



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 25 August 2014 that found the appellant was not eligible for income assistance for July 2014 as the ministry determined that the appellant had not completed a work search since applying for assistance in April 2014 and, based on the medical documentation provided, the ministry determined that the appellant does not meet the medical exemption criterion set out in section 4.1(4)(d) of the Employment and Assistance Regulation (“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 any of the other exemption criteria. As she has already received 3 months of hardship assistance, pursuant to section 39(4) of the Regulation, the ministry is unable to provide further hardship assistance to her at this time.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 4.1, 39(4) and 42.7.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files as summarized in the reconsideration decision: on 11 April 2014, the appellant applied for income assistance as a former recipient. The appellant's previous assistance file was closed in December 2012 because of employment. After being employed, the appellant received employment insurance until March 2014. The ministry approved hardship assistance for April, May and June 2014 pending a 3 week work search or medical documentation to support an exemption from meeting the work search requirement.
2. A Medical Report – Employability dated 17 June 2014, completed by the appellant's general practitioner (GP) who has known her for 6 months or less. The GP diagnoses the appellant's primary medical condition as degenerative disc disease (DDD), lower spine (the GP notes "per pt.") The GP describes the overall medical condition as "mild." The GP indicates that the expected duration of the medical condition is more than 2 years ("chronic,") and not episodic – daily and constant. The GP describes the restrictions specific to the medical condition as "pain with extended periods of standing."
3. A note from the appellant's GP dated 27 June 2014, stating:

"I spoke with [the appellant] today on the telephone. She was requesting further information on my previous note stating her workplace limitations. Unfortunately we do not have access to old records, so we are still working up her file. She does have CT scan booked for early August. At this point, I can tell you that the patient states she is severely disabled due to lower back and leg pain and is unable to stand, sit, or walk for extended periods of time. I do not have objective evidence of this but we are hoping that the CT scan will help in this regard."
4. A note from a physician-associate of the GP dated 30 July 2014. The physician notes that the appellant is scheduled for a CT scan on 06 August 2014 and will be seeing a physician 1 – 2 weeks afterwards. The physician writes: "from what [the appellant] describes she is unable to stand for prolonged periods because of her pain. This will likely limit her employment opportunities."
5. A radiology report dated 12 August 2014 regarding a CT scan of the appellant's lumbar spine done on 06 August 2014. Reason for exam: "Chronic right back pain radiating down right leg." Final impression: "Significant multilevel degenerative disc disease, likely superimposed on the rightward scoliosis." Conclusion: "The patient's symptoms most likely arise from the right foraminal and right lateral disc bulge at L4-5, which would affect the exiting right L4 nerve root. Clinical correlation is recommended."
6. An exercise therapy/fitness consultation referral form prepared for a registered kinesiologist dated 20 August 2014. Under limitations/restrictions, the GP writes: "Assess & conditioning & Management please"
7. A prescription dated 21 August 2014 for an anti-depressant medication.
8. The appellant's Request for Reconsideration, dated 01 August 2014, attached to which is a

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submission prepared by her advocate dated 07 August 2014. In his submission, the advocate reviews the medical information and notes that the appellant had attempted to retrieve records from her previous physician but was informed that her records have been lost. The balance of the submission goes to argument (see Part F, Reasons for Panel Decision, below).

In her Notice of Appeal, dated 29 August 2014, the appellant writes: "I feel I should be medically exempt from doing an employment plan & have proven my condition, but I was still denied."

Before the hearing, the appellant submitted a note from her GP dated 04 September 2014 that reads:
"Due to multiple medical conditions [the appellant] is unable to work for the next month. We will continue to followup at that time."

At the hearing, the appellant's advocate reviewed the medical information, going to argument as to why the appellant met the medical exemption criterion. He also raised issues with regard to the original decision. (See Part F, Reasons for Panel Decision, below.)

In her presentation and in answer to questions the appellant provided the following information:

- She confirmed that when she applied for income assistance in April 2014, because of her medical condition, she opted to seek the medical exemption rather than doing the 3 week work search. She stated that she wished to apply for person with disabilities (PWD) designation, but had not yet been able to obtain the form.
- She described how her degenerative disc disease causes her difficulty standing, sitting and walking for any length of time. She stated that these restrictions have gotten worse over the past several months, to the point where she felt that she could not manage searching for work
- She explained that her GP was reluctant to make a definitive assessment of her employability until he was able to obtain a firm diagnosis of her degenerative disc disease.
- While she has been prescribed physiotherapy and massage therapy to help her with her medical condition, she has not been able to follow through because she does not have the medical coverage.
- She stated that the drug prescription she has been given is not a narcotic painkiller, but something that was originally formulated as an antidepressant and has been given to her as a muscle relaxant.

The ministry stood by its position at reconsideration.

When asked about the admissibility of the GP's 04 September 2014 note submitted prior to the hearing, the ministry representative noted that this information was not before the ministry at reconsideration. The ministry representative stated that if the note had been provided in the April – June 2014 period, then things might have been different.

The panel finds that the information provided in the GP's note of 04 September 2014 is not admissible as evidence under section 22(4) of the *Employment and Assistance Act*, for the following reasons: 1) the information was not before the ministry at reconsideration; 2) the information does not corroborate or substantiate any of the medical records before the ministry at reconsideration, as none of these records provide a firm assessment of the appellant's employability, and therefore is not in support of the information and records before the ministry at reconsideration; and 3) the information is not relevant, as it speaks to the appellant's employability for the 30 days after the date of the note, not

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with respect to the time period within which the ministry was awaiting an assessment of her employability – that is, the period April to June 2014.

The panel finds that the appellant's oral testimony is in support of the information and records before the ministry at reconsideration, as it is further to information contained in the medical records before the ministry and in the ministry's files. Accordingly, the panel admits this evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in finding that the appellant is ineligible for income assistance for July 2014 under section 4.1 of the EAR and for hardship assistance under section 39(4) and 47.2 of the EAR. More specifically, the issue is whether the following determinations were reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- The appellant had not completed a work search since applying for assistance in April 2014.
- Based on the medical documentation provided, the appellant does not meet the medical exemption criterion set out in section 4.1(4)(d) of the EAR or any of the other exemption criteria
- As she has already received 3 months of hardship assistance, the ministry is unable to provide financial assistance to her at this time.

The applicable legislation is from the 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.

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.

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.

At the hearing, the appellant's advocate raised issues with the original decision, noting that there was a "conflict" with the legislation, with the decision referring to sections from the Employment and Assistance for Persons with Disabilities Regulation instead of from the EAR. The advocate also suggested that important evidence, namely the 30 July 2014 note from the physician concerning the appellant's upcoming CT scan, was not considered by the ministry in the original decision. The panel chair noted that the decision under appeal is the reconsideration decision, not the original decision, and that these issues are not relevant to this appeal. The appellant's advocate stated that he understood this to be the case.

Eligibility for income assistance

Section 4.1 of the EAR requires an applicant for income assistance to complete certain tasks and/or meet certain criteria to be eligible for income assistance. After completing the application form, the applicant must either complete searches for employment as directed by the minister or demonstrate that a search for employment satisfactory to the minister has been completed within the 30 days prior to the date of application. As the appellant is a former recipient of income assistance, the applicable search for employment period as directed by the minister is 3 weeks ("3 week work search"). Alternatively, the applicant must demonstrate that (s)he meets the exemption criteria set out in section 4.1(4) and (6) of the EAR. These criteria include the medical exemption criterion: "a person who has a physical or mental condition that, in the minister's opinion, precludes the person from completing the search for employment as directed by the minister." The other criteria apply if the person is prohibited by law from working in Canada, has reached 65 years of age, is fleeing an abusive spouse or relative, or has a dependent child or provides care to a foster child or a child under care if the child has not reached 3 years of age.

There is no dispute that the appellant did not complete a 3 week work search, opting instead to provide medical documentation that she met the medical exemption criteria. The appellant has provided no information that she meets the other exemption criteria.

The ministry provided the appellant with hardship assistance beginning from the date of her application in April 2014 under section 47.2 of the EAR to allow the appellant to complete the 3 week work search or satisfy the ministry that she met the medical exemption criterion. Under section 39(4) of the EAR, such hardship assistance is limited to 3 months, or in the appellant's circumstances, for

the months of April, May and June 2014, or up until July 2014. At that time, as the ministry determined that the appellant had not completed the 3 week work search or satisfied the ministry that she met the medical exemption or other exemption criteria, the ministry therefore determined that the appellant was ineligible for income assistance for July 2014 and onwards. The appellant sought reconsideration of that decision, and it is the reconsideration decision, which determined her ineligible for income assistance, that is at issue in this appeal. As explained above, the central issue is whether the appellant was able to demonstrate that she met the medical exemption criteria at the time of reconsideration. The panel will review the positions of the parties with regard to this issue.

In the reconsideration decision, the ministry notes that the appellant describes herself as being severely disabled and that she is unable to sit, stand or walk for extended periods. Her GP initially indicated that she had mild DDD, with daily constant episodes, and that restrictions include pain with extended periods of standing which would limit her employment opportunities. However the appellant was a new patient of the GP and he had no ability to access her previous records, so he indicated that it was based on what the appellant had reported. The CT scan since has confirmed that she has multilevel DDD and has since been prescribed painkillers and referred for therapy for assessment and conditioning. Although the appellant indicates that she is severely disabled, the position of the ministry is that the medical documentation does not support such as severe diagnosis to approve a medical exemption. The ministry acknowledges that the appellant has a medical barrier; however, in the ministry's opinion the appellant should still be able to conduct a 3 week work search as directed by the ministry to secure light-duty or sedentary type work.

The appellant's position is that her GP's note of 04 September 2014 stating that she is unable to work provides the medical evidence that she meets the medical exemption criterion. She argues that her previous medical records were lost and her GP was reluctant to provide such a firm assessment earlier, until he had the results of the CT scan. She also submits that the evidence before the ministry at reconsideration, including the results of the CT scan showing significant multilevel DDD, prescriptions for pain relief and for massage therapy and physiotherapy, the GP's assessment in the Medical Report – Employability that her condition is chronic and that she has "pain with extended periods of standing" and her other physician's note of 06 August 2014 that "she is unable to stand for prolonged periods because of her pain. This will likely limit her employment opportunities," all clearly demonstrate that she has a medical condition that precludes her from searching for employment.

Panel findings

The panel notes that the diagnosis of a specific medical condition is not in itself determinative of a condition that precludes searching for employment. In the panel's view, a description of the condition, such as that given for the reason for the CT exam ("chronic right back pain radiating down right leg") is an adequate starting point. While the specific diagnosis based on the CT scan might be required for treatment planning, what is essential for the application of section 4.1(4)(d) of the EAR, the medical exemption criterion, is a description and assessment of the employment-related restrictions arising from the medical condition. On the Medical Report – Employability form, the section regarding restrictions asks the medical practitioner to describe the nature of any restrictions specific to the medical condition(s), giving as an example "restricted motion in arms or legs" and indicating "attach additional pages if required." (The panel notes that the medical practitioner is not asked for an assessment of employability – under the legislation, the determination of whether the person is precluded from completing a search for employment is "in the minister's opinion." In exercising the minister's discretion in this respect, the panel finds that it is reasonable for the ministry to rely on the

diagnosis and restrictions reported by the medical practitioner.) As the ministry noted, the only restriction described in the medical documentation before the ministry at reconsideration related to pain with extended periods of standing. The Medical Report – Employability describes the appellant's restriction as "pain with extended periods of standing." The other physician's note of July 30 states that the appellant said that "she is unable to stand for prolonged periods of time because of her pain." The physician notes: "This will likely limit her employment opportunities." The panel understands this to mean that the physician is commenting on the limits to the type of work the appellant might be able to do, not providing an assessment of her overall employability.

While the appellant argues that she also has difficulty sitting and walking, in the medical records, there is no mention of restrictions for these activities. While the appellant has stated that her previous medical records were lost, she had 3 months to arrange for a medical practitioner to make and submit an assessment of the full range of employment-related restrictions arising from the appellant's medical conditions. Given the information concerning the appellant's employment related restrictions provided by the appellant's physicians was limited to references to pain with prolonged/extended periods of standing, the panel finds that the ministry was reasonable in determining that the medical exemption criterion had not been met and that the appellant should still be able to conduct the 3 week work search as directed by the ministry to secure light duty or sedentary type work.

Eligibility for hardship assistance

In the reconsideration decision, the ministry stated that, as the appellant has already received 3 months of hardship assistance, the ministry is unable to provide financial assistance to her at this time.

The appellant made no submissions on this matter.

The panel notes that under section 39 of the EAR, if hardship assistance has been provided to a family unit under section 47.2 of the EAR pending the completion of searches for employment, the hardship assistance is limited to one calendar month under subsection (2)(b) of section 39 and a further 2 calendar months under subsection (4). As the appellant had received hardship assistance for 3 months – April, May and June 2014 – the panel finds that the ministry was reasonable in determining that the appellant was not eligible for further hardship assistance at that time.

Conclusion

Based on the foregoing, and in particular the panel's finding that the ministry was reasonable in determining that the medical exemption criterion set out in section 4.1(4)(d) of the EAR had not been met, the panel finds that the ministry's decision that the appellant is ineligible for income assistance for July 2014 under section 4.1, of the EAR and for further hardship assistance under section 39(4) and 42.7 of the EAR is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.