

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 22, 2016 which found that the appellant is not eligible for income assistance (IA) because pursuant to section 1(1) of the *Employment and Assistance Act* (EAA) his spouse is his dependent and pursuant to section 4.1(2.1)(b) of the *Employment and Assistance Regulation* (EAR) the dependent spouse must complete the 5 week work search requirement which she failed to do. The ministry also found that the appellant is not eligible for hardship assistance (HA) pursuant to section 47.2(1) of the EAR because the appellant's spouse failed to complete the authorization, declaration and verification of the application (part 2) as required by section 4.2(3) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) - Section 1(1), 1.1 (1) and 2.

Employment and Assistance Regulation (EAR) – sections 4.1(2.1)(b), 4.2(3) and 47.2(1).

PART E – Summary of Facts

Evidence At Reconsideration

A Request for Reconsideration (RFR), which is signed and dated August 10, 2016 and states in part that:

- the appellant's wife and children are on vacation and will not be back until the end of the month;
- he (the appellant) has not worked since April 22, 2015 which is a long enough time;
- he has used his money and credit cards; and
- he tried to work 3 times but his doctor stopped him.

Evidence On Appeal

A Notice of Appeal (NOA), which is signed and dated August 25, 2016 and states in part that, the appellant does not have money for food, rent or medicine and cannot survive.

Evidence At the Hearing

At the hearing the appellant submitted the following information:

- a letter from his doctor, signed and dated July 12, 2016, which states "This letter is to certify that [the appellant] was assessed in this office and was/is unable to work due to illness/injury ongoing problems with his feet. He is not able to work since April 22, 2015"; and
- 5-page document showing an arbitration award between the appellant and his spouse. The document shows that first hearing of the case occurred on June 4, 2016 and the last hearing of the case occurred on August 28, 2016.

At the hearing the appellant stated that following:

- he has a credit card debt of \$60 000 because he has not worked since April 22, 2015;
- he pays for food, rent, medicine and everything else to survive by using his money, credit cards and borrowing money from others;
- he did not apply for IA sooner because he thought he could return to work per his doctor's advice;
- since he is not working, his wife decided to leave him;
- he and his wife last resided together in March 2015 in another part of the country and his wife has not lived in British Columbia (BC) since 2009;
- his wife started divorce proceeding on January 29, 2016;
- at the time of the IA application process, the appellant was hopeful that his wife would move to BC to be with him and not divorce him; and
- if his IA application is not backdated to July 21, 2016 he will have to continue to borrow money;

At the hearing the ministry relied on its reconsideration decision.

Admissibility of Additional Evidence

The ministry did not object to the admittance of the letter from the doctor dated July 12, 2016 because the ministry is aware of and accepts the appellant's medical condition. The ministry

objected to the admittance of the 5-page arbitration document because information regarding a divorce between the appellant and his spouse was not information that the ministry had at the time of the reconsideration decision.

The panel notes that the letter from the doctor dated July 12, 2016 is not “new evidence” but rather, it specifically related to and referred to the documents that were before the ministry at reconsideration. The panel therefore finds that the letter is admissible as it is in support of or corroborates the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The panel notes that the letter from the 5-page arbitration document is not in support of or corroborates the evidence that was before the ministry at the time of reconsideration. The panel therefore finds that the document or the appellant’s reference to his divorce or separation from his wife are not admissible as they are not in support of or corroborate the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for IA is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances. In particular the ministry found that:

- pursuant to section 1(1) of the EAA his spouse is his dependent and pursuant to section 4.1(2.1)(b) of the EAR the dependent spouse must complete the 5 week work search requirement which she failed to do, and
- pursuant to section 47.2(1) of the EAR because the appellant's spouse failed to complete the authorization, declaration and verification of the application (part 2) as required by section 4.2(3) of the EAR.

The EAA sets out the following eligibility criteria:

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they have resided together for at least
 - (i) the previous 3 consecutive months, or
 - (ii) 9 of the previous 12 months, and
- (b) the minister is satisfied that the relationship demonstrates
 - (i) financial dependence or interdependence, and
 - (ii) social and familial interdependence,consistent with a marriage-like relationship.

Eligibility of family unit

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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.

The EAR sets out the following eligibility criteria:

Application for income assistance — stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (2).

(2) The applicants for income assistance in a family unit

(a) must complete and submit to the minister an application for income assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 7 (2), and

(ii) the information, authorizations, declarations and verifications specified by the minister, as required in the application for income assistance (part 1) form, and

(b) subject to subsections (4) and (6), must

(i) complete searches for employment as directed by the minister for the applicable period under subsection (2.1) immediately following the date of the application under paragraph (a), or

(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),

and in either case provide information about and verification of the searches for employment, in the form specified by the minister.

(2.1) The applicable period for the purposes of subsection (2) (b) (i) is

(a) 3 weeks, if any applicant in the family unit is a former recipient, and

(b) 5 weeks in any other case.

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act.

(4) Subsection (2) (b) does not apply to a person who

(a) is prohibited by law from working in Canada,

(b) has reached 65 years of age,

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

(d) has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or

(e) is fleeing an abusive spouse or relative.

- (f) Repealed. [B.C. Reg. 6/2008, s. 1.]
- (5) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 3 (e).]
- (6) Subsection (2) (b) does not apply to a sole applicant who
- (a) has a dependent child, or
 - (b) provides care to a supported child
- if the child has not reached 3 years of age.

Application for income assistance — stage 2

- 4.2** (1) In this section, "**applicant orientation program**" means a program established by the minister to ensure that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of
- (a) rules about eligibility for income assistance or supplements,
 - (b) the process of applying for disability assistance,
 - (c) required employment search activities, community based job search resources and ministry and community programs,
 - (d) mutual obligations of the minister, applicants and recipients,
 - (e) employment plans,
 - (f) the minister's authority to collect and verify information, and
 - (g) the availability of alternate resources, such as, federal programs and other Provincial programs.
- (2) The second stage of the process for assessing the eligibility of a family unit for income assistance is fulfilling the requirements of subsection (3).
- (3) Subject to section 47.2 (2), on completion of the first stage process provided for in section 4.1, the applicants for income assistance in the family unit must complete and submit to the minister an application for income assistance (part 2) form and must include as part of the application
- (a) proof of the identity of the persons in the family unit and of their eligibility under the Act,
 - (b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and
 - (c) the information, authorizations, declarations and verifications specified by the minister as required in the application for income assistance (part 2) form.
- (4) Subsection (3) does not affect the minister's powers under section 10 of the Act.
- (5) Subsection (3) (b) does not apply to a person who
- (a) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
 - (b) has reached 65 years of age,
 - (c) is not described in 7 (2) [*citizenship requirements*] and is in a family unit that satisfies the requirement under section 7 (1), or
 - (d) has a physical or mental condition that, in the minister's opinion, precludes

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the person from completing an applicant orientation program.

Applicants who do not meet work search requirements

47.2 (1) The minister may provide hardship assistance to a family unit that is ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, if

(a) the applicants who submitted the application for income assistance (part 1) form also submit to the minister an application for income assistance (part 2) form that, subject to this section, complies with section 4.2, and

(b) the minister considers that

(i) any person in the family unit has an immediate need for food or shelter or needs urgent medical attention, and

(ii) undue hardship will occur if the hardship assistance is not provided.

(2) An applicant may submit an application for income assistance (part 2) form under subsection (1) (a) for the purpose of applying for hardship assistance even though the requirements under section 4.1 (2) (b) respecting the completion of searches for employment have not been satisfied.

The Appellant's Position

The appellant argues that he has not worked since April 22, 2015, has used all of his money, credit cards and borrowed money to pay for rent, food and medicines. He is \$60 000 in debt and needs IA to survive. He also argues that since his application process started on July 21, 2016 he should be considered eligible from that date.

The Ministry's Position

The ministry argues that the appellant's spouse is his dependent and therefore they are a family unit. In order to be eligible for IA the recipient must complete a 5 week work search period. Due his physical health the appellant is exempt from the required 5 week work search period however his spouse is not. Since she has not completed the 5 week work search period the family unit is not eligible for IA pursuant to section 4.1(2.1)(b) of the EAR. The ministry also argues that the family unit is not eligible for HA pursuant to section 47.2 (1) of the EAR because the appellant's spouse has failed to provide authorization, declaration and verification of the application (part 2) which is required per section 4.2(3) of the EAR.

The Panel Decision

The ministry contends that pursuant to sections 1, 1.1 and 2 of the EAA, the appellant's spouse is his dependent and they form part of the family unit; as such, they are also subject to the applicable legislation. At the time of the reconsideration decision, the appellant did not dispute that he has a spouse and referred to 'a wife' in his RFR. It is therefore reasonable to conclude that the appellant and his spouse, together with and on behalf of their 3 dependent children, are applying for IA as a family unit and are therefore subject to the legislation as a family unit.

The legislation requires that a family unit who is applying for IA complete a specific process. Section

4.1(2.1)(b) of the EAR requires that a 5 week work search period be completed. Though section 4.1(4) of the EAR lists the exemptions to this requirement and the appellant qualifies for the exemption listed under section 4.1(4)(d), section 2 of the EAA specifies that each person in the family unit must satisfy the initial and continuing conditions of eligibility. Therefore, it is required that the appellant's spouse complete a 5 week work search period to be eligible for IA. The evidence presented in the case of the appellant does not establish that the appellant's spouse started or completed a 5 week work search period. The panel finds that the ministry reasonably determined that the appellant's spouse failed to complete the application requirements in that she has not completed the 5 week work search requirement pursuant to section 4.1(2)(b) of the EAR.

Section 47.2(1) of the EAR allows the ministry to provide HA for those who do not qualify for IA. The legislation requires that the applicant who submits part 1 of the application for IA also submit the authorization, declaration and verification of the application (part 2) in order to qualify for HA. As stated previously, the appellant, and his spouse must apply on behalf of the entire family unit. In the case of the appellant's family unit, his spouse did not complete the authorization, declaration and verification of the application (part 2) and therefore the family unit, which includes the appellant, his spouse and their dependent children, does not qualify for HA. The panel finds that the ministry reasonably determined that the appellant's spouse failed to complete part 2 (the authorization, declaration and verification of the application) pursuant to section 4.1(2)(b) of the EAR and therefore the appellant's family unit does not qualify for HA pursuant to section 47.2(1) of the EAR.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's Reconsideration Decision which determined that the appellant was not eligible for IA or HA under section 4.1(2.1)(b) or section 47.2(1) of the EAR was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision. The appellant is not successful in his appeal.