

PART C – Decision under Appeal

The decision under appeal is the September 9, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) wherein the ministry determined that the appellant was ineligible for income assistance for a period of two calendar months as prescribed in section 29(3)(a)(i) of the Employment and Assistance Regulation (“EAR”). The basis for the ministry’s decision was that the ministry determined that the appellant had been dismissed from employment for just cause within 60 days of applying for income assistance, as contemplated by section 13(1)(a)(iii) of the *Employment and Assistance Act* (“EAA”), and that the appellant’s family unit did not include dependent children, as contemplated by section 13(2)(b) of the EAA. The ministry also found that the appellant’s circumstances did not satisfy any of the exceptions to ineligibility set out in section 29(4) of the EAR.

PART D – Relevant Legislation

EAA section 13;
EAR section 29

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted in writing in accordance with section 22(3) of the EAA.

The information before the ministry at the time of reconsideration included the appellant's Request for Reconsideration form, with attached written reconsideration submission prepared by the appellant's advocate.

The evidence indicates that the appellant was added as a dependant to the income assistance file of his common-law spouse as of August 1, 2014. On August 13, 2014 the ministry was advised by the appellant's former employer that the appellant had been dismissed from employment in July, 2014. The appellant had worked one day for the employer on July 17, 2014, then missed the following two shifts and was dismissed by the employer.

In his written reconsideration submission the appellant acknowledged that he missed the two shifts but stated that "the reasons for the two absences were justified." He stated that in the first instance he was ill and did not have a contact number to notify his employer. In the second instance he stated that the power went out at his residence so his alarm did not go off.

In its written appeal submission the ministry stated that the appellant:

- signed part 2 of the application form for income assistance on August 13, 2014;
- worked and was paid for one day by his employer on July 17, 2014; and
- was scheduled for additional shifts but failed to attend, so was dismissed from his job.

The additional information provided by the ministry in its appeal submission substantially reiterates and corroborates the information that was before the ministry at the time of reconsideration. The panel has admitted this information as written testimony in support, in accordance with section 22(4) of the EAA.

The appellant did not submit any additional information on appeal.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's September 9, 2014 reconsideration decision wherein it determined that the appellant was ineligible for income assistance for a period of two calendar months as prescribed in section 29(3)(a)(i) of the EAR. The basis for the ministry's decision was that the ministry determined that the appellant had been dismissed from employment for just cause within 60 days of applying for income assistance, as contemplated by section 13(1)(a)(iii) of the EAA, and that the appellant's family unit did not include dependent children, as contemplated by section 13(2)(b) of the EAA. The ministry also found that the appellant's circumstances did not satisfy any of the exceptions to ineligibility set out in section 29(4) of the EAR.

The relevant legislative provisions are as follows:

EAA

Consequences of not meeting employment-related obligations

- 13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if
- (a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has
 - (i) failed to accept suitable employment,
 - (ii) voluntarily left employment without just cause, or
 - (iii) been dismissed from employment for just cause, or
 - (b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.
- (2) For the purposes of subsection (1),
- (a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
 - (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.
- (3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

EAR

Consequences of failing to meet employment-related obligations

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- (3) For the purposes of section 13 (2) (b) [*consequences of not meeting employment-related obligations*] of the Act, the period of ineligibility for income assistance lasts
- (a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

- (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
- (ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:

- (i) the family unit has been ineligible for income assistance for one calendar month;
- (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.

(4) Section 13 [*consequences of not meeting employment-related obligations*] of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:

- (a) Repealed. [B.C. Reg. 116/2003, Sch. 1, s. 2 (a).]
- (b) sole applicants or sole recipients who have at least one dependent child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (d) sole applicants or sole recipients who have a foster child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (e) persons who receive accommodation and care in a special care facility or private hospital;
- (f) applicants or recipients admitted to hospital because they require extended care;
- (g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
- (h) applicants or recipients in a family unit that includes only applicants or recipients who are
 - (i) Repealed. [B.C. Reg. 160/2004, s. 2.]
 - (ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,
 - (iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
 - (iv) persons not described in section 7 (2) [*citizenship requirements*];
 - (v) persons who have persistent multiple barriers to employment; or

- (vi) persons who have reached 65 years of age;
- (i) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [*agreements with child's kin and others*] of the *Child, Family and Community Service Act* for a child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [*other powers and duties of directors*] of the *Child, Family and Community Service Act* for a child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment.

* * *

The appellant's position, as set out in his reconsideration submission and Notice of Appeal, is that the ministry's decision was unfair since he had not been a recipient of income assistance at the time he was dismissed from his employment. The appellant argued that, in any event, his reasons for missing the two shifts were "justified". The appellant also argued that his common-law spouse is pregnant so she needs income assistance.

The ministry's position, as set out in its reconsideration decision and appeal submission, is that the appellant signed the application form for income assistance on August 13, 2014, which was within 60 days of the appellant's dismissal for cause in July, 2014. The ministry argued that since the appellant's family unit does not include a dependent child, he is ineligible for income assistance for the months of August and September, 2014. Finally, the ministry argued that the appellant's circumstances do not fall within any of the exceptions to ineligibility set out in section 29(4) of the EAR.

Panel Decision

The basic facts are not in dispute – the appellant acknowledged that he missed two day's work and was dismissed from employment. The appellant argued that his absences from work were "justified". In the panel's view it is a normal and reasonable condition of employment that an employee notifies his employer if he is going to miss a shift due to illness, and that he makes every effort to attend work on time, particularly in circumstances where the evidence indicates the appellant had only put in one shift with his employer. In the panel's view, the evidence reasonably supports the ministry's conclusion that the appellant was dismissed from employment for just cause.

The appellant also argued that the ministry's decision was "unfair" since he was not receiving income assistance at the time of his employment and dismissal. Section 13 of the EAA is clear that the period of ineligibility is triggered by an application for income assistance within 60 days of being dismissed from employment with cause. The appellant's application on August 13, 2014 occurred within 60 days of his dismissal from employment in July. The appellant's circumstances are reflected

in the legislation, and the ministry's decision to apply the legislation in those circumstances was reasonable.

There is no evidence that any of the exceptions to ineligibility set out in EAR section 29(4) apply in the circumstances of the appellant. His spouse's pregnancy is not an exception recognized by the legislation.

For these reasons, the panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstances, and confirms the decision.