

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of November 18, 2014 wherein the ministry determined that the appellant did not qualify for income assistance, pursuant to Section 14 of the Employment and Assistance Act, for failing to pursue alternate available income and that, in accordance Employment and Assistance Regulation Section 31, she remains ineligible until she pursues the income.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 14
Employment and Assistance Regulation (EAR) Section 31

PART E – Summary of Facts

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

- A Shelter Information form completed by the appellant dated November 4, 2014. The form states the appellant would be moving to a new address on November 1, 2014. The appellant confirms on the form that the new address is located on reserve land.
- A Request for Reconsideration Decision form dated November 14, 2014 completed by the appellant. She writes that she needs her November assistance cheque. She adds that she had to move because of the paperwork the ministry requested but the native social assistance worker was on vacation for two weeks. She adds that her new residence “couldn’t wait that long for rent.” She writes she had to ask to stay at another home because her “new place said no.”

In her Notice of Appeal form dated November 20, 2014 the appellant writes that because the ministry decision to deny her assistance was made just before the November long weekend, the native social worker was on vacation for two weeks. As a result, she could not move into her new place on reserve and she stayed at a residence off of reserve. She adds that her doctor has declared her “unemployable” and asks that her doctor’s notes be checked.

The appellant was not in attendance at the hearing. After confirming she had been notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing the ministry told the panel that the EAA Section 14 requires a recipient of employment assistance to accept or pursue other means of support. The ministry explained that people living on reserve have access to assistance from the Federal ministry Aboriginal Affairs and Northern Development Canada (AANDC). Because the appellant informed the ministry on November 4, 2014 that she was moving onto reserve lands, the ministry determined she needed to apply for assistance from the Federal ministry. The ministry told the panel that the native social worker would have had another worker relieving her duties while she was on holidays. She said the appellant could have made her application with the relief worker.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant does not qualify for income assistance for failing to pursue alternate available income.

The relevant legislation is as follows:

EMPLOYMENT AND ASSISTANCE ACT

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;

(b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) disposed of real or personal property to reduce assets;

(b) [Not in force.]

(3) In the circumstances described in subsection (1), the minister may

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

EMPLOYMENT AND ASSISTANCE REGULATION

Effect of failing to pursue or accept income or assets or of disposing of assets

31 (1) For the purposes of section 14 (3) (a) [*consequences of not accepting or disposing of property*] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

(a) if the income, assets or other means of support are still available, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 14 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,

(a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and

(b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.

(4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2 000 of the value of the forgone consideration.

(5) For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce assets.

The appellant argues that her income assistance should continue because she was not able to apply for assistance from the ministry AANDC due to the social worker being on holidays in November. She argues that she was forced to stay off reserve and that she has a medical condition preventing her from finding work.

It is the ministry's position that the appellant no longer qualifies for income assistance benefits

because she is now living on reserve lands and failed to accept or pursue other means of support. The ministry argues people living on reserve lands can receive support from through AANDC.

Regarding the ministry's determination that the appellant must apply for assistance from AANDC, the panel considered the EAA Section 14 that requires a person to pursue or accept other means of support. The panel finds that the ministry, upon receiving notification that the appellant would be moving to a residence on reserve lands, was reasonable to require her to apply for assistance from AANDC. Although the legislation does not list all means of support that a person must apply for, the panel is satisfied that if there is assistance potentially available from AANDC, EAA Section 14 requires that the appellant to seek that assistance. The panel notes that both parties agree that funding is available from AANDC however the appellant argues she did not have timely access to the AANDC assistance due to factors out of her control.

The appellant makes two arguments about why she was unable to access the AANDC funds. In her Request for Reconsideration she argues that the aboriginal social worker was on holidays and in her Notice of Appeal she argues that her doctor has declared her unfit for employment. The appellant also submits that she was not able to move onto the reserve lands as stated in her Shelter Information form due to the delay in getting AANDC assistance.

Regarding her argument that she was unable to apply for assistance from AANDC due to the native social worker being on holidays, the panel considered the ministry's evidence that there should have been a worker relieving the duties of the social worker. The panel was not presented with evidence regarding the availability of the social worker or if the appellant had inquired about a relief worker. The panel also considered that although the absence of the social worker may have created a delay in her application, the appellant would have been able to meet with the worker upon her return. If the absence of the native social worker caused her to lose the opportunity to move onto reserve, the appellant could have informed the ministry with an updated Shelter Information form.

Regarding the appellant's argument that her doctor has determined she is unfit for employment, the panel finds this evidence is not relevant to the ministry's reconsideration decision. The panel notes that a recipient's employability or medical condition is not a factor in the EAA Section 14.

Regarding the appellant's testimony that her move to the reserve lands did not take place as indicated on the Shelter Information form, the panel finds that the evidence before the ministry at the time of reconsideration indicated that the appellant was moving onto reserve on November 1, 2014. The panel was provided no supporting documents showing the information on the Shelter Information form is outdated.

The panel finds that the ministry was reasonable to determine that the appellant does not qualify for income assistance, pursuant to Section 14 of the Employment and Assistance Act, for failing to pursue alternate available income and in accordance Employment and Assistance Regulation Section 31, she remains ineligible until she pursues the income.

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