ministry determined that the Appellant did not provide any information demonstrating that she worked 840 hours in each of 2 consecutive years. Therefore the Ministry determined that the Appellant did not meet the requirements in section 8(1)(a) of the EAA and section 18(1) of the EAR. The Ministry also considered section 8(1)(c) of the EAA and determined that the Appellant did not provide any information demonstrating that she worked and received EI, or a public or private income replacement program or plan for a two consecutive year period. Therefore the Ministry found that the Appellant did not meet the requirements in this legislation.

The Appellant's position is that she completed employment searches and submitted the required documents to the Ministry. She had several job interviews but has not been successful in getting employment. The Appellant stated that she has done everything in her ability to seek employment and has worked as a casual employee.

#### *The Panel's Findings*

The Panel finds that, although the Appellant submitted evidence that she worked part-time, there is no evidence that she worked 840 hours in each of 2 consecutive years. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements in section 8(1)(a) of the EAA and section 18(1) of the EAR. The Panel also finds that there is no evidence that the Appellant was receiving EI or any income under a public or private income replacement program or plan. Therefore the Ministry reasonably determined that the Appellant did not meet the requirements in section 8(1)(c) of the EAA.

#### **Section 8(1)(b) EAA and Section 18(1) EAR**

With respect to section 8(1)(b), of the EAA and section 18(2) of the EAR, the requirement to earn at least \$7000 from employment in each of two consecutive years, the Ministry noted that the information from the Appellant showed that in 2013 she earned \$4,514.41 from employment, but her 2012 Notice for Reassessment did not indicate what income was from employment. Therefore, the

Ministry determined that the Appellant did not demonstrate that she met these requirements.

The Appellant submitted that she met this requirement by providing evidence in the form of tax assessments and notices to show that her 2012 income was \$11,686 and her 2013 income was \$10,651. She submitted that some of her income was from a program which provided her with funding for school.

*The Panel's Findings*

The Panel finds that the only evidence about the Appellant's income from employment is the tax information from 2013; that is, that the Appellant had income from employment in the amount of earned \$4,514.41. There is no evidence to indicate whether any of the Appellant's income in 2012 was remuneration from employment. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not meet these legislated requirements.

**Section 18(3) EAR**

The Ministry determined that the Appellant did not meet any of the exemptions in section 18(3) of the EAR, based on the Two Year Independence Assessment she completed and on the Appellant's 1 year of study to obtain an Adult Graduation Diploma. The Ministry found that these studies did not meet the exemption criteria for persons awarded a 2 year diploma from a post-secondary institutions.

The Appellant's position is that she attended school full time, has been accepted into a health care program and will be entering a college program in September 2014. She also has been looking for work while going to school fulltime.

*The Panel's Findings*

The Panel finds that there is no evidence to establish that the Appellant met any of the specific exemptions set out in section 18(3) of the EAR, which are cited above. Specifically, with respect to section 18(3)(l), the Panel finds that there is no evidence that the Appellant has been awarded a 2 year diploma or certificate, a bachelor's degree or a post-graduate degree from a post-secondary institution. Therefore, the Ministry reasonably determined that the Appellant did not meet any of the exemptions in section 18(3) of the EAR.

**Section 18(4) EAR**

The Ministry considered the information from the Appellant about her efforts to find employment, that she found one job for 1 day a week, as well as information about her employment in the past and efforts to find a job. The Ministry found that the Appellant had not been prevented from searching for, accepting or continuing in employment and therefore did not meet the requirements of section 18(4)(a). The Ministry also considered the application of section 18(4)(b) in the Appellant's circumstances and it conceded that the Appellant may experience undue hardship from possible homelessness if she is not assisted; however, the Ministry found that the Appellant did not meet the exemption in section 18(4) of the EAR because she had not been prevented from searching for, accepting or continuing in employment.

The Appellant submitted that she completed employment searches and also worked as a casual worker while going to school full time. She submitted that she was unable to work due to lack of available work, but she has been looking for other work. The Appellant wrote that without income

assistance she is at great risk of homelessness and other safety issues.

*The Panel's Findings*

The Panel finds that the Appellant provided evidence, such as her job applications, demonstrating that she has been looking for employment. She was also working part time. Therefore, the Panel finds that the Ministry reasonably determined that there is no evidence that there are circumstances beyond the Appellant's control preventing her from searching for, accepting or continuing employment; that is, she did not meet the first requirement for an exemption under section 18(4). The Appellant stated that she is at risk of being homeless and the Ministry conceded that she may experience undue hardship from possible homelessness. However, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the exemption in section 18(4) of the EAR because she was not prevented from searching for, accepting or continuing in employment.

Conclusion

Having considered all of the evidence and relevant legislation, the Panel finds that the Ministry's decision as reasonably supported by the evidence. The Panel therefore confirms the reconsideration decision.