

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) dated April 21, 2016, in which the ministry determined that the Appellant is not eligible for income assistance. The Ministry found that the Appellant does not meet the requirement for 2 years employment set out in Section 8(1) of the *Employment and Assistance Act* (EAA) and Section 18(1) and (2) of the *Employment and Assistance Regulation* (EAR). The ministry further determined that he does not meet any of the exemptions in Section 18(3) or 18(4) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 8
Employment and Assistance Regulation (EAR) Section 18

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A copy of the Appellant's Two-Year Independence Assessment form, signed March 22, 2016, with all questions answered "no".
- A copy of a Notice of Assessment for the 2014 taxation year reporting zero taxable income.
- A letter from the appellant's legal counsel establishing communication with the ministry.
- Application for Income Assistance signed April 1, 2016.
- The appellant's Request for Reconsideration, signed April 21, 2016.

With his Notice of Appeal to the Tribunal the appellant submitted copies of T4 Statements of Remuneration reporting the following income:

Taxation year 2009 – reported tax exempt income - \$ 696.80
Taxation year 2010 – reported tax exempt income - \$ 698.88
Taxation year 2011 – reported tax exempt income - \$ 364.00
Taxation year 2013 – reported tax exempt income - \$9,319.48
Taxation year 2014 – reported tax exempt income - \$3,195.31

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

The Panel admitted the T4 income statements as documentary evidence under Section 22(4)(b) of the EAA as it is in support of information and records that was before the ministry at the time the Reconsideration decision was made.

At the hearing:

The appellant states that he committed an offence in February 2016, was in jail for eight days and there are legal conditions currently in effect that restricts his ability to find work. He is a first nations' member who received income assistance for several years from his First Nations Organization (FNO), but that assistance was terminated when his file was closed in February 2016. In the past, he has had training in various fields with the maximum training period of two months. In 2015 he received income assistance of \$1,000 per month for 6 or 7 months when he was unemployed from the FNO. He also stated that he received income assistance in 2014 from the FNO when unemployed. He is trying to find work but it is very difficult because of his legal conditions and is currently living in a shelter facility.

The appellant's position is that he now has court ordered conditions which do not permit him to be in his former community and also makes finding employment very difficult. The appellant argued that he did receive income assistance from his FNO when he was not working and therefore argued that he did meet the \$7,000 threshold as set out in section 18(2) EAR.

The panel admitted the appellant's testimony, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the



ministry at reconsideration in accordance with section 22(4) of the EAA.

The ministry relied on the facts in the Reconsideration decision. It is the ministry's position that the appellant did not have employment earnings of at least \$7,000 (or 840 hours) in each of any 2 consecutive years and did not qualify for any of the allowable exemptions and therefore did not meet the 2 year financial independence required to become eligible for assistance.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision dated April 21, 2016, in which the Ministry determined that the Appellant is not eligible for income assistance. The Ministry found that the Appellant does not meet the requirement for 2 years employment set out in Section 8(1) of the Employment and Assistance Act (EAA) and Section 18(1) and (2) of the Employment and Assistance Regulation (EAR) and that he does not meet the requirements for the exemptions listed in Section 18(3) and (4) of the EAR.

Relevant Legislation

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.

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;
- (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.

[am. B.C. Regs. 331/2003, s. 1; 304/2005, s. 4; 279/2009; 48/2010, Sch. 1, s. 1 (b); 145/2015, s. 5.]

Panel decision:

The Panel finds that the ministry reasonably determined from the information provided by the appellant that he does not meet the legislated requirement in Section 8(a) or (b), of the EAA and Section 18(1) and (2) of the EAR to be eligible for income assistance. The evidence is that the appellant reported to the ministry that he was not employed for 840 hours in each year of any consecutive two year period, did not receive an income from employment of at least \$7,000 in each year of any consecutive two year period and he did not meet any of the exemptions stated in section 18(3) EAR to the legislated requirements for income assistance set out in section 8(1) EAA.

With respect to Section 18(4) EAR, there is not sufficient evidence before the Panel that there were factors beyond the appellant's control that prevented him from meeting the 2 year legislated criteria set out in section 18(1) or 18(2) EAR.

In reviewing all of the evidence, the panel notes that in 2013 the earned income is \$9,319.48 and in 2014 the appellant reported earned income of \$3,195.31. In 2014 the appellant's income was supplemented with income assistance from the appellant's FNO in the months that he was unemployed.

Section 8(1)(c)(ii) EAA states "For a family unit to be eligible for income assistance, at least one applicant in the family unit must have been employed for remuneration for a portion of two consecutive years and for the balance of those years received income under a public or private income replacement program or plan." The panel finds that income received from the appellant's FNO is social assistance and not an income replacement program or plan and therefore section



8(1)(c)(ii) EAA does not apply in the circumstances of the appellant..

The panel finds that the ministry's decision that the appellant was not eligible for income assistance under section 8 EAA was supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision in accordance with section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.