

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated June 17, 2014, which found the Appellant ineligible for hardship assistance. The Ministry determined that the Appellant received hardship assistance under section 47.2(1) of the Employment and Assistance Regulation for three consecutive months in 2014 and that there are no provisions in the legislation that would permit the issuance of further hardship assistance.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 1, 5

Employment and Assistance Regulation (EAR) sections 4, 39, 47.2

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A copy of a Medical Report – Employability dated June 5, 2014, which states that the Appellant's spouse has anxiety and depression, Hepatitis C and alcohol addiction, with restrictions in concentration, reliability for work [illegible], fatigue, insomnia, variable mood lability[sic] stomach pain, nausea, heartburn, vomiting, antisocial behavior and memory lapses.
- A copy of a B.C. Employment and Assistance cheque dated March 3, 2014, in the amount of \$1,101.06, payable to the Appellant.
- A copy of a B.C. Employment and Assistance cheque dated March 3, 2014, in the amount of \$828.88, payable to the Appellant.
- A letter to the Ministry from the Appellant dated June 6, 2014.
- A copy of a disconnection notice from B.C. Hydro, dated May 6, 2014.
- A note from the Appellant's landlord, dated May 26, 2014, stating that she is in arrears in her rent.
- A copy of a letter from the Ministry to the Appellant dated March 10, 2014, advising her of their decision to deny a request for health supplement.
- A copy of the Appellant's spouse's Application for Income Assistance, page 3 of 5, dated May 3, 2014, with "Drug or alcohol problem" circled in the section "If not looking for work, why not?"
- A copy of an Employment Program of British Columbia Action Plan in the Appellant's spouse's name, dated March 17, 2014, listing under "considerations", financial hardship, no driver's licence, criminal record, age (older worker), addiction issues (alcohol), employment maintenance issues, no computer skills, lack of skills/qualifications, low-skilled (skills-gaps).
- A copy of a Health Supplement Info Sheet 11 – Diet Supplement, dated March 10, 2014 in the Appellant's spouse's name, requesting high protein for treatment of Hepatitis C.
- A copy of the Appellant's Medical Report – Employability, dated May 15, 2014, listing medical conditions of pregnancy, chronic fatigue, nausea/vomiting, nosebleeds and thrombocytopenia, with restrictions listed as back pain, nausea, nosebleeds occur spontaneously, chronic fatigue from standing too long or exertion, nausea with smells and sight of various items leads to vomiting.
- A copy of a note on a physician's prescription pad, undated, stating "off work, pregnancy, nausea, fatigue [illegible]."
- A copy of the Appellant's Application for Income Assistance dated March 3, 2014, stating that she has been actively looking for work but cannot find a suitable job, her spouse has a serious alcohol addiction and her landlord wants to evict them if they cannot pay the rent. "No" is entered in the space next to the question "Do you have an immediate need for urgent medical attention?"
- A copy of a letter to the Ministry from the Appellant's landlord, dated February 10, 2014, stating that the Appellant owes half of the rent for January and all of February.
- A copy of the Ministry's "SSA Store Assessment Details" printout dated February 3, 2014.
- The Appellant's Request for Reconsideration, dated May 28, 2014, with attachments.

Prior to the hearing the Appellant submitted the following:

1. A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 6, 2014.
2. A Deposit Account History Financial Enquiry for the dates April 1 to 3, 2014.
3. A copy of an obstetrical ultrasound (14 weeks+), dated May 23, 2014.
4. A copy of a laboratory report dated June 4, 2014, with hematology and lipids test results.
5. A copy of a police certificate of blood alcohol breath test results of the Appellant's spouse, dated May 14, 2013, with a result of 240 mg of alcohol per 100 ml of blood.
6. A copy of a letter to the Ministry from an addictions counsellor, dated June 26, 2014.
7. A copy of a note written on a physician's prescription pad, dated June 26, 2014, stating that the Appellant has multiple health issues and her baby is due on October 12, 2014, and that she was

advised to refrain from lifting, twisting, bending, prolonged sitting [illegible].

8. A copy of Part 1 of the Canadian Bill of Rights.
9. A copy of part of the Canadian Charter of Rights and Freedoms, with excerpts from a website.
10. A copy of the United Nations Convention on the Rights of the Child.
11. A copy of newspaper articles, undated.
12. A copy of a website dealing with "Civil rights and civil duties".
13. A copy of part of a Ministry brochure dealing with the requirement to do a three week work search, three month limit, who does not have to do the three week work search and how to apply for an immediate needs assessment.
14. A copy of an article titled "Human Rights in British Columbia".
15. A copy of a webpage of the B.C. Human Rights Coalition titled "FAQ – Drug and Alcohol Addictions".
16. A copy of a note written on a physician's prescription pad, dated [illegible] 16, --13, referring to the Appellant's spouse, stating "off work due to [illegible] addiction, hepatitis, going to see mental health and addictions.

The Panel determined that items numbered 1 to 7 and 16 above were admissible under s. 22(4) of the EAA as they were in support of the records before the minister at reconsideration. The Panel determined that items numbered 8 to 15 above were argument, not evidence. The Ministry had no objection to the admission of the documents.

At the hearing the Appellant stated that she wants to receive "regular" income assistance. She stated that she did not reapply for income assistance after being denied further hardship assistance because she wishes to receive back pay. The Panel noted that the issue under appeal is the denial of hardship assistance. The Appellant stated that she was in receipt of hardship assistance because she was denied income assistance.

The Appellant stated that she is in need because her landlord has threatened eviction. She stated that she and her spouse should not have had to do a three week job search when they applied for income assistance because they are exempt from this requirement due to having a physical or mental condition that precludes them from completing a search. She referred to the considerations listed on her spouse's Action Plan and her pregnancy and problems obtaining day care for her children. The Appellant stated that she and her physician completed her Medical Report – Employability together, which explains why the handwriting is different on the form; she wrote some of the entries, and her physician signed the form. The Appellant argued that the Ministry should have called her doctor if they had doubts. The Appellant stated that it took until March to receive assistance, although she applied in February.

With respect to the three month limit on hardship assistance, the Appellant stated that not all of the relevant information was taken into consideration by the Ministry. She stated that she and her spouse were unable to complete job searches because of physical or mental conditions that preclude them from doing so; therefore the initial determination of ineligibility for income assistance was wrong.

In response to questions from the Panel, the Appellant stated that she applied for hardship assistance on February 3, but did not receive a cheque until March 3. She stated that she had insomnia, nausea and nosebleeds at the time she applied, and that she informed the Ministry that she was pregnant.

The Ministry submitted two documents titled "Reasonable Work Search Activities Guidelines" signed by the Appellant and her spouse February 28, 2014. The Panel determined that these documents were admissible under s. 22(4) of the EAA as they were in support of the records before the minister at reconsideration. The Appellant did not object to their admission.

The Ministry responded that the Appellant applied for hardship assistance on February 3 and was assessed

for immediate need by telephone February 9, then after receipt of documentation, she was found to be eligible on February 17. The cheque that was issued included the February benefit. The Ministry stated that the Appellant and her spouse signed employment plans and were given work search documents February 28. The Ministry stated that anyone applying for income assistance has a work search requirement. The Ministry stated that on April 2, 2014, the Ministry found the work search that was submitted by the Appellant and her spouse and found it inadequate and instructions were given to the Appellant and her spouse on how to properly conduct a work search. The Ministry stated that the Appellant's spouse was instructed to complete a work search to the best of his ability, and he was scheduled for workshops, which he did not attend. On May 5, the Ministry reviewed the work searches and found them unacceptable.

In response to questions from the Appellant, the Ministry stated that the documents submitted at the hearing demonstrate that both the Appellant and her spouse signed work search activity guidelines documents. The Ministry stated that due to the immediate need, hardship assistance was given to the Appellant, but if they had refused to sign the work search documents, they would have been denied assistance. The Ministry stated that there is no record of the Appellant's spouse ever attending a workshop. The Ministry stated that it is up to the applicant for assistance to provide documentation. The Appellant was requested to provide an employability report, then her spouse was referred to an appropriate contractor. The Ministry stated that work search requirements can be modified; the Appellant's spouse was instructed to do the work search to the best of his ability.

In response to questions from the Panel, the Ministry stated that there is a multi-stage application process; the Appellant applied online, then there was an assessment for immediate need.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision dated June 17, 2014, which found the Appellant ineligible for hardship assistance. The Ministry determined that the Appellant received hardship assistance under section 47.2(1) of the Employment and Assistance Regulation for three consecutive months in 2014 and that there are no provisions in the legislation that would permit the issuance of further hardship assistance.

Legislation

EAA

Interpretation

1 (1) In this Act:

"**hardship assistance**" means an amount for shelter and support provided under section 5 (1)[*hardship assistance*];

Hardship assistance

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

EAR

Application for income assistance — stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (2).

(2) The applicants for income assistance in a family unit

(a) must complete and submit to the minister an application for income assistance (part 1) form and must include as part of the application

- (i) the social insurance number of each applicant in the family unit who is a person described in section 7 (2), and
- (ii) the information, authorizations, declarations and verifications specified by the minister, as required in the application for income assistance (part 1) form, and

(b) subject to subsections (4) and (6), must

- (i) complete searches for employment as directed by the minister for the applicable period under subsection (2.1) immediately following the date of the application under paragraph (a), or
- (ii) demonstrate that each of the applicants has completed a search for employment

satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),
and in either case provide information about and verification of the searches for employment, in the form specified by the minister.

(2.1) The applicable period for the purposes of subsection (2) (b) (i) is

- (a) 3 weeks, if any applicant in the family unit is a former recipient, and
- (b) 5 weeks in any other case.

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act.

(4) Subsection (2) (b) does not apply to a person who

- (a) is prohibited by law from working in Canada,
- (b) has reached 65 years of age,
- (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (d) has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or
- (e) is fleeing an abusive spouse or relative.
- (f) Repealed. [B.C. Reg. 6/2008, s. 1.]

(5) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 3 (e).]

(6) Subsection (2) (b) does not apply to a sole applicant who

- (a) has a dependent child, or
- (b) provides care to a foster child or a child in their care under an agreement referred to in section 8 or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*

if the child has not reached 3 years of age.

Hardship assistance — eligibility and limitations

39 (1) For a family unit to be eligible for hardship assistance, the family unit

- (a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.2, and
- (b) must not be ineligible for income assistance for any other reason.

(2) A family unit that is eligible for hardship assistance must be provided with hardship assistance

- (a) in accordance with Schedule D,
- (b) only for the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, and
- (c) only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance, subject to
 - (i) section 4 (2) of Schedule D for hardship assistance provided under sections 41 to 47.1, and

(ii) section 4 (3) of Schedule D for hardship assistance provided under section 47.2.

(3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in

(a) section 41, 44 or 46, or

(b) section 43, unless the source is employment insurance,

is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 consecutive calendar months of receipt.

(4) If

(a) hardship assistance has been provided to a family unit under section 47.2 for the calendar month referred to in subsection (2) (c) of this section,

(b) the family unit continues to be ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, and

(c) the member of the family unit who has not satisfied that requirement is, if applicable, taking the steps to satisfy the requirement as directed by the minister,

hardship assistance may be provided under section 47.2 for a further 2 consecutive calendar months following the initial calendar month for which the hardship assistance is provided.

Applicants who do not meet work search requirements

47.2 (1) The minister may provide hardship assistance to a family unit that is ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, if

(a) the applicants who submitted the application for income assistance (part 1) form also submit to the minister an application for income assistance (part 2) form that, subject to this section, complies with section 4.2, and

(b) the minister considers that

(i) any person in the family unit has an immediate need for food or shelter or needs urgent medical attention, and

(ii) undue hardship will occur if the hardship assistance is not provided.

(2) An applicant may submit an application for income assistance (part 2) form under subsection (1) (a) for the purpose of applying for hardship assistance even though the requirements under section 4.1 (2) (b) respecting the completion of searches for employment have not been satisfied.

The Appellant's position is that she is still in immediate need of hardship assistance, and she and her spouse should not have been deemed to have failed to comply with work search requirements as they should have been exempted from those requirements due to physical and mental conditions that preclude them from completing a search for employment. The Appellant argued that there is a significant imbalance of power between the Appellant and the Ministry, and that she did what she could to bring her difficulties to the Ministry's attention as to why she and her spouse could not comply with the work search requirement. She

argued that the physician's notes show that she and her spouse were not capable of looking for work, although she did her best. She argued that they signed employment plans because they needed money, and her basic human rights are being ignored.

The Ministry's position is that the Appellant and her spouse were required to complete work searches, signed agreements to do so, and did not complete them satisfactorily. In addition, the Ministry holds that the Appellant has received the maximum number of consecutive months of hardship assistance provided for in the applicable legislation, and there is no provision in the legislation to permit issuance of further hardship assistance at this time. The Ministry argued that the Appellant's spouse's employment plan required him to participate to the best of his abilities, and he was referred to an employment contractor who would have helped him deal with his barriers to employment, however he did not attend any workshops.

The Panel notes section 19.1 of the EAA and sections 44 and 46.3 of the *Administrative Tribunals Act* provide that the Panel has no jurisdiction over human rights legislation or the *Canadian Charter of Rights and Freedoms* issues.

The Panel finds that the Appellant was initially denied income assistance under s. 4.1(2)(b), EAR, for not meeting work search requirements, then was granted hardship assistance under s. 39(2), EAR. Section 47(2), EAR provides for hardship assistance for those who are ineligible for income assistance because a member of the family unit has not satisfied the requirement under s. 4.1(2) respecting the completion of searches for employment. Section 39(4), EAR states that a family unit to which hardship assistance has been provided under s. 47.2 for a calendar month and continues to be ineligible because a member of the family unit has not satisfied the requirement respecting the completion of searches for employment and is taking the steps to satisfy the requirement as directed by the minister, may be provided hardship assistance for a further 2 consecutive months following the initial calendar month for which the hardship assistance is provided. Section 39(4) does not provide for hardship assistance to a family unit beyond the further 2 consecutive months following the initial calendar month of hardship assistance in situations where a member of the family unit has not satisfied the work search requirements of section 4.1(2) of the EAR, as is the case here, where both the Appellant and her spouse were found to have not satisfied work search requirements. The Panel notes that the denial of income assistance to the Appellant by the Ministry is not an issue under appeal in this hearing. The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.