

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration including the following:

- Record of employment, dated November 14, 2008, stating that the Appellant was employed between August 19, 2008 and October 29, 2008, with total earnings of \$8,539.75.
- Record of employment, dated December 19, 2008, stating that the Appellant was employed between November 20, 2008 and December 14, 2008, with total earnings of \$2,853.90.
- Record of employment, dated January 11, 2012, stating that the Appellant was employed between November 1, 2011 and December 16, 2011 with total earnings of \$7,773.80.
- A tax return summary for the 2012 taxation year, dated November 26, 2015, showing employment income of \$5,083.40 for the 2012 tax year.
- Canada Revenue Agency 2012 assessment – 28 February 2013, dated November 26, 2015, showing employment income of \$5,083 for the 2012 tax year.
- A tax return summary for the 2013 taxation year, dated November 26, 2015, showing employment income of \$4,058.40 for the 2013 tax year.
- Canada Revenue Agency 2013 assessment – 24 March 2014, dated November 26, 2015, showing employment income of \$4,058 for the 2013 tax year.
- Canada Revenue Agency 2014 assessment – 23 April 2015, dated November 26, 2015, showing employment income of \$1,069 for the 2014 tax year.
- A letter, dated November 27, 2015, from the Appellant's recent employer stating that he was employed by a small business from June 30, 2015 to the end of August 2015. He was paid \$1,300 for work in July and \$1,300 for work in August, 2015. The letter includes a breakdown of tasks completed to earn the \$1,300, and is signed by the Appellant's recent employer.

In the notice of appeal, dated January 15, 2016, the Appellant states that he was in a car accident on September 2, 2015. He also states that he needs to get his birth certificate from the provincial government at his previous address so that he can receive medical care in British Columbia. He says that he is currently receiving emergency hospital care.

Prior to the hearing, the Appellant also submitted the following:

1. a copy of an email, dated February 3, 2016, from a Probation Officer describing stating where and when the appellant was in a correctional facility. The custodial period was less than 6 months.
2. Medical Report-Employability form for the appellant. The report was signed by the appellant on February 1, 2016 and signed by a medical practitioner on February 7, 2016. In the report the doctor states that he saw the appellant only once, the appellant's primary medical condition is from a motor vehicle accident (according to patient), secondary medical condition is left patella-femoral syndrome with his overall medical condition described as moderate but not episodic in nature and the expected duration of the condition is 1-3 months. The patient (appellant) is restricted when walking long distances, running and climbing stairs. The doctor has no previous medical records.
3. A memo dated February 11, 2016 referencing the appellant and signed by a physiotherapist indicates the patient (appellant) has had one treatment to date. The space for the doctor's name is blank. The memo has four categories for comment: Assessment, Treatment, Status and Comment.

Under Assessment it's states: "To whom It may Concern, Pls (Please) note that the above mentioned client (appellant) would benefit from lumbar mechanical treatment to further his recovery from nerve root compression." There are no comments under Treatment, Status or Comments.

At the hearing, the Appellant provided evidence that he applied for income assistance as a single person with no dependents when he was still in a correctional facility and was told he would receive income assistance once he was released. He stated when he was released he was told he was not eligible for income assistance and that he had to submit a record of his earnings, which he did, before a decision would be made. The appellant acknowledged that his earnings between 2008 and 2014, as reported by the ministry, were correct and that his primary work was hunting and trapping which only provided him with enough money to live in his community. The appellant testified that he didn't claim or submit any of these earnings. The appellant stated that in the fall of 2015 when he was being transferred from one correction facility to another he was a passenger in a vehicle that was involved in an accident and he suffered a leg injury. He tried to get his leg examined but was told that he would be released before an MRI (magnetic resonance imaging) could be arranged and that he would be best to have the leg x-rayed when he was released. The appellant stated that he suffers from leg pain as a result of the accident and now he can't stand for any length of time and the pain prevents him from going out hunting and trapping. He testified that he needed the income assistance to pay for fuel for his skidoo and supplies when travelling his trap line. The appellant stated the trapping season is almost over for this year and he has no money to pay his living expenses. The appellant testified that until recently he was on emergency medical care and that he just recently got a family doctor. He stated that he recently went to see him for a medical letter and his family doctor also sent him to see the physiotherapist. Both medical practitioners provided him with medical letters.

The ministry had no objection to the panel receiving these documents for consideration on admissibility as evidence.

The panel finds that when considering evidence for admissibility it must meet the test under section 22(4)(b) EAA that the written testimony was in support of the information and records that was before the ministry when the decision being appealed was made. The two documents, the Medical Report-Employability identifies an injury to the appellant's leg which is placing restricting on his employability and the letter from the physiotherapist provides a prognosis for treatment for recovery from nerve root compression. The panel finds that neither subject were issues raised by the appellant to be addressed by the ministry at Reconsideration.

The panel finds these documents do not meet the test of admissibility as evidence under section 22(4) EAA, however, based on the comments of the Reconsideration officer ("if you can get confirmation from your doctor that you have a medical condition the precludes you from searching for work, then you may wish to provide that information with your appeal") the panel has allowed the documents to be considered in making its findings.

The panel finds that the oral evidence provided by the appellant supports the information and record that was before the ministry at reconsideration and is admissible under section 22(4) of the EAA.

The ministry relied on the facts as stated in the reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant was not eligible for income assistance because he did not meet the two-year financial independence requirement under section 8 of the EAA and under section 18 of the EAR, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Relevant legislation considered:

**EAA**

**Requirement for 2 years employment**

Section 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.

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**EAR**

**Requirement for 2 years employment**

Section 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; (B.C. Reg. 304/2005)
  - (d) applicants with dependent children;
  - (e) Repealed (B.C. Reg. 48/2010)
  - (f) applicants who are providing care to a child in care; (B.C. Reg. 145/2015)
  - (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*; (B.C. Reg. 331/2003)

(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*. (B.C. Reg. 331/2003)

(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. (B.C. Reg. 279/2009)

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**In reference to section 8(1) and 8(2) of the EAA:**

**Appellant's position**

The appellant argued that he doesn't understand the two-year financial independence requirement and that his primary source of income is hunting and trapping which was not reported. The appellant argued he was told that he would receive income assistance once he was released.

**Ministry's position**

The ministry's position is that the appellant submitted documents showing he earned \$9,393.40 in 2008; \$7,773.80 in 2011; \$5,083.00 in 2012; \$4,058.00 in 2013 and \$1,069.00 in 2014. The ministry argued that the appellant does not meet the legislated criteria under section 8(1) EAR of having been employed for remuneration for at least 840 hours in each of two consecutive years or must have earned remuneration for employment of at least \$7000 in each of 2 consecutive years to be eligible for income assistance.

**Panel Decision**

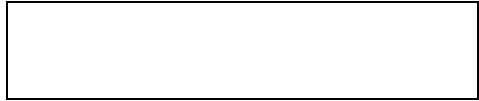
The evidence is that the appellant acknowledged that he did not earn \$7000 in earned remuneration in two consecutive years to meet the legislated criteria set out in section 8 of the EAA. Therefore the panel finds the ministry reasonably determined the appellant did not meet the legislated criteria set out in section 8 EAA.

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**In reference to section 18(3) EAR – exemption to meet requirements of section 8 EAA:**

The evidence before the panel is that the appellant is a single male with no dependents who is at least 19 years of age and therefore the exemptions listed in section 18(3) EAR, except 3(c), do not apply to the appellant. Therefore, the panel finds that the ministry reasonably determined that the appellant does not meet the other exemptions listed in section 18(3)(a), (b) and (d) to (p)(ii) of EAR.

Section 18(3)(c) of the EAR states 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;

Appellant's position:

The appellant's position is that he hurt his leg while in custody and now his leg is so painful that he can't stand on it and can't go out hunting and trapping which is his livelihood. The appellant argued that he has done nothing wrong and needs the income assistance to survive. The appellant argued that he is unable to work his trap line due to the pain in his leg. The appellant argued that his family doctor, who he only recently obtained, completed the Medical Report-Employability form regarding his injured leg. The appellant argued the family doctor also sent him to the physiotherapist, who completed a medical letter as well regarding his injured leg.

Ministry's position

The ministry's position is that the appellant did not provide the ministry with sufficient information, except of his injury when he was incarcerated, to confirm that his medical condition prevented him from working. The ministry position is that the appellant told the ministry worker that when he was released it was his intention to return to farm work with his previous employer.

Panel Decision

The appellant's position is that his family doctor completed the Medical Report -Employability which supports his position that he is not able to work. The ministry's position is that in the Medical Report-Employability the doctor states the appellant's restrictions are walking long distances, running and climbing stairs which, in the opinion of the ministry, is not sufficient medical evidence that will prevent the appellant from working for at least the next 30 days.

The panel finds there is no medical evidence contained in the letter from the physiotherapy clinic to support that the appellant is not able to work. The letter simply states that he would benefit from treatment to further his recovery from nerve root compression. The panel finds the Medical Report – Employability form, dated February 7, 2016, does state that the appellant's medical condition is expected to continue for 1 – 3 months and that the appellant is restricted in walking long distances, running and climbing stairs but the report does not provide sufficient information to conclude that the appellant's medical condition will prevent him from working for at least the next 30 days.

Therefore, the panel finds the ministry reasonably determined that there is insufficient evidence to support that the appellant meets the legislated criteria stated in section 18(3)(c) of the EAR.

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**In reference to section 18(4) EAR – exemption to meet requirements of section 8 EAA**

Section 8(4) EAR states that 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's position is that hunting and trapping is his primary work and the pain and injury to his leg is preventing him from going out on his trap line to earn any money. The appellant submits the Medical Report-Employability supports his position.

**Ministry's Position**

The ministry position is that the appellant provided confirmation that he has been able to obtain employment as demonstrated by the employment records, the notices of assessment and the letter from his former employer at the farm. The ministry argued that the appellant told the worker he was intending to return to the farm to work and didn't think the probation order would affect his employability. The ministry argued that the appellant made no indication that he was unable to accept, search for or maintain employment and therefore the minister does not waive the two-year financial independence requirement in section 8 of the EAR.

**Panel Decision**

The evidence before the panel is contradictory as in the appellant stated that he was prevented from hunting and returning to his trap line because of the injury to his leg and he needed the income assistance to provide for hunting supplies, i.e. gasoline for his ski-doo, etc. In the ministry reconsideration decision the appellant told the worker during his interview for income assistance that he intended to return to work at the farm where he was recently employed. There is no evidence before the panel that the appellant attempted to search for, accept or maintain employment after his release from the correctional facility. The appellant's testimony is that "I can't work" (return to my trap line and hunt) because my leg is too painful. The panel finds the Medical Report-Employability does not address this issue and the doctor did not provide a separate letter providing his reasons or opinion on whether the appellant was able to search for, accept and maintain employment or his reasons why the appellant would not be able to search for work because of his medical condition.

The panel finds there is insufficient evidence to support that due to circumstances beyond the appellant's control his medical condition prevented him from searching for, accepting or continuing employment.

Therefore, the panel finds the ministry's decision that the appellant is not exempt from the two year financial independence requirement as set out in section 18(4) of the EAR is reasonable.

**Conclusion:**

For the above reasons, the panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for income assistance because he does not meet the criteria under section 8 of the EAA or meet any of the exemption categories under section 18 of the EAR is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed.