

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated November 23, 2015 that determined that the appellant was not eligible for income assistance because the appellant did not meet all of the criteria required under section 8(1) of the *Employment and Assistance Act (EAA)* and sections 18(1) and 18(2) of the *Employment and Assistance Regulation (EAR)*. Specifically, the ministry determined that the appellant had not demonstrated that he had been employed for remuneration for at least 840 hours in each of two consecutive years, or that he had earned at least \$7000.00 from employment in each of two consecutive years, or that he had been employed for remuneration for a portion of two consecutive years and for the balance of those years served a waiting period in respect of, or received benefits under, a claim for Employment Insurance or received income under a public or private income replacement program or plan. In addition, the ministry determined that there was no information to demonstrate that the appellant met any of the exemption categories listed under section 18(3) of the *EAR*. Finally, section 18(4) of the *EAR* allows the minister to waive the two-year financial independence requirement if the minister is satisfied that due to circumstances beyond the appellant’s control, the appellant has been prevented from searching for, accepting or continuing in employment and the family unit will otherwise experience undue hardship if not assisted. As the appellant is homeless, the minister determined that the appellant could experience undue hardship if not assisted. However, the minister was not satisfied that due to circumstances beyond the appellant’s control, he has been prevented from searching for, accepting or continuing in employment.

## PART D – Relevant Legislation

EAA section 8  
EAR section 18

## PART E – Summary of Facts

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

1. A Record of Employment (ROE) dated September 20, 2013 confirming that Employer A employed the appellant for 224 hours for which the appellant was paid \$2,799.81.
2. A ROE dated December 12, 2013 confirming that Employer B employed the appellant for 152 hours for which the appellant was paid \$1,622.93.
3. A ROE dated May 13, 2015 confirming that Employer C employed the appellant for 418 hours for which the appellant was paid \$4,487.91.
4. A ministry form entitled *Two-Year Independence Assessment* dated and signed by the appellant on November 13, 2015. The form records that the appellant replied “No” to each of the following questions:
  - a. Were you employed for 840 hours in each year of any consecutive two-year period?
  - b. Was your income from employment at least \$7,000 in each year of any consecutive two-year period?
  - c. If you were employed and paid for work performed only for a portion of a consecutive two-year period, for the remaining balance: were you waiting for or receiving benefits under the Employment Insurance Act (Canada)? OR were you receiving income under a private or public income replacement plan?
  - d. Are you pregnant?
  - e. Do you have a medical condition that: prevents you from working for at least 30 days from today’s date; OR precluded you from working for at least 6 months of the last two years?
  - f. Have you been supported by an employed spouse for a consecutive two-year period? If for less than two years, for the remaining balance were you working? OR were you waiting for or receiving benefits under the *Employment Insurance Act* (Canada)? OR were you receiving income under a private or public income replacement program?
  - g. In the past two years, were you incarcerated in a lawful place of confinement for a total of six months?
  - h. When you turned 19 years of age: were you in the care of the Ministry of Children and Family Development? OR Had you entered into a youth agreement?
  - i. In the past six months, from the date of this application, did you separate from an abusive spouse, or leave an abusive relative?
  - j. Have you been granted a two-year certificate or diploma, or a bachelor’s degree (or higher) from a post secondary institution?
  - k. Are you providing care for a child under an agreement under the *Child, Family and Community Act*?
  - l. Are you receiving assistance for a child who resides with you under an agreement under the Child in the Home of a Relative Program?
5. An Application for Income Assistance dated November 18, 2015 in which the appellant indicates that he is “*Single – Never Married*”.
6. An undated T4 for 2013 from Employer A showing employment income of \$2,799.81.
7. An undated T4 for 2013 from Employer B showing employment income of \$1,622.93.
8. An undated T4 for 2013 from Employer D showing employment income of \$483.60.
9. An undated T4 for 2014 from Employer C showing employment income of \$4,285.xx (cents unreadable).
10. An undated T4 for 2014 from Employer E showing employment income of \$170.58.
11. An undated T4 for 2014 from Employer F showing employment income of \$2,470.00.
12. An undated Tax return Summary for 2013 listing the appellant’s total income for that year as

\$5,394.57.

13. An undated Tax return Summary for 2014 listing the appellant's total income for that year as \$6,925.95
14. The appellant's *Request for Reconsideration* signed and dated by the appellant on November 19, 2015. In his reasons for requesting reconsideration, the appellant explained that he had submitted only two ROE's but he has subsequently "... found more hours for his assistance and now have got enough to be eligible for assistance."

In the *Reconsideration Decision* the ministry states that the appellant has applied for income assistance as a sole applicant and has been homeless in the past 12 months.

The appellant's *Notice of Appeal* was signed and dated on December 3, 2015 and stated that the reason for the appeal was that the appellant "... has come across more hours to submit ..."

At the hearing the appellant explained that he had worked for other employers in 2013 and 2014 from which he had not previously received ROEs. He has contacted them to try to obtain confirmation of the hours he worked but was unable to obtain any documentation since they don't have the records.

In response to questions from the panel the appellant confirmed that his tax records for 2013 and 2014 are complete and correct. He also confirmed that the information he provided in response to the questions in the *Two-year Independence Assessment* is correct. The appellant was also asked if he could explain the discrepancy in the income he was reported to have received in 2014 from Employer C. The ROE reported insurable earnings of \$4,487.91 whereas the T4 reported employment income of \$4,285.xx (cents unreadable). He was not able to explain this discrepancy.

The ministry explained that the appellant does not meet the two-year requirement for employment or any of the exemptions. Further, the ministry noted that the appellant had quit all three jobs for which he submitted ROEs and that there was no evidence provided by the appellant that he had been unable to work additional hours of employment.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that the appellant was not eligible for income assistance because the appellant did not meet the requirements of section 8 of the EAA and section 18 of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant had not demonstrated that he had been employed for remuneration for at least 840 hours in each of two consecutive years, or that he had earned at least \$7,000.00 from employment in each of two consecutive years, or that he had been employed for remuneration for a portion of two consecutive years and for the balance of those years served a waiting period in respect of, or received benefits under, a claim for Employment Insurance or received income under a public or private income replacement program or plan? In addition, was the ministry reasonable in determining that there was no information to demonstrate that the appellant fell under any of the exemption categories listed under section 18(3) of the *EAR*? Finally, was the ministry reasonable in determining that the appellant had not provided information to establish that the appellant had been prevented from searching for, accepting or continuing in employment due to circumstances beyond the appellant's control?

The relevant legislation is as follows:

From the EAA:

### **Requirement for 2 years employment**

- 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.
- (2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

From the EAR:

### **Requirement for 2 years employment**

- 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 \$7 000 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, Sch. 1, s. 1 (b).]
  - (f) applicants who are providing care to a child in care;
  - (g) applicants who were supported by an employed spouse for at least 2 years;

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- (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.

#### Appellant's Position

The appellant argues that he has worked additional hours beyond those reported in the ROEs he submitted but he is unable to obtain confirmation of these additional hours.

#### Ministry's Position

The ministry argues that the appellant does not satisfy the two-year requirement for employment or any of the exemptions and notes that the legislation provides no room for discretion in assessing these requirements. The ministry observes that section 18(4) of the EAR does allow the ministry discretion in waiving the two-year financial independence requirement if the minister is satisfied that due to circumstances beyond the appellant's control, the applicant has been prevented from searching for, accepting or continuing in employment and the family unit will otherwise experience undue hardship if not assisted. As the appellant is homeless, the ministry found that the appellant could otherwise experience undue hardship if not assisted. However, the ministry is not satisfied that due to circumstances beyond the appellant's control he has been prevented from searching for, accepting or continuing in employment.

#### Panel Decision

The panel notes that the ministry found that the appellant does not satisfy the requirements of sections 18(1) or 18(2) of the EAR. He had not been employed for remuneration for at least 840 hours in each of 2 consecutive years and he did not earn remuneration for employment of at least \$7,000.00 in each of 2 consecutive years. The appellant does not dispute these findings. The panel also notes that the ministry found that the appellant did not satisfy any of the exemptions listed in section 18(3) of the EAR. The appellant does not dispute this finding. Finally, the panel notes that the ministry was not satisfied that due to circumstances beyond the appellant's control he has been

prevented from searching for, accepting or continuing in employment. Accordingly, the ministry determined that the appellant does not qualify under section 18(4) of the EAR to have the two-year financial independence requirement waived. The appellant did not dispute this finding.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that the appellant has not met the requirements of section 8 of the EAA and section 18 of the EAR to receive income assistance was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision.