

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated August 18, 2016 which held that the appellant was not eligible for income assistance pursuant to section 8(1) of the Employment and Assistance Act (EAA) because the appellant has not:

- been employed for remuneration for the prescribed number of hours or earned the prescribed amount of remuneration set out under section 18 of the Employment and Assistance Regulation (EAR) in each of two consecutive years; or
- been employed for remuneration for a portion of two consecutive years and for the balance of those years was either waiting for or receiving benefits under the Employment Insurance Act (EIA) or was receiving income under a private or public income replacement plan.

The ministry also determined that the appellant was not in any of the categories of applicants for income assistance set out under sections 18(3) and (4) of the EAR for whom the requirements of section 8(1) of the EAA do not apply.

PART D – Relevant Legislation

EAA, section 8
EAR, section 18

PART E – Summary of Facts

The appellant applied for income assistance as a single person on August 8, 2016 and ministry records note that the appellant indicated that she has been living in another country for the last two years, staying with her uncle, and working as a waitress most of the time. Missing her family, the appellant quit her job and moved back to Canada on August 2, 2016, and is currently living with her mother.

Ministry records indicate that the appellant has not provided confirmation that she has worked 840 hours or earned at least \$7000 in two consecutive years and that the appellant does not dispute that she has not worked those hours or earned that amount. The appellant did not indicate that she was awaiting or receiving benefits under the EIA or that she was receiving income under a private or public income replacement plan. During her August 8, 2016 intake interview, the appellant was asked if she met any of the exemption criteria under section 18(3) of the EAR, which include being under 19 years of age, having dependent children, or fleeing an abusive spouse or relative in the past 6 months. The appellant stated that she did not meet any of the exemption criteria.

Included in the appeal record is a copy of the appellant's 4-page Application for Income Assistance (Part 2). All 4 pages are date stamped August 9, 2016, and are either signed or initialed by the appellant. The appellant indicated that she moved to Canada from another country on August 2, 2016, has not been financially independent for at least 2 years or in receipt of EI benefits within the past 60 days, and was not fleeing an abusive spouse or relative. The appellant reported needing a bed, bedding, a coat, and lots more, as she has nothing.

Also included in the appeal record is a 1-page Two-Year Independence Assessment date stamped August 9, 2016, and signed by the appellant. Information included in the document is that the appellant is not pregnant, does not have a medical condition that prevents her from working for at least 30 days from today's date or precluded her from working for at least 6 months of the last two years, and in the past 6 months has not separated from an abusive spouse or left an abusive relative.

In her Request for Reconsideration, dated August 15, 2016, the appellant writes that she is asking for assistance because she is not employed and is new to B.C. She moved only with the clothes in her luggage. She was leaving an abusive relationship and left everything behind. She is staying with her mom, who expects rent. She is looking for work, has been to a job search program, but has not found a job yet.

In her Notice of Appeal, the appellant writes that she just left an abusive relationship and has nothing as she left everything behind. She is currently actively seeking employment.

At the hearing, the appellant stated that she left the province in which she formerly resided on June 3rd because she was fleeing her abusive boyfriend. She spent the next month in another country with her uncle, where she worked, and then moved to B.C. She stated that otherwise, she has not worked for 2 years. She continues to actively seek employment and explained that the job search program she attended is for abused women. When completing her application for income assistance online, and during the subsequent telephone interview with the ministry, she answered "no" when asked if she was fleeing an abusive spouse because she was neither married to nor in a common law

relationship with her boyfriend, and because she was scared.

At the hearing, the ministry clarified the income assistance application process, noting that if an applicant indicates abuse, the file is transferred to a specialized worker. The ministry also noted that a person may reapply for income assistance. The ministry did not provide additional evidence.

Section 22(4) of the EAA provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA - to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role decision makers of the first instance. Accordingly, panels cannot admit information that would place them in that role. In this case, there was no information before the ministry at reconsideration regarding whom the appellant was fleeing or the nature or timing of that person’s relationship with the appellant. Therefore, in accordance with section 22(4) of the EAA, the panel has not admitted the information respecting the identity and timing of the appellant’s relationship with her boyfriend as it is not in support of the information before the ministry at reconsideration and would place the panel in the role of decision maker of the first instance. The balance of the appellant’s information was admitted as it corroborated the information before the ministry at reconsideration.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision that the appellant was not eligible for income assistance was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, was the ministry reasonable when concluding that the appellant:

- has not been employed for remuneration for the prescribed number of hours (840), earned the prescribed amount of remuneration (\$7000) as required by section 8(1) of the EAA and section 18 of the EAR; or
- has not been employed for remuneration for a portion of two consecutive years and for the balance of those years was either waiting for or receiving benefits under the EIA or was receiving income under a private or public income replacement plan; and
- does not meet the criteria set out under section 18(3) or (4) of the EAR in order to be exempt from the requirements of section 8(1) of the EAA?

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.

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Eligibility under section 8(1) of the EAA

The appellant does not dispute that she does not meet the eligibility criteria for income assistance set out under section 8 of the EAA.

The ministry argues that the appellant has not met any of the requirements for eligibility for income assistance set out under section 8(1) of the EAA because she has not provided confirmation that in each of two consecutive years she has either been employed for remuneration for at least the prescribed number of hours, which under section 18 of the EAR is 840 hours, or has earned remuneration for employment in at least the prescribed amount, which under section 18 of the EAR is \$7000. The ministry also notes that the appellant does not dispute that this is the case. Additionally, the appellant has not indicated that she was employed and paid for work performed only for a portion of a consecutive two-year period, and for the remaining balance was either waiting for or receiving benefits under the EIA or receiving income under a private or public replacement plan.

Panel Decision

Section 8(1) of the EAA sets out the conditions under which an applicant is eligible for income assistance. An applicant must have been employed for remuneration for at least the prescribed number of hours in each of two consecutive years, earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or have been employed for remuneration for a portion of two consecutive years and for the balance of those years was either waiting for or receiving benefits under the Employment Insurance Act or was receiving income under a private or public income replacement plan. Section 18(1) of the EAR sets out that the prescribed number of hours of employment for remuneration is 840 and that the prescribed amount of earned remuneration for employment set out in section 18(2) is \$7000.

The panel finds that the appellant has not provided documentation respecting any employment earnings or hours of employment. Additionally, the appellant signed both the Application for Income Assistance (Part 2) in which she indicates that she has not been financially independent for at least 2 years, and the Two-year Independence Assessment in which she also indicates that she has not employed for 840 hours or had employment income of at least \$7000 in any consecutive two-year period. At the hearing, the appellant confirmed that she has not met these conditions. Therefore, based on the above information, the panel finds that the ministry reasonably determined that the appellant has not met the income assistance eligibility requirements of section 8 of the EAA.

Exemptions under section 18(3) of the EAR

The appellant argues that she moved to B.C. as she was fleeing an abusive relationship. She has never applied for assistance before, has nothing but the clothes she took with her, and does not understand why the ministry will not help her.

The ministry's position is that the appellant has not provided information to confirm that she falls within any of the categories of applicants whom section 18(3) of the EAR exempts from meeting the eligibility requirement for income assistance set out under section 8 of the EAA. The ministry also

relies on the appellant's statement during her intake interview that she did not meet any of the exemption criteria. Respecting the exemption criteria set out under paragraph (k), the ministry notes that the first time the appellant mentioned fleeing an abusive relationship was in her Request for Reconsideration, and that she did not provide any details regarding what relationship was abusive or when the abusive relationship occurred. The ministry also notes that the application submitted for income assistance indicates that the appellant moved to B.C. from another province but that during her intake interview, the appellant stated that she had been living in another country with her uncle. Furthermore, the appellant reported that while living in another country she was employed and that she is currently actively seeking employment, which indicates that her ability to work is not impaired. The ministry notes that it made a number of attempts to contact the appellant at the number she provided, but that the number was not connected. The ministry concludes that as the relationship and timeline related to the abuse has not been provided, and given that the appellant reports that she is currently seeking employment, there is insufficient information to determine that she meets the exemption criteria of section 18(3) of the EAR.

Panel Decision

Section 18(3)(a)-(p) of the EAR sets out a number of circumstances under which an applicant for income assistance does not have to meet the two-year financial requirements of section 8 of the EAA. Those circumstances include having not reached the age of 19, being pregnant, and having dependent children.

The panel finds that there is no information indicating that the appellant falls within any of the categories of applicants set out in paragraphs (a)-(j) and (l)-(p), which address a variety of circumstances including being pregnant, having dependent children, and having been incarcerated. Accordingly, the panel finds that the ministry reasonably determined that the appellant did not meet the eligibility criteria under section 18(3)(a)-(j) and (l)-(p) of the EAR.

The appellant has argued that she falls within the category set out in paragraph (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.

As the ministry notes, the appellant had not identified the person from whom she was fleeing or when the abuse took place and the appellant has provided unclear and/or conflicting information respecting the reason and timeframe for her move. Additionally, the appellant has consistently indicated that she was working while in the foreign country and that since moving to B.C. she has actively been searching for employment. The panel finds that the ministry has reasonably viewed the information provided by the appellant as insufficient to establish that she separated from an abuse spouse or changed her place of residence to flee an abusive relative, other than a spouse, within the past 6 months. The panel also finds that the ministry has reasonably viewed the information about the appellant's ability to work while residing with her uncle and her continued efforts to find employment upon returning to B.C. as not establishing that her ability to work has been impaired. Therefore, the panel finds that the ministry reasonably determined that the appellant has not met the criteria of section 18(3)(k) of the EAR.



Exemption under section 18(4) of the EAR

The appellant argues that she is expected to pay rent to her mother, she has no belongings except the clothes that were in her luggage, has been unable to find a job, and is therefore in need of financial assistance.

The ministry argues that, as the information does not establish that the appellant has been prevented from searching for, accepting or continuing employment and that she will otherwise experience hardship, the requirements of section 18(4) of the EAR for exemption from the application of section 8 of the EAA have not been met. In particular, the ministry points to the appellant's statement that she quit her employment to move home because she missed her family which does not indicate circumstances beyond her control that have prevented her from working and that the appellant has not submitted information indicating she would face undue hardship if not found eligible for income assistance.

Panel Decision

Section 18(4) sets out two requirements that must be met in order for the requirements of section 8 of the EAA to not apply. The minister must be of the opinion that due to circumstances beyond the applicant's control, the applicant has been prevented from searching for, accepting or continuing in employment and the family unit will otherwise experience undue hardship.

In this case, the appellant has indicated that she was working when living in another country, that she quit that employment, and that she is actively looking for employment. The appellant also advised the ministry that she moved because she missed her family. Based on this information, the panel finds that the ministry was reasonable in forming the opinion that the appellant has not been prevented from searching for, accepting or continuing employment due to circumstances beyond her control as required by section 18(4)(a) of the EAR.

With respect to the additional requirement of paragraph (b) – that the appellant will otherwise experience undue hardship – the information is that the appellant left her belongings when she moved to B.C. and that she is living with her mother and is expected to pay rent. The panel finds that the ministry has reasonably concluded that the appellant has not provided information sufficient to indicate that she will face undue hardship if she is not found eligible for income assistance and that the requirements of section 18(4)(b) were not met.

Conclusion

In conclusion, the panel finds that the ministry decision that the appellant is not eligible for income assistance because she did not meet the requirements of section 8 of the EAA or the requirements of section 18(3) or (4) of the EAR in order to be exempt from the section 8 requirements, is reasonably supported by the evidence. The reconsideration decision is confirmed and the appellant is not successful on appeal.