

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated May 8, 2014 which held that the Appellant is not eligible for income assistance as set out in the Employment and Assistance Regulation, Section 7 and 7.1 because the legislated citizenship requirements are not met.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 7 and 7.1

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

1. On May 6, 2014, the Ministry received an update from Citizenship and Immigration Canada (CIC) regarding the Appellant's Citizenship status.
2. CIC informed the Ministry that the Appellant submitted a request for a search of records, and CIC returned the Appellant's application with a letter suggesting the Appellant complete the Application for a Citizenship Certificate in order to obtain a determination on citizenship status.
3. The Ministry's Sponsorship Default Recovery Program also states that the Appellant has a Social Insurance Number (SIN), which means, if it can be verified, the Appellant likely will have status in Canada, however it is the minister's opinion that it does not establish the Appellant's citizenship status. Additionally, the Appellant has not yet provided verification of his declared SIN.
4. The Appellant is a sole applicant with no dependent children.
5. The Appellant is known to the Ministry by both his birth name and his adopted name.

In the Notice of Appeal, the Appellant states that it will take at least another 6 months to get the Canadian Citizen papers back from the Federal Government and states that he is not working and he could really use the help, and he is over age 60.

At the hearing, the Appellant provided the following:

1. Stated he had collected Social assistance at least 4 or 5 times in the past 45 years.
2. He received a tax refund in 2013 and for the past 3 months has been receiving his CPP pension benefit.
3. He stated that he would be living in a "shopping cart" within two weeks because he can no longer get a break from his landlord.
4. He stated that he wanted to get into commercial driving but could not do so without proof of his SIN and that he needed to change his career from auto-body painting work to commercial driving because the chemicals and dust would kill him if he continued in that line of work.
5. He moved to Canada from another country with his family when he was a young child.
6. He has lived here as a Canadian for 60 years working and paying taxes like everyone else.
7. In 1972 his mother re-married and he was adopted by his new father and had a name change.
8. He has received social assistance from time to time over the past 45 years with the last claim in 2011 receiving \$1,400 and each time he only had to provide his SIN and drivers licence.

9. He has applied for his citizenship papers over 5 months ago with the documents being returned to him for completion and resubmitted just a few weeks ago.
10. He currently has no telephone, is financially destitute and will be living on the street in two weeks.

The Ministry commented that after performing a back ground check into the Appellant's records, no evidence of previous payments to the appellant could be found, however a changeover in the computer systems used by the Ministry may be the cause and the ministry would request to look at his hard file, located in another community.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably conclude that the Appellant is not eligible for income assistance as set out in the EAR, Section 7 and 7.1 because the legislated citizenship requirements are not met.

Employment and Assistance Regulation

Citizenship requirements

7 (1) For a family unit to be eligible for income assistance at least one applicant or recipient in the family unit must be

- (a) a Canadian citizen;
- (b) authorized under an enactment of Canada to take up permanent residence in Canada;
- (c) determined under the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)* to be a Convention refugee;
- (d) in Canada under a temporary residence permit issued under the *Immigration and Refugee Protection Act (Canada)* or on a minister's permit issued under the *Immigration Act (Canada)*;
- (e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act (Canada)*; or
- (f) subject to a removal order under the *Immigration and Refugee Protection Act (Canada)* that cannot be executed.

Exemption from citizenship requirements

7.1 (1) Despite section 7 (1), a family unit that does not satisfy the requirement under that section is eligible for income assistance if the minister is satisfied that all of the following apply:

- (a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;
- (b) the applicant or recipient has one or more dependent children who are Canadian citizens;
- (c) the applicant or recipient has separated from an abusive spouse;
- (d) the applicant or recipient has applied for status as a permanent resident under the *Immigration and Refugee Protection Act (Canada)*;
- (e) the applicant or recipient cannot readily leave British Columbia with the dependent children because
 - (i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,
 - (ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or
 - (iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

(2) If a family unit satisfies the requirement under subsection (1), income assistance and supplements may be provided to or for the family unit on account of

- (a) the sole applicant or sole recipient in that family unit, and
- (b) each person in the family unit who is a dependent child.

(B.C. Reg. 198/2012)

The Ministry's position is that the Appellant does not qualify for income assistance because as a sole applicant with no dependent children, he must be:

- a) A Canadian citizen;
- b) Authorized under an enactment of Canada to take up permanent residence in Canada;
- c) Determined under the e Immigration and Refugee Protection Act (Canada) or the Immigration Act (Canada) to be a Convention refugee;
- d) In Canada under a temporary residence permit issued under the Immigration and Refugee Protection Act (Canada) or on a minister's permit issued under the Immigration Act (Canada);
- e) In the process of having his or her claim for refugee protection, or application for protection, determined or decided under the Immigration and Refugee Protection Act (Canada); or
- f) Subject to a removal order under the Immigration and Refugee Protection Act (Canada) that cannot be executed.

The Appellant has not provided proof of having met any of the above required eligibility criteria, and CIC cannot confirm the Appellant's citizenship status. The ministry further contends that while the Appellant has a SIN (the Appellant has not provided verification of the declared SIN), it is the ministry's opinion that it does not establish the Appellant's citizenship status. The Ministry has determined that the Appellant does not meet any of the citizenship criteria under Section 7 of the EAR.

The Ministry has further determined that as the Appellant does not have dependent children, the exemption under section 7.1 of the EAR does not apply and the Appellant is not exempt from the citizenship requirement.

The Appellant's position is that his citizenship is established by his history of work and his past receipt of social assistance going back 40 years.

At the hearing, the Ministry contended that there was no record of the Appellant receiving social assistance in the past, and ministry was aware that the Appellant was known by two names, his birth name and his adopted name. The Ministry presented no additional information or evidence other than to refer to the evidence provided in the reconsideration decision.

The panel finds that Sections 7 and 7.1 of the EAR clearly sets out the criteria to be met to be eligible for income assistance, specifically:

1. The exemption provided under section 7.1 of the EAR is not available to the Appellant because he does not have dependent children, and
2. The Appellant does not meet any of the citizenship criteria under Section 7 of the EAR, specifically he must be:
 - a) A Canadian citizen;

- b) Authorized under an enactment of Canada to take up permanent residence in Canada;
- c) Determined under the Immigration and Refugee Protection Act (Canada) or the Immigration Act (Canada) to be a Convention refugee;
- d) In Canada under a temporary residence permit issued under the Immigration and Refugee Protection Act (Canada) or on a minister's permit issued under the Immigration Act (Canada);
- e) In the process of having his or her claim for refugee protection, or application for protection, determined or decided under the Immigration and Refugee Protection Act (Canada); or
- f) Subject to a removal order under the Immigration and Refugee Protection Act (Canada) that cannot be executed.

The panel further accepts the Ministry's opinion that the SIN does not establish a person's citizenship status because a verified SIN indicates a person may have Canadian Citizenship or Permanent Residency in Canada, it does not establish a person's citizenship status. The Appellant has yet to provide verification of his declared SIN to the Ministry.

Therefore, based on the legislation and the facts presented in this decision, the Panel finds that the Ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.