

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated December 7, 2015, which found the Appellant ineligible for income assistance under section 16(1) of the Employment and Assistance Act for the months of October, November and December, 2015 because she was a full-time student.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) sections 2

Employment and Assistance Regulation (EAR) sections 1(1) Definitions, 16

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 23

PART E – Summary of Facts

Information before the minister at reconsideration included:

- The Ministry's letter to the Appellant advising her of their decision, dated November 25, 2015.
- A Revised Notice of Assessment addressed to the Appellant from the Ministry of Advanced education dated October 12, 2015, stating that she is eligible to receive \$6,841 in student loans.
- An Accommodation Letter from a college dated September 8, 2015, stating that the Appellant was registered in a course of study.
- A Consumer Report from a credit reporting agency dated October 15, 2015, stating that the Appellant received a student loan.
- A letter to the Appellant from the Ministry dated September 21, 2015 advising her of a second appointment for a compliance review.
- A letter from the Ministry to the Appellant dated September 2, 2015 advising her to contact the Ministry for a compliance review.
- A copy of an Employment and Assistance Review signed by the Appellant October 15, 2015.
- The Appellant's Request for Reconsideration signed November 27, 2015.

At the hearing, the Appellant stated through her advocate, who is her social worker, that she agrees that she should not have received income assistance while she was a full-time student; however, she should have been designated as a Person with Disabilities (PWD) during the period in question. She state that she submitted an application for PWD designation in August, but it was not approved until December.

The Ministry responded that the Appellant's application for PWD was received on September 9, 2015 and a decision was made December 3, which is the usual processing time. The Ministry stated that when the Appellant started school in September, 2015 she had employable status, and her application for PWD designation was received after she started school. Although she was technically ineligible for assistance, her file was kept open to process her PWD application. The Ministry stated that the Appellant did not report that she was a student on her monthly reporting stub.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which found the Appellant ineligible for income assistance under section 16(1) of the Employment and Assistance Act for the months of October, November and December, 2015 because she was a full-time student.

Legislation

EAA

Eligibility of family unit

- 2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
 - (b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

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

Effect of family unit including full-time student

- 16 (1) Subject to subsection (1.1), 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.
- (1.1) Subsection (1) (a) does not apply to a family unit that includes a recipient who is enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2) during the period described in subsection (2).
- (1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person
- (a) is a sole recipient of income assistance who
 - (i) has a dependent child, or
 - (ii) provides care to a supported child,
 - (b) is required to enroll in the program of studies as a condition of an employment plan and

(c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist.

(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.

EAPWDR

Effective date of eligibility

23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.

(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

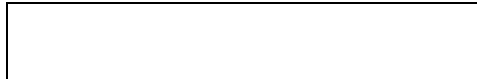
(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

-
- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
 - (b) the applicable of the dates referred to in section 72 of this regulation.
- (3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).
- (3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of
- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
 - (b) the applicable of the dates referred to in section 72 of this regulation.
- (3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).
- (4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:
- (a) the date the family unit became eligible for disability assistance;
 - (b) 12 calendar months before the date of payment.
- (5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

The Appellant's position is that she should have been designated as a Person with Disabilities earlier, and if that had happened, she would not have been ineligible for income assistance due to being a full-time student. The Appellant argued that she would have been eligible for disability assistance as a full-time student with PWD designation but the Ministry took an unduly long time to process her application. The Appellant argued that her learning disability should be taken into account. The Appellant's advocate stated that the Appellant failed to report her status as a full-time student on his advice.

The Ministry's position is that as a full-time student the Appellant was not eligible for income assistance, and that her application for PWD designation was processed in the usual time period, approximately 3 months. In addition, there is no provision in the legislation for backdating PWD designation; it becomes effective on the first day of the month following the month in which the minister designates the applicant.

The Panel notes that s.16(1), EAR is clear concerning the eligibility of a recipient of income assistance who is enrolled as a full-time student. The Appellant stated that she did not advise the Ministry of her enrolment as a student on her monthly reporting form because she had applied for designation as a PWD, and expected to be designated much earlier. The Panel finds that the Ministry reasonably determined that the Appellant was not eligible for income assistance during the period of October to December, 2015 when she was a recipient of income assistance. The Appellant's second issue is that her PWD designation should be effective earlier than



January, 2016. The Panel notes that s.23, EAPWDR is explicit; the effective date of eligibility for PWD designation is the first day of the month after the month in which the minister designates the applicant as a PWD. In this case, the date of designation was December, 2015, therefore the effective date was January 1, 2016. The Panel finds that the Ministry reasonably determined the effective date of the Appellant's designation as a PWD.

The Panel therefore confirms the Ministry decision.