

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 May 1, 2014, which held that the appellant is not eligible for income assistance (IA) because she does not meet the 2-year financial independence requirement set out under section 8 of the Employment and Assistance Act (EAA) nor had she met any of the exemption categories under 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), section 18

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was duly notified, the hearing proceeded pursuant to section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration was comprised of:

- the appellant's ministry Two-Year Independence Assessment form unsigned and undated;
- an advocacy consent for release of information form signed by the appellant March 17, 2014;
- a letter to the ministry from the appellant's advocate dated April 1, 2014, requesting a 12 business day extension allowing time to submit additional information;
- a ministry Medical Report-Employability dated February 28, 2014; and
- the Request for Reconsideration.

The ministry's evidence is that the appellant was 24 years of age and applied for assistance as a single person with no dependants. At the date of application the appellant reported that: she was suffering from a medical condition that prevented her from working, did not complete high school, had not worked since, had no learning disabilities diagnosed while in high school and was raised by a working mother and grandmother who supported her. In August 2013, the appellant received temporary income assistance in another province while attending an employment readiness program.

On the appellant's Two-Year Independence Assessment form her response was "no" to the question of whether she was employed for 840 hrs or earned employment income of at least \$7,000.00 in each year of any consecutive two-year period and with the exception of answering "yes" to the question which asks if she has a medical condition, answered "no" to all of the other remaining questions which relate to whether she falls within the categories of persons identified under section 18(3) of the EAR;

In the appellant's Medical Report- Employability her physician reports that he is a general practitioner, has seen the appellant for less than six months and has examined previous medical records. Her primary diagnosis is DVT and chronic anemia, onset July 2010, secondary medical condition psoriasis, date of onset not specified. The overall medical conditions are described as moderate and are expected to last more than two years. Both anemia and psoriasis are described as chronic in nature and the DVT as treated. No restrictions specific to the appellant's medical conditions are reported by the physician.

No information was submitted to the ministry by either the appellant or her advocate specifying her reasons for requesting reconsideration.

After the ministry Reconsideration Decision and prior to the hearing the appellant submitted her Notice of Appeal to the Tribunal dated June 5, 2014, in which she provides her reasons for disagreeing with the ministry's Reconsideration Decision. The appellant reports that she was on medical and then took a course in job finding. As of June 2, 2014, she started an office administration program at a training institution. She took out a student loan which does not include living expenses and her course ends in February 2015, and they will help her find a job so she just needs help for the next 8 months. The appellant also reports that she does not want to be on assistance, was on it in another province because of medical issues, however she is now in college and needs help to have a place to live and to purchase food and medication. The appellant reports that she is trying to better herself, get a trade and become self supporting.

At the hearing the ministry stood by the record.

Based on the evidence the panel made the following Findings of Fact:

- The appellant has never been employed for remuneration for at least 840 hours nor did she earn at least \$7,000.00 in each of two consecutive years.
- The appellant indicated at the time of her application for IA that she had a medical condition which prevented her from working.
- The appellant's physician has diagnosed her with primary conditions of DVT and chronic anemia, onset July 2010, and a secondary medical condition psoriasis, date of onset not specified. Both anemia and psoriasis are described as chronic but moderate in nature, will last more than two years and the DVT as treated.
- No restrictions specific to the appellant's medical conditions are reported by her physician.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant is not eligible to receive IA was either a reasonable application of the legislation and reasonably supported by the evidence. Specifically the ministry determined that the appellant is not eligible for IA because she does not meet the 2-year financial independence requirement set out under section 8 of the EAA nor had she met any of the exemption categories under section 18 of the EAR. In arriving at their decision the ministry relied upon the following legislation:

Employment and Assistance Act

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.

Employment and Assistance Regulation

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.

[am. B.C. Regs. 331/2003, s. 1; 304/2005, s. 4; 279/2009; 48/2010, Sch. 1, s. 1 (b).]

As the appellant reported to the ministry that she has no employment history there is no dispute by either party that she has not earned \$7,000 or been employed for 840 hours in each of 2 consecutive years as required under section 8 of the EAA and section 18(1) and (2) of EAR. The focus of the argument by the parties is therefore whether there is any applicable exemption in section 18(3) or (4) of EAR which would exempt the appellant from the two-year independence requirement all together.

The ministry's position is that the appellant did not provided any evidence that she falls within any of the categories of exempt persons under section 18(3) or (4) of the EAR.

The appellant's position is that at the time of making her application for IA she was suffering anemia and psoriasis which prevented her from working. On appeal, the appellant reported that as of June 2, 2014, she enrolled in an office administration program at a training institution. She took out a student loan that does not include living expenses and her course ends in February 2015. The appellant argued that as the training institute she is attending will help her find a job upon graduation, all she requires from the ministry is financial assistance for food, rent and medications for the next 8 months.

In considering the regulatory exemptions which could exempt the appellant from the two-year independence requirement, set out above in section 18(3) of EAR, the panel finds that there is no dispute by either party that the appellant does not meet any of the requirements found in sub-sections (3)(a)(b)(d)(f)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) of EAR. The panel further finds that the only applicable regulatory exemption the appellant has raised which could exempt her from the two-year independence requirement is noted above in section 18(3)(c) of EAR. While the appellant argued at application for IA that she was suffering from anemia and psoriasis which prevented her from working the panel finds that there is insufficient documental medical evidence provided by her physician to support this argument. In the appellant's Medical Report completed by her physician he reports examining the appellant's previous medical records and has

diagnosed her with primary conditions of DVT and chronic anemia, onset July 2010, and secondary medical condition psoriasis, date of onset not specified. Both anemia and psoriasis are described as chronic and moderate in nature, expected to last more than two years and the DVT as treated. The physician further reported no restrictions specific to the appellant's medical conditions. The panel finds based on the information provided the ministry reasonably determined that the appellant has not met either of the regulatory requirements set out in section 3(c)(i) or (ii) of EAR which would exempt her from the two-year independence requirement.

Finally the panel considered the regulatory requirements set out above in section 18(4) of the EAR. While the appellant argued in her Notice of Appeal that all she requires from the ministry is financial support for the next 8 months to cover the cost of rent, food or medications, the appellant has failed to provide evidence demonstrating how or why section 18(4) is applicable in her circumstance. The panel finds that ministry records report that the appellant is 24 years of age, has no employment history, has been supported by a working mother, was temporarily on IA in another province in 2013, while attending employment programming, and has medical conditions that the ministry considers to be a mild barrier to employment. The panel therefore finds based on the evidence presented the ministry reasonably determined there are no factors beyond the appellant's control that have prevented her from searching for, accepting, or continuing in employment and that therefore, the appellant does not meet the exemption requirements of section 18(4) of the EAR.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.