

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 27, 2015 which found that the appellant is not eligible for income assistance under Section 13 of the *Employment and Assistance Act* (EAA) for the prescribed period because the ministry determined that the appellant was dismissed from employment for just cause.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 13

Employment and Assistance Regulation (EAR), Section 29

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Record of Employment (ROE) dated September 30, 2015 indicating September 30, 2015 as the appellant's last day for which he was paid;
- 2) Application for Income Assistance dated November 19, 2015; and,
- 3) Request for Reconsideration- Reasons dated November 11, 2015.

In his Request for Reconsideration dated March 30, 2015, the appellant wrote that:

- He would like a delay because he must wait for the ROE to come.
- He needs money to pay for rent and food.

The ministry relied on its reconsideration decision, which included information that:

- The appellant applied online for income assistance as a two-person family unit with no dependent children, which the ministry received on October 29, 2015.
- On November 3, 2015 the appellant and his spouse attended at a ministry office with an interpreter and the appellant stated that he was fired from his job on September 30, 2015 because he stole an item from his job site.
- On the ROE, the employer listed the reason for issue the ROE as "M" and Service Canada confirms this means dismissed and is used when the employer initiates the separation from employment.

Additional Information

In his Notice of Appeal dated December 4, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- His family does not have the money to pay rent and he has mental anguish because there is no money.
- He has to borrow money from his family to pay the rent.

The ministry forwarded a letter dated January 11, 2016 as the ministry submission on the appeal, which stated:

- The appellant is ineligible for income assistance for being dismissed from his employment for just cause within 60 days of his application for assistance.
- The period of ineligibility for income assistance is for the two calendar months of November and December 2015.

Admissibility of Additional Information

The appellant did not raise an objection to the information in the ministry's letter. The panel considered the information in the letter as information that clarified the actual months that constituted the two calendar months of ineligibility, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reconsideration decision, which found that the appellant is not eligible for income assistance under Section 13 of the *Employment and Assistance Act* (EAA) for the prescribed period because the ministry determined that the appellant was dismissed from employment for just cause, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstance.

Section 13 of the EAA provides:

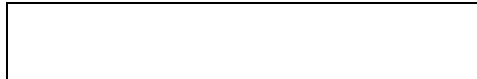
Consequences of not meeting employment-related obligations

- 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
 - (i) failed to accept suitable employment,
 - (ii) voluntarily left employment without just cause, or
 - (iii) been dismissed from employment for just cause, or
 - (b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.
- (2) For the purposes of subsection (1),
- (a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
 - (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.
- (3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Section 29 of the EAR provides:

Consequences of failing to meet employment-related obligations

- 29 (1) For the purposes of section 13 (2) (a) [consequences of not meeting employment-related obligations] of the Act,
- (a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting 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;
 - (ii) the date the default occurred, and
 - (b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:
 - (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.
- (2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [consequences of not meeting employment-related obligations] of the Act.
- (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;
- (ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:

- (i) the family unit has been ineligible for income assistance for one calendar month;
- (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.

(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:

(a) Repealed. [B.C. Reg. 116/2003, Sch. 1, s. 2 (a).]

(b) sole applicants or sole recipients who have at least one dependent child who

- (i) has not reached 3 years of age, or
- (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

(c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(d) sole applicants or sole recipients who are providing care to a child in care who

- (i) has not reached 3 years of age, or
- (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

(e) persons who receive accommodation and care in a special care facility or private hospital;

(f) applicants or recipients admitted to hospital because they require extended care;

(g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;

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

- (i) Repealed. [B.C. Reg. 160/2004, s. 2.]
- (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,
- (iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
- (iv) persons not described in section 7 (2) [citizenship requirements],
- (v) persons who have persistent multiple barriers to employment, or
- (vi) persons who have reached 65 years of age;

(i) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [agreements with child's kin and others] of the Child, Family and Community Service Act for a child who

- (i) has not reached 3 years of age, or
- (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

(k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [other powers and duties of directors] of the Child, Family and Community Service Act for a child who

- (i) has not reached 3 years of age, or
- (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment.

Ministry's Position

The ministry's position is that the appellant is not eligible for income assistance under Section 13(1)(a) and 13(2)(b) of the *Employment and Assistance Act* (EAA) for the prescribed period because the ministry determined that the appellant was dismissed from employment for just cause. The ministry argued that the prescribed period under Section 29(3)(a) of the *Employment and Assistance Regulation* (EAR) lasts for two calendar months from the later of the date of the submission of the application for income assistance (part 2) form and the date the default occurred. The ministry argued that the appellant does not dispute that his ROE indicated that he was dismissed by his employer on September 30, 2015 for stealing. The ministry argued that the appellant was dismissed for cause within 60 days before he applied online for income assistance on October 29, 2015 and, therefore, his family unit is ineligible until two calendar months have elapsed from October 29, 2015 because this is the later of the two occurrences, under section 29(3)(a) of the EAR. The ministry argued that the appellant does not fall within any of the exempted categories in Section 29(4) of the EAR as he is employment obligated with no dependent children.

Appellant's Position

The appellant's position, as set out in his Notice of Appeal, is that his family does not have the money to pay rent and he has mental anguish because there is no money and he has to borrow from his family.

Panel Decision

The appellant does not dispute that he applied online for income assistance on October 29, 2015, and that he was dismissed from his employment for just cause on September 30, 2015, which was within 60 days before his application for income assistance, contrary to Section 13(1)(a)(iii) of the EAA. Pursuant to Section 13(2)(b) of the EAA, the consequence for the appellant's family unit, since the family unit does not include dependent children, is that the family unit is not eligible for income assistance for the prescribed period. The prescribed period, according to Section 29(3)(a) of the EAR is until 2 calendar months have elapsed from the later of the date of the applicant's submission of the application for income assistance (part 2) form under the regulation [Section 29(3)(a)(i)] and the date the default occurred [Section 29(3)(a)(ii)]. As the later of the date of the appellant's application on October 29, 2015 and the default of dismissal on September 30, 2015, is October 29, 2015, the panel finds that the ministry reasonably determined that the appellant is ineligible for income assistance for two calendar months from this date. As clarified in the ministry's letter dated January 11, 2016, the appellant is ineligible for income assistance for the two calendar months of November 2015 and December 2015. The panel finds that the ministry also reasonably concluded that there was no evidence provided that the appellant falls within any of the exempted categories set out in Section 29(4) of the EAR.

Conclusion

The panel finds that the ministry's conclusion that the appellant is not eligible for income assistance, pursuant to Section 13 of the EAA and Section 29 of the EAR, for the months of November and December 2015 as the appellant was dismissed from employment for just cause, was reasonably supported by the evidence. Therefore, the panel confirms the ministry's reconsideration decision.