

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 1, 2014, in which the ministry denied the appellant’s application for income assistance because it was not satisfied under section 5(2) of the Employment and Assistance Regulation that the appellant’s parents did not have the ability to assume responsibility for the financial support of the appellant, who is considered a child under the Employment and Assistance Act section 1.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 1(1) and 2
Employment and Assistance Regulations (EAR) section 5

PART E – Summary of Facts

The appellant did not attend the hearing. The panel confirmed that the appellant had been notified of the hearing date and time and proceeded with the hearing under section 86(b) of the EAR. The appellant completed a Release of Information document authorizing her representative to attend the hearing and to make decisions on her behalf.

A ministry observer attended the hearing with the consent of the appellant's representative, but did not participate in the hearing.

The information before the ministry at the time of reconsideration includes the following:

- The appellant's Under 19 Applicant for BC Benefits application (Ministry of Children and Family Development (MCFD) document), dated August 29, 2014, which was denied.
- A ministry document titled Shelter Information completed by the appellant's father/landlord, dated August 12, 2014, stating the appellant's monthly rental amount to be \$570.00.
- A Residential Tenancy Branch document 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, completed by the appellant's father/landlord, dated August 15, 2014, which indicated that the appellant must move out by August 29, 2014.
- The appellant's bank account summary statements, which included transaction details from June 1-30, 2014, July 1-31, 2014 and August 1-11, 2014.
- A letter from the appellant's maternity caregiver, dated August 13, 2014, stating that the appellant is pregnant and under her care, with an expected due-date of Sept. 13, 2014.
- At the time of reconsideration, the appellant was 18 years old, caring for a child born Sept., 2014.
- In her Request for Reconsideration, the appellant requests that the minister consider that she is currently evicted and due to have her baby in 5 days. She has tried unsuccessfully to access funding from both MCFD as well as her parents, but claims that she is her own family unit. She states she has applied herself because her family unit does not include an adult, as per section 5(1)(a). (She will have her own family unit once she has the baby.) She has had past addiction issues and claims she would benefit from a semi-supported environment where she currently resides, which is not within her parents' home, but in a secondary suite.
- The ministry discussed the appellant's circumstances with both the appellant and her mother.

With her Notice of Appeal, the appellant included a written submission in which she provided the following information:

- The appellant's parents own 2 residences, 1 in which they (and appellant) currently reside, and another in another city, which is being used as a rental unit (although the rental unit is presently vacant).

- Her father is not working because the company he was working for cancelled the contract unexpectedly, and the father was laid off Oct. 1, 2014.
- Her mother is on reduced hours at work because of ongoing health concerns from injuries sustained from her workplace.
- Her parents are at risk of foreclosure of their properties because of their current financial situation.

With respect to the information in the appellant's Notice of Appeal mentioned above, the panel finds that it is consistent with, and in support of, the evidence the ministry had at reconsideration and therefore admits the information, in accordance with EAA section 22(4).

At the hearing, the appellant's representative submitted oral argument on her behalf, which is summarized in Part F of this decision.

At the hearing, the ministry relied upon and reaffirmed its reconsideration decision. The ministry representative also referred to a policy document, the Policy Guideline for the interpretation of Section 1-5 of the Employment and Assistance Act, which she said was available to ministry personnel. Although it relates to the ministry's rationale for its decision and how it applies the legislation, the policy is not considered evidence.

PART F – Reasons for Panel Decision

The issue under appeal is the ministry's reconsideration decision which denied the appellant's application for income assistance because it was not satisfied under section 5(2) of the EAA, that the appellant's parents did not have the ability to assume responsibility for the financial support of the appellant, considered a child under EAA section 1.

The relevant legislative provisions are as follows:

EA Act

1. (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"child" means an unmarried person under 19 years of age;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child; (B.C. Reg. 131/2012)
(B.C. Reg. 193/2006)

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"family unit" means an applicant or a recipient and his or her dependants;

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

"recipient" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

Eligibility of family unit

2. For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and
- (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act or the regulations.

EA Regulations

Applicant requirements

- 5 (1) For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless
- (a) the family unit does not include an adult, or
 - (b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.
- (2) A child who is not residing with his or her parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child. (B.C. Reg. 48/2010)
- (3) If a family unit includes a parenting dependent child, an application under subsection (1) may include in the family unit both the parenting dependent child and his or her dependent child. (B.C. Reg. 197/2012)
- (4) Despite subsection (1), if
- (a) a parenting dependent child is a dependent youth residing with his or her parent,
 - (b) the parent of the dependent youth is a recipient under the Act or a recipient within the meaning of the *Employment and Assistance for Persons with Disabilities Act*,
- the dependent youth may apply for income assistance or a supplement for a family unit composed of the dependent youth and any dependant of that dependent youth.
(B.C. Reg. 197/2012)
- (5) The minister may provide income assistance or a supplement to a family unit described in subsection (4) if the minister considers that this is appropriate in the circumstances. (B.C. Reg. 197/2012)
- (6) If income assistance or a supplement is provided to a family unit described in subsection (4), the minister may not provide income assistance or a supplement on account of a person in that family unit as part of any other family unit.
(B.C. Reg. 197/2012)

The appellant's position is that she is a youth, independent of her parents, caring for a 1-month old child, residing in a separate residence from her parents. She and the baby reside in a downstairs suite, while her parents and younger brother reside upstairs. She states that her father was working in Sept., 2014 and was laid off Oct.1, 2014. Her mother is on reduced hours at work because of ongoing health concerns from injuries sustained from her workplace. Her parents are at risk of foreclosure of their properties due to their financial difficulties. It is because of their financial difficulties that the appellant claims that her parents are unable to support her and her child.

The ministry's position is that, as an unmarried person under the age of 19, the appellant is legally a child, and as such her parents carry the primary responsibility for supporting her until she turns 19. Even though the appellant is living separately from her parents in the basement suite, the ministry views the separate suite to still be a part of the family residence. Further, the suite *is* available for the appellant, whether she is able to pay rent for living there or not. Based on information provided by the appellant and her parent, the ministry determined that the appellant's parents can manage to take care of the appellant and her child at this time.

The panel finds that the appellant meets the definition of "child" under section 1 of EAA as she is

unmarried and under the age of 19. Her parents have allowed her to live in a separate suite in the basement of their residence, although they may have recently asked for \$570.00 per month rent. The panel notes that, other than the shelter information form, there was no other evidence to confirm that the appellant is in fact paying rent, such as rent receipts or withdrawals from her bank account for the rent amount. Despite claims that she (and the baby) would be evicted because she cannot pay the rent, there is no evidence at this time that eviction has occurred. In fact, in her Oct., 2014 appeal statement, she states "I reside in a separate suite and my parents . . . reside upstairs". The panel also finds that the appellant has not satisfactorily established that her parents are unable to financially support her (and her baby). She provided no separate evidence from her parents, such as a letter confirming they are having financial difficulties because of absences from work and/or property foreclosure.

Therefore, based on the evidence, the panel finds that the ministry reasonably determined that the appellant, as a child, was not eligible for income assistance, as it was not satisfied that the appellant's parents were not able to assume responsibility for her financial support.

Conclusion

Based on the above findings, the panel finds that the ministry was reasonable in denying the appellant's request for income assistance, and that its decision was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the panel confirms the ministry decision.