

PART C – Decision under Appeal

The decision under appeal is the April 20, 2015 reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) in which the Ministry denied the Appellant income assistance (IA) for two calendar months due to being dismissed from employment for just cause based on its interpretation of Section 13(1)(a)(iii) of the Employment and Assistance Act (EAA) that declares a family without dependent children is not eligible for a prescribed period if they are dismissed from employment with just cause and Section 29(3) of the Employment and Assistance Regulations (EAR) that sets the prescribed period. Furthermore the Ministry decided the Appellant was not eligible for an exception to the consequences as specified in the EAR, Section 29(4).

PART D – Relevant Legislation

Employment and Assistance Act Section 13
Employment and Assistance Regulation Section 29

PART E – Summary of Facts

Preliminary Matter: The Appellant did not attend the hearing. After confirming that the Appellant had been notified of the hearing, the Panel proceeded with the appeal hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at the time of reconsideration included the following:

- An application for IA initiated by the Appellant dated March 11, 2015 and signed April 8, 2015.
- A Record of Employment from the Appellant's previous employer specifying his first day of employment was December 4, 2014 and last paid day was February 18, 2015. Under comments it specifies "disregard of drug and alcohol policy".
- A Certificate of Health or Disability dated April 15, 2015 from a walk in medical clinic that certifies the Appellant "was unable to work/school for medical reason for the dates indicated below". Under remarks, the document states "undergoing treatment for drug dependency - not able to work" for the dates April 1 to May 10, 2015, inclusive.

The Request for Reconsideration document states the Appellant completed stage one of his application for IA on March 11, 2015 and at that time he stated he was pending Employment Insurance but had been fired from his job for not passing a drug test. The Appellant informed the Ministry that he would be appealing his Employment Insurance denial because his employer should only have suspended him and sent him on a course. On March 23, 2015 the Appellant completed stage two of the IA application and confirmed he was terminated due to his own actions. Because the Appellant lost his job on February 18, 2015, the Ministry specified April 19, 2015 as the earliest the Appellant would be eligible for IA, however his application was not opened until March 23, 2015, therefore the Ministry concluded the Appellant is not eligible for IA until May 21, 2015.

At the hearing the Ministry reviewed the time line of events as outlined in the reconsideration decision. She stated that the drug test was a condition of the Appellant's employment and that the Appellant was not in any treatment or rehabilitation program that the Ministry was aware of at the time of his termination. Upon questioning, she clarified that the Certificate of Health or Disability was received by the ministry with the Request for Reconsideration, on or about April 17, 2015. She also stated the Certificate did not include any details on the type of treatment or if it was some type of rehabilitation program.

The Panel finds as fact that the following time line:

- The Appellant was terminated for disregard of his employer's drug and alcohol policy on February 18, 2015.
- The Appellant initiated his application for IA on March 11, 2015 and completed it on April 8, 2015.
- The Appellant submitted a Certificate of Health or Disability dated April 15, 2015 stating he was undergoing treatment for drug dependency from April 1 to May 10, 2015.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the April 20, 2015 reconsideration in which the Ministry denied the Appellant IA for two calendar months due to being dismissed from employment for just cause based on its interpretation of Section 13 of the EAA and Section 29(3) of the EAR and further found the Appellant was not eligible for an exception to the prescribed period as specified in the Section 29(4) of the EAR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the Appellant.

The following legislation applies to this appeal:

EAA Section 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

(iii) been dismissed from employment for just cause,

EAR Section 29

(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;

(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:

(h) applicants or recipients in a family unit that includes only applicants or recipients who are

(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,

The Appellant argues he has submitted a letter from a medical doctor which confirms he cannot work and that he needs medications to function.

The Ministry argues that contravening a condition of his employment that is failing a drug test, constitutes dismissal from employment for just cause. Furthermore, the Ministry argues the Appellant was not participating in a treatment or rehabilitation program that was approved by the Ministry at the time of his dismissal on February 28, 2015.

The Panel finds the Record of Employment is clear that the Appellant contravened an existing policy of his employment and therefore confirms the reasonableness of the Ministry's determination that the Appellant was terminated for just cause under Section 13(1)(a)(iii) and that the applicable consequences set out under Section 29(3)(a) is ineligibility for income assistance for 2 months.

The Panel finds the Appellant did not enter into any treatment or rehabilitation program until April 2015 therefore as of his termination date (February 28, 2015) or his application date for IA (March 11, 2015), the Ministry was not aware, neither did they approve his participation in any program. The Panel finds the Ministry's determination that the Appellant was not eligible for an exception to the prescribed period of ineligibility under Section 29(4)(h) is reasonable.

Accordingly, the Panel finds the Ministry's determination to deny the Appellant IA for 2 months was a reasonable application of the legislation in the circumstances of the Appellant. The Panel therefore confirms the Ministry's decision.