



PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 31 August 2015 determined the appellant was not eligible for income assistance because he did not meet the requirements of the 2 year independence test under s. 8 of the Employment and Assistance Act (EAA) and s. 18 of the Employment and Assistance Regulation (EAR) and did not meet the criteria for exemption.

PART D – Relevant Legislation

EAA s. 8;
EAR s. 18.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- On 17 August 2015 the appellant signed an Application for Income Assistance and the ministry requested him to provide confirmation of meeting the 2 year independence test; that is he had worked at least 840 hours in each of the 2 consecutive years and had earned at least \$7,000 in each of the 2 consecutive years.
- On 20 August 2015, the appellant advised the ministry that he would provide tax assessments confirming he met the test. He also indicated he had contacted the Canada Pension Plan (CPP) but the information provided did not confirm he met the conditions of the test.
- The appellant provided the following documents:
 - Income tax return for 2013 confirmed that the appellant's gross income was just under \$900.
 - Income tax return for 2014 confirmed that the appellant's gross income was over \$9,000.
- According to the ministry the appellant's income assistance file indicated that he had secured 99 total insurable hours and just over \$1,000 total insurable earnings.
- The ministry file also indicated that the appellant had lost employment due to a shortage of work or because of the end of the season and acknowledged that it was beyond the appellant's control.
- The appellant did not provide the ministry with an eviction notice for his apartment.
- In his request for reconsideration dated 24 August 2015 the appellant stated he had been looking for work for the previous 6 weeks and had not been able to secure employment. He left his apartment and since he cannot get help he will end up on the street and hungry.

In his Notice of Appeal dated 7 September 2015, the appellant indicated that he applied for income assistance before he was 19 years of age but was not accepted and that he was prevented from working due to circumstances beyond his control and that he will experience undue hardship as he was evicted from his apartment and was then sleeping in a tent while winter was approaching – he stated he needed help.

At the hearing, the appellant testified that he had been evicted from his apartment and was then living at a cousin's place and that he had secured new employment in his trade to start soon. He lost his previous employment not because of a shortage of work but rather because the employer wanted to hire two other people. He estimated that in 2015 he had so far earned approximately \$900 and confirmed his earnings for 2013 and 2014 as stated in his income tax returns that he had provided to the ministry. He stated he had also lost 2 previous jobs when he was laid off for no apparent reason. The ministry did not provide new evidence.

The panel determined the additional oral evidence was admissible under s. 22 (4) of the EAA as it was in support of the records before the minister at reconsideration as it corroborated the previous evidence of the appellant's earnings and accommodation.

PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for income assistance because he did not meet the requirements of the 2 year independence test or the exemption criteria under s. 8 of the EAA and s. 18 of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is s. 8 of the EAA:

8 (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have

- (a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,
- (b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or
- (c) been employed for remuneration for a portion of two consecutive years and for the balance of those years either
 - (i) served a waiting period in respect of, or received benefits under, a claim under the *Employment Insurance Act* (Canada), or
 - (ii) received income under a public or private income replacement program or plan...

and s. 18 of the EAR:

18 (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.

(2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7000 in each of the 2 consecutive years.

(3) Section 8 of the Act does not apply to the family units of the following categories of applicants:

- (a) applicants who have not reached the age of 19;
- (b) applicants who are pregnant;
- (c) applicants who have a medical condition that, in the opinion of the minister,
 - (i) will prevent the applicant from working for at least the next 30 days, or
 - (ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form;
- (d) applicants with dependent children;
- (e) Repealed (B.C. Reg. 48/2010)
- (f) applicants who have a foster child;
- (g) applicants who were supported by an employed spouse for at least 2 years;
- (h) applicants who were supported by an employed spouse for a portion of a two year period and met a requirement of section 8 (1) of the Act for the balance of the two year period;
- (i) applicants who were incarcerated in a lawful place of confinement for at least 6 months of the 2 year period immediately preceding the date of application for income assistance;
- (j) applicants who were in the care of a director under the Child, Family and Community Service Act or who had an agreement with a director under section 12.2 of the Child, Family and Community Services Act until the applicant's 19th birthday;
- (k) applicants who
 - (i) have separated from an abusive spouse, or
 - (ii) changed place of residence to flee an abusive relative, other than a spouse,

within the past 6 months if, in the minister's opinion, the applicant's ability to work is consequently impaired;

(l) applicants who have been awarded a 2 year diploma or certificate, a bachelors degree or a post-graduate degree from a post-secondary institution;

(m) applicants who have persistent multiple barriers to employment;

(n) applicants who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the applicant from leaving home for the purposes of employment.

(o) applicants who are providing care for a child under an agreement referred to in section 8 of the *Child, Family and Community Service Act*;

(p) applicants who are providing care for a child under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(4) Section 8 of the Act does not apply to the family units of applicants if, in the minister's opinion,

(a) the applicant, due to circumstances beyond the applicant's control, has been prevented from searching for, accepting or continuing employment, and

(b) the family unit will otherwise experience undue hardship.

Position of the parties:

The ministry argued that the appellant did not meet any of the requirements under s. 8 of the EAA and s. 18 (1)(2) and (3) of the EAR as he had not worked the number of hours and did not earn the amount of remuneration listed in subsections (1) and (2) and did not meet any of the exceptions under subsection (3). The ministry also argued that in its opinion while the appellant had lost his employment for circumstances beyond his control he did not face a pattern in the longer term of being prevented from searching for, accepting or continuing employment for circumstances beyond his control and that he was not experiencing undue hardship, noting that an eviction notice had not been provided.

The appellant did not deny he did not meet the requirements under s. 8 of the EAA and 18 (1)(2) and (3) of the EAR but he argued he lost his employment for circumstances beyond his control and that he was facing undue hardship because he was evicted from his apartment.

Panel decision:

The panel notes the evidence provided is to the effect that the appellant did not work at least 840 hours or earn \$7000 in each of 2 consecutive years and thus finds the ministry reasonably determined he did not meet the requirements under s. 8 (1)(a) and (b) of the EAA and s. 18 (1) and (2) of the EAR. As well, while the appellant mentioned he had presented another request for income assistance before he was 19 years of age, he admitted this request had been previously denied and he did not provide further evidence that any of the exemptions under s. 18 (3) of the EAR applied to his situation and consequently the panel finds that the ministry reasonably determined he did not benefit from any of those exemptions.

The panel notes that under s. 18 (4) of the EAR, it is the minister's opinion that determines whether the appellant meets this requirement and consequently, there is a discretion vested in the minister in determining whether the circumstances warrant an exemption from the rules of the 2 year independence test. While the appellant was unable to continue his last employment for

circumstances that were beyond his control, he provided no evidence that it was a pattern or a long term situation that prevented him from securing employment. In fact, he testified that over the years he had looked for and gotten employment on at least 3 occasions and that since he lost his last job, he had looked for employment and admitted he got a job offer and had secured a position to start in the near future. Thus, the panel finds the ministry reasonably exercised its discretion in determining the appellant was not *prevented* from searching for, accepting or continuing employment for circumstances that were beyond his control.

Even if the appellant had met the requirement under s. 18 (4)(a) of the EAR, was the evidence sufficient to demonstrate he experienced undue hardship under s. 18 (4)(b) of the EAR? In fact the evidence initially showed that the appellant “left” his apartment and when the ministry mentioned he had not provided an eviction notice, the appellant then testified he was evicted but again did not provide an eviction notice. Further, the appellant had indicated he had to live in a tent and that since winter was coming, he would suffer undue hardship. However, and fortunately, the appellant testified that he was able to stay at his cousin’s residence while waiting to start his new job. In those circumstances, the panel finds the ministry reasonably determined it was not satisfied there was enough evidence to support undue hardship.

Therefore, the panel finds the ministry’s decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.