



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of October 4, 2016, in which the ministry denied income assistance (IA) to the appellant because she failed to pursue income from the native band on whose land she resided, as required by Employment and Assistance Act (EAA) Section 14 and Employment and Assistance Regulation (EAR) Section 31.

PART D – Relevant Legislation

Employment & Assistance Act, Section 14
Employment & Assistance Regulation, Section 31

PART E – Summary of Facts

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

- appellant's application for IA dated August 26, 2016;
- letter from the ministry dated September 1, 2016 informing the appellant that she is ineligible for IA because she resides on land owned by an indigenous band (band land);
- appellant's Request for Reconsideration submitted to the ministry on September 28, 2016 with attached an 11-page handwritten note from the appellant, summarized as follows:
 - she has been ill for most of the past year and applied for IA until she could get healthy and work again;
 - for the past 6 years she has rented a pad for her motor home on privately owned native land at a monthly rent of \$200, where she has a horse, dogs, chickens and a garden;
 - on August 12, 2016 she initially applied for IA while still in hospital;
 - on August 18, 2016 a ministry worker told the appellant that the native band would provide band income assistance (BA) because she lived on band land;
 - when out of hospital she was told by ministry workers and by the band office that she was "not their problem";
 - the band social services intake worker would not let her book an appointment to see her about BA (Note: the appellant provided the telephone number she used to call the band intake worker);
 - the ministry closed her August 12, 2016 IA application without the appellant's knowledge and instructed her that she could not reapply unless she received a letter from the band denying BA;
 - on August 23, 2016 the appellant received a call from a ministry worker that she was denied IA but could apply for reconsideration of the ministry's decision;
 - on August 31, 2016 she received a call from the ministry that it would re-open the appellant's previous IA file from 2015 and would provide her a letter denying IA that she could take to the band office;
 - on September 13, 2016 the appellant attended at the band office with the IA denial letter asking for the intake worker, who was not available to see her. The appellant left the IA denial letter with a band office employee and asked her to give it to the intake worker;
 - on September 14, 2016 the appellant called the intake worker and left a message asking her to call back;
 - on September 19, 2016 the appellant called the band office to set up an appointment with the intake worker but was told she was busy. A band employee informed the appellant that if she attended at the band office she would be given a BA application;
 - on September 22, 2016 the appellant handed in her completed BA application (except tax records which could be submitted electronically);
 - she has not received a response from the band office and waited until the last day to submit her request for reconsideration to the ministry in the hope that she would receive a call from the band intake worker, but as of September 28th she had heard nothing from the band office;
 - she has sought help from the office of her MLA but its staff members have been unable to assist;
- a copy of the ministry's policy entitled "First Nations", stating: "Indigenous and Northern Affairs

[Redacted]

Canada (INAC) is responsible for provision of social assistance on reserves. First nations persons and non-status persons residing on reserves are to apply for assistance from the band. Failure to pursue income results in consequences for non-compliance. “

- rent receipts from the appellant's landlord for the months of April, May, June and August 2016.

At the hearing the appellant submitted an undated letter from her landlord confirming that she has been renting a pad from him at \$200 per month for the past 6 years. The landlord added that he is happy with the arrangement and wishes it to continue.

The appellant also told the panel that she has telephoned and attended at the band office on 4 or 5 occasions seeking either BA or a letter of denial that she can submit to the ministry, but has been told by a band employee that she is not to come back to the band office, and was also told that the band has nothing to do with the appellant's [request for assistance]. On another occasion a band employee told her that they would call her if they needed additional information pertaining to her application for BA. To date she has not received a letter or a telephone call from the band.

The appellant also stated that at the ministry's suggestion she applied for medical employment assistance (EI). She received a lump sum payment of medical EI in mid-September 2016 but is not eligible for further EI.

The panel determined that the landlord's letter and the appellant's oral evidence were admissible under EAA Section 22(4) (b) as evidence in support of the information before the ministry at reconsideration because the letter confirmed the appellant's tenancy on band land and the appellant provided additional verbal detail relating to her attempts to pursue BA.

The ministry representative relied on the reconsideration decision but clarified that from the ministry's perspective the issue under appeal relates solely to the appellant's failure to apply for BA. The ministry acknowledges that the appellant has applied for and received all EI assistance to which she is entitled.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision of October 4, 2016 in which the ministry denied income assistance (IA) to the appellant because she failed to pursue income from the native band on whose land she resided, as required by Employment and Assistance Act (EAA) Section 14 and Employment and Assistance Regulation (EAR) Section 31.

Relevant legislation:

EAA:

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;

(b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(3) In the circumstances described in subsection (1), the minister may

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

EAR:

Effect of failing to pursue or accept income or assets or of disposing of assets

31 (2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one

calendar month for each \$2 000 of the value of the forgone consideration.

The appellant argues that she has followed the instructions of the ministry to pursue other income from EI and the band. She has received a small lump sum medical EI payment and is not eligible for EI assistance. She has done everything in her power to pursue BA but has received no response from the band and has been told that she should not return to the band office.

The ministry relies on the reconsideration decision, summarized as follows:

- under EAA Section 14 the ministry may declare an applicant ineligible for IA if she fails to pursue income that would enable her to be independent of IA;
- under ministry policy INAC is responsible for providing BA to all eligible persons residing in non-commercial property situated on band land;
- because the appellant resides on non-commercial property situated on band land she must apply for BA, whether or not she is an indigenous person.

Panel Decision

The relevant legislation, namely EAA Section 14 (1) states that the ministry may take action against an applicant for IA if, within 2 years before the application the applicant “fails to accept or pursue income, assets or other means of support that would, in the minister’s opinion, enable the applicant to be completely independent of IA”. If the applicant fails to pursue income under 14 (1) the ministry may declare her ineligible for IA for a prescribed period. The ministry also relies on ministry policy which requires persons residing on reserves to apply for assistance from the band, with consequences for non-compliance for failure to pursue income.

The ministry acknowledges that the appellant has pursued and received all the EI income to which she is entitled but argues that she remains ineligible for IA because she has failed to pursue BA from the band on whose land she currently resides.

The appellant has:

1. repeatedly sought advice from the ministry to assist her in obtaining either IA or BA;
2. informed the ministry that she has been denied BA, as noted in the Summary of Facts in the Reconsideration Decision;
3. pursued and received the maximum EI income to which she was entitled, which evidences her willingness to pursue income from other sources;
4. requested the assistance of her local MLA;
5. attended at the office of the band on whose land she currently resides on at least 4 occasions seeking an application for BA or a letter from the band denying assistance;
6. delivered the ministry’s IA denial letter to the band office;
7. telephoned the band office on several occasions seeking an appointment with the intake worker who is responsible for BA, with no success;
8. completed an application for BA (excepting past income tax information which she believes she can submit electronically if requested to do so) and delivered it to the band office personally;
9. followed up with telephone calls to ascertain the status of her BA application.

The Oxford Canadian Dictionary defines the word “pursue” as: *“to seek after, aim at; to continue to*



investigate or discuss; to persistently attend, stick to". The appellant has repeatedly pursued income or a letter of denial from the band, as evidenced by items 1 – 8 (above). EAR Section 14 (1) does not state that an applicant for IA must *obtain* income or other means of support. As well, the ministry's policy requires persons residing on reserves to *apply for* assistance from the band, which the appellant has done.

The panel therefore finds that the ministry's determination that the appellant is ineligible for IA for failure to pursue income or other means of support is not a reasonable interpretation of the applicable legislation in the circumstances of the appellant, and rescinds the reconsideration decision.