

PART C – Decision under Appeal

The appellant appeals the November 27, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) in which the ministry determined that the appellant was no longer qualified to receive income assistance on the basis that she is enrolled as a full-time student in a funded program of studies and is thus ineligible to receive income assistance under section 16(1)(a) of the *Employment and Assistance Regulation* (“EAR”).

PART D – Relevant Legislation

Employment and Assistance Regulation (“EAR”), sections 1 and 16.
Canada Student Financial Assistance Regulations, s. 2(1).

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with s. 22(3)(b) of the *Employment and Assistance Act*.

The appellant received income assistance as a single person qualified as a person with persistent multiple barriers to employment (PPMB).

The evidence before the ministry at reconsideration included the following documents:

- Copy of the appellant's request for reconsideration dated November 19, 2014 to which the appellant attached several documents noted in this list;
- Copy of 3 page typed submission on reconsideration from the appellant dated November 24, 2014;
- Copy of 1 page letter from a ministry investigative officer to the appellant dated November 3, 2014 advising the appellant she is no longer eligible for assistance as she started full-time school at a post-secondary institution October 20, 2014, through December 18, 2015;
- Copy of 2-page letter from a ministry investigation officer to the appellant dated November 3, 2014 advising the appellant that the ministry had conducted a file review for the purpose of determining current or auditing past eligibility for assistance and had determined that she received income assistance between October 1, 2014 and November 3, 2014 for which she was not eligible as she was enrolled full-time at a post-secondary institution starting October 20, 2014;
- Letter to the appellant from a post-secondary institution dated September 11, 2014 advising that she had been accepted into a diploma program at the institution for a period of 60 weeks, starting October 20, 2014 and ending December 18, 2015;
- Copy of a ministry employment and assistance review form signed by the appellant on October 28, 2014;
- Copy of a letter from a ministry investigation officer to the appellant dated October 16, 2014 advising the appellant that her file had been selected for review and scheduling a meeting for October 28, 2014;
- Copy of a letter from a bank to the appellant dated September 24, 2014 confirming that her federal and provincial student loans were removed from collections status in October 2007 and the debt had been extinguished, together with 8 copies of fax cover sheets from the appellant regarding this letter and the status of her former student loan;
- Excerpts from the admissions package of the post-secondary institution provided to the appellant;
- Copy of a financial aid processing & personal information waiver form of the post-secondary institution signed by the appellant and dated September 30, 2014;
- Copy of the signature page of the post-secondary institution's pre-enrollment policy package signed and dated by the appellant September 30, 2014;
- A copy of the ministry's employability screen for the appellant;
- Copies of pages regarding Canada Student Loans from the Internet;
- A copy of the appellant's notice of assessment from the Canada Revenue Agency dated March 13, 2014 on which is the hand-written note "cashed cheque and paid fees in full April 9, 2014";
- A copy of a province of British Columbia master student financial agreement signed and dated

by the appellant on October 17, 2014; and

- A copy of the diploma program courses (hours, weeks and credits) for the appellant's program with the post-secondary institution, showing the program duration is 60 weeks, with class hours from 12-5 or 5-10 daily.

The appellant attached to her notice of appeal dated December 5, 2014, the following documents which were not before the ministry at reconsideration:

- A letter dated November 15, 2014 from the coordinator of a social service providing a reference for the appellant;
- A letter dated November 28, 2014 from the appellant to the deputy registrar, ministry of justice, in which the appellant writes that she is responding to a letter requesting information regarding an offence with someone with a name similar to hers and birth date;
- A letter dated November 26, 2014 from an advocate to the appellant's doctor requesting that the doctor help the appellant with her disability application; and
- A letter from the ministry to the appellant dated June 27, 2014 advising the appellant that it is time to complete a review of the appellant's PPMB status and attaching a PPMB medical report form for the appellant to provide to her doctor for completion.

The appellant also included with the documents attached to her notice of appeal a letter dated December 2, 2014 "to whom it may concern" in which the appellant set out what she describes as evidence of the changes she has made to her life.

In its submissions on the appeal, the ministry did not refer to the additional information provided by the appellant with her notice of appeal. Under section 22(4)(b) of the *Employment and Assistance Act*, this panel may admit as evidence at this hearing only the information and records that were before the ministry when the decision being appealed was made, or oral or written testimony in support of the information and records that were before the ministry when the decision being appealed was made. Of the additional documents provided by the appellant with her notice of appeal, only the letter from the ministry to her of June 27, 2014 with the attached PPMB medical report form would have been before the ministry at reconsideration. The appellant's "to whom it may concern" letter dated December 2, 2014 is written testimony in support of submissions to the ministry at reconsideration. Accordingly, the panel admits as evidence the letter from the ministry of June 27, 2014 and the appellant's December 2, 2014 submission under s. 22(4)(b) of the Act. As the remaining documents were not information and records that were before the ministry at reconsideration or written testimony in support of the information and records before the ministry at reconsideration, the panel does not admit as evidence the letters of November 15, 2014, November 28, 2014, and November 26, 2014.

In her written submissions on reconsideration, the appellant states that in the fall of 2014, she was in the process of completing her application to renew her PPMB status, but had changed doctors and nurse practitioners, and she was also getting her education documents to the ministry. She states that at a meeting with the ministry on October 27 2014, the ministry informed her she would be denied income assistance based on the fact she had enrolled in full-time studies. The appellant does not deny that she enrolled in a full-time program at a post-secondary institution starting October 20, 2014, and she indicates that she received a student loan to cover her fees, as well as an additional \$400 to cover books and living expenses

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of November 27, 2014, denying the appellant income assistance under section 16(1)(a) of the *Employment and Assistance Regulation* ("EAR") on the basis that the appellant is enrolled as a full-time student in a funded program of studies, as defined under subs. 1(1) of the EAR.

The panel notes that the appellant had qualified under section 2 of the EAR as a person with persistent multiple barriers (PPMB) to employment; however, the ministry's reconsideration decision does not turn on the appellant's PPMB status, but rather on her status as a full-time student in a funded program of studies. Accordingly, the relevant provisions of the legislation are the following:

EAR

Definitions

1(1) In this regulation

"full time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

"funded program of studies" means a program of studies for which student financial assistance may be provided to a student enrolled in it;

"student financial assistance" means funding provided to students under the Canada Student Financial Assistance Act (Canada);

Effect of family unit including full-time student

16(1) A family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student

- (a) in a funded program of studies, or
- (b) in an unfunded program of studies without the prior approval of the minister.

(2) The period referred to in subsection (1)

- (a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and
- (b) is not longer than one year.

Canada Student Financial Assistance Regulations

Interpretation

2(1) In the Act and these Regulations,

"full-time student" means a person

- (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute
 - (i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
 - (ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,
- (b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and
- (c) who meets the requirements of subsection 5(1) [obtaining a direct loan] or 7(1) [continuation and reinstatement] or section 33 [obtaining a Canada Student Grant].

Submissions

The appellant argues that she should not be denied income assistance because she told the ministry she was enrolling in the post-secondary institution and took every step possible to ensure she was not denied assistance. She asserts that a ministry worker told her she would not be denied assistance for enrolling in full-time studies. The appellant also argues that in her application for a student loan, she asked only for school fees (tuition) as she knew extra funds would negatively affect her income assistance if she received a government student loan. The appellant indicates that she has received as a part of her student loan \$400 over 4 months (\$100 per month) to cover books and living expenses and that she submitted the loan documents to the ministry prior to October 27, 2014 (the date the ministry was reviewing her for requalification as a PPMB). The appellant argues that as a person qualified for PPMB, she is entitled to earn \$500 per month above her assistance, and she argues that her student loan should be considered part of this \$500 per month.

The ministry's submission referenced the reconsideration decision. The ministry notes that subsections 16(1) and (2) of the EAR provide that the appellant is not eligible for income assistance if she is enrolled as a full time student in a funded program of studies from the first day of the month following the month in which classes start until the last day of the month in which exams are held. The ministry notes that there is no discretion in this legislation and no exemption from it for a person qualified as a PPMB. The ministry noted that the appellant is enrolled as a full-time student in a funded program of studies that started October 20, 2014 and is due to complete December 18, 2015 and that she does not deny this. The ministry notes that the definition of a funded program of studies in subsection 16(1) of the EAR does not differentiate between the amounts for which financial assistance is issued. The ministry notes that the appellant's information indicates that financial assistance may be provided for her program of studies. The ministry found that the appellant is a full-time student enrolled in a program of studies since October 20, 2014, and that as there is no discretion in the legislation or exemption for a person with PPMB status, the appellant is not eligible for income assistance under section 16 of the EAR from November 1, 2014 to the last day of the month in which her exams are held.

Decision

The appellant has received income assistance as a single person, qualified as a PPMB. The appellant does not deny that in late September 2014, she enrolled as a full-time student at a post-secondary institution, commencing her studies October 20, 2014. The appellant does not deny that she has qualified for financial aid and received student loans for her school fees.

Section 16(1)(a) of the EAR sets out that a family unit is not eligible for income assistance if a recipient is enrolled as a full-time student in a funded program of studies. The definition of a "full-time student" is a person who is enrolled in courses that constitute at least 60% of a course load recognized by the educational institution as constituting a full-time course load, whose primary occupation during the course of study is as a student, and who meets the loan requirements, as per section 1(1) of the EAR and section 2(1) of the *Canada Student Financial Assistance Regulations*. The appellant does not dispute that she is a full-time student and there was evidence before the ministry (such as the September 11, 2014 letter from the post-secondary institution to the appellant) confirming her status as a full-time student.

The definition of a “funded program of studies” is a program of studies for which student financial assistance may be provided to a student enrolled in it, as set out in section 1(1) of the EAR. The appellant does not dispute that she is pursuing a funded program of studies and there was evidence before the ministry that the appellant receives financial assistance as a student enrolled in the diploma program.

The appellant argues that she should not be ineligible for income assistance because she has qualified as a PPMB and as such, is eligible to earn up to \$500 per month, and her financial assistance should be considered part of this \$500 per month. There is no provision in the applicable legislation allowing for an exemption to section 16(1) of the EAR for persons qualified as PPMB. Further, there is no provision in the EAR allowing financial assistance to be considered as earned income.

The panel finds that the ministry’s determination that the appellant is ineligible for income assistance under section 16(1)(a) of the EAR as of November 1, 2014 because she is enrolled as a full-time student in a funded program of studies is reasonable based on the evidence and is a reasonable application of the legislation in the appellant’s circumstances. The panel confirms the ministry’s reconsideration decision.