PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of October 3, 2016, which found that the appellant is no longer eligible for the Child in Home of Relative (CIHR) benefits. The ministry determined that the appellant ceased to meet the eligibility criteria for CIHR assistance under s.6 of the *Employment and Assistance Regulation* (EAR), as it read on March 31, 2010 prior to repeal, because he no longer resided with the relative under whose care CIHR assistance had been provided and therefore no longer met the requirement of the continued provision of CIHR under the transitional legislation *CIHR Program Transition Regulation* ("CIHR Regulation"). The ministry also determined that as CIHR assistance was no longer available under the EAR, the appellant could not re-apply.

PART D – Relevant Legislation

CIHR Regulation as it read March 31, 2010 section 6
CIHR Regulation
Employment and Assistance Act (EAA) section 4
"EAR, section 6 [Repealed April 1, 2010]

PART E – Summary of Facts

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

- Ministry CIHR Screening Results email dated January 5, 2012
- Letter from a college to the appellant dated February 23, 2016 offering the appellant a seat for a course commencing September 2016
- Handwritten letter from the appellant's grandmother, undated
- Request for Reconsideration form (RFR) with attached letter from the appellant's grandmother (the "Letter") on behalf of the appellant, both signed and dated September 23, 2016. The letter indicates that as section 6 of the EAR has no flexibility for extenuating circumstances, the appellant's grandmother is asking the ministry to consider his circumstances. In particular the appellant's grandmother states that the appellant graduated a year early at the age of 17 and was accepted into a college program for a two year program in another city. The grandmother states that she and her husband are still the appellant's caregivers and will be responsible for him financially and that he will return home for Christmas, break and the summer, as this is home and ask he is still dependent on us. The grandmother states that if the program was called "Child in the "Care" of a relative" there wouldn't be a problem, as he has been in our "care" for ten years, not just living in our home.
- Consent to Disclosure of Information signed by the appellant on September 24, 2016

Additional information provided

In his Notice of Appeal dated October 17, 2016 signed by the appellant's grandmother, the appellant indicates that his reasons for disagreeing with the reconsideration decision are the same as previously set out in the RFR. The appellant's grandmother states that the CIHR Regulation does not allow for extenuating circumstances and it discriminates against the appellant for graduating a year early.

The appellant also submitted a letter dated November 2, 2016 (the "Submission"), prepared by his grandmother stating that the CIHR Regulation has absolutely no flexibility regarding the condition that the appellant continue to reside in her and the appellant's grandfather's home in order to receive CIHR benefits. The grandmother states that the appellant graduated a year early and will be moving to another city and will reside with her son in order to attend a college program that is not available in their city. The grandmother states that she and her husband are still financially responsible for the appellant's care and he will return to their home for holidays, spring break and summer, so even though he is living elsewhere he should still qualify for benefits. The grandmother states that discontinuing the funds has put a financial burden on them that they did not expect as they are both retired. She states that the reasons they ask for the benefits to continue outweigh the reasons to discontinue the benefits. The grandmother states that this is not a case that is black and white and it does not make sense to discontinue the benefits in light of the appellant's circumstances.

The ministry provided an email dated November 3, 2016 indicating that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal or the Submission. The panel has accepted the information in the Notice of Appeal and the Submission as argument.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry decision that the appellant ceased to meet the CIHR assistance eligibility requirements of s.6 of the EAR as it read on March 31, 2010, thereby not meeting the requirements of the CIHR Regulation, because he no longer resided with the same relative, is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. Also at issue is the reasonableness of the ministry's decision that the appellant could not re-apply for CIHR assistance.

The relevant legislation is as follows:

CIHR Regulation as it read March 31, 2010

6(1) in this section,
"*child"* does not include a person with disabilities;
"*relative"* in relation to a child, does not include the child's parent.

(2) Subject to subsection (2.1), a child is eligible for income assistance under section 11 of Schedule A if
(a) the child resides with his or her relative,
(b) the child's parent placed the child with the relative, and
(c) the child's parent does not reside with the relative.

(2.1) A child is not eligible for income assistance under subsection (2) if
(a) the child ceases to meet the conditions set out in subsection (2)
(b) the relative with whom the child resides has entered into an agreement under section 8 of the *Child, Family and Community Service Act* in relation to the child,
(c) the relative with whom the child resides or the parent of the child fails
- (i) to provide accurate and complete information to the minister,
- (ii) to provide all of the authorizations requested by the minister under section 4.4 or 34.1 within the time, if any specified by the minister,
- (iii) to attend in person at the ministry office when required to do so by the minister under section 34.1(2)(c) , or
- (iv) to submit the form required by the minister under section 34.1(2)(a), within the time specified by the minister,

(d) the minister determines, based on a review of the application of the child provided on or after December 1, 2007 and information obtained under the authorization appended to the application, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child, or
(e) the minister has conducted an audit under section 34.1 and determines, based on information provided under the audit, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child.

(3) If a child is eligible for income assistance under subsection (2), the minister may pay the income assistance to the relative of the child.

EAA

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

EAR
Child in the home of a relative

Repealed

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

Employment and Assistance Act

CHILD IN THE HOME OF A RELATIVE PROGRAM TRANSITION REGULATION

[includes amendments up to B.C. Reg. 16/2011, February 3, 2011]

Child in home of relative transition

1 The provisions referring to a child in the home of a relative, or otherwise applying in relation to such a child or the relative with whom such a child resides, of the Employment and Assistance Regulation, B.C. Reg. 263/2002, and of the Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002, as those regulations read on March 31, 2010, continue to apply in relation to

(a) a child in the home of a relative who was eligible to receive income assistance under section 6 of the Employment and Assistance Regulation, on March 31, 2010,

(b) a child whose application under section 6 of the Employment and Assistance Regulation was received on or before March 31, 2010 and approved on or after that date, and

(c) the family unit of a relative with whom a child referred to in paragraph (a) or (b) was residing on March 31, 2010,

until the date the child ceases to be eligible for income assistance under section 6 of the Employment and Assistance Regulation as it read on March 31, 2010.

Additional audit powers

2 (1) In this section, **"section 34.1"** means section 34.1 of the Employment and Assistance Regulation, B.C. Reg. 263/2002, as it read immediately before its repeal on March 31, 2010.

(2) For the purposes of the application of section 34.1 (1) as it applies under section 1 of this regulation, on or after the date this section comes into force,

(a) the minister may also conduct a review of all records obtained under the *Child, Family and Community Service Act* , the *Family and Child Service Act*, S.B.C. 1980, c. 11, and the current and former *Adoption Act* , pertaining to the persons referred to in section 34.1 (1) (a) (i) and (ii), and

(b) the written authorizations under section 34.1 (2) (b) must permit the minister to use and disclose information about a person referred to in section 34.1 (2) (b) (i) or (ii) for the purpose of conducting a review under paragraph (a) of this subsection.

[en. B.C. Reg. 16/2011.]

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The reconsideration decision states that as of April 1, 2010 the CIHR Program was repealed (cancelled) from the EAR. CIHR transitional regulations were put in place to allow CIHR benefits already in pay to continue as long as the recipient continued to meet the CIHR Regulations as they read on March 31, 2010 and is only applicable until the date the child ceases to be eligible for CIHR assistance as it read March 31, 2010.

The ministry's position is that as the appellant no longer resides with his grandmother, who was his caregiver on March 31, 2010, he ceases to be eligible for CIHR benefits as it read on March 31, 2010. The ministry notes the appellant is currently residing in another city and is attending a two year program. The reconsideration decision also notes that the appellant's grandmother indicates that she and her husband are still responsible for his care, and that he will be coming home for Christmas, breaks, and during the summer. However, it is the ministry's position that as his primary residence is now in another city, the ministry is unable to continue his CIHR benefits.

The ministry acknowledges that the appellant is residing with another relative but since March 2010 the ministry is no longer accepting new applications for the CIHR program; therefore cannot consider any new applications.

The appellant's position, as set out by his grandmother in the Letter and the Submission, is that the legislation is not fair and is punishing him for graduating a year early and moving to live with another relative while completing a two year college program. The appellant's position is that although he has moved to another city, he will return home at Christmas, spring break, and during the summer. His grandparents continue to be responsible for is care which is placing a financial burden on them, so the appellant's position is that his extenuating circumstances ought to be taken into account. The appellant's position is that due to his extenuating circumstance the ministry ought to continue his CIHR benefits even though he is now residing in the home of a different relative while completing his college program.

Panel Decision

The CIHR Regulation provides that a child who was eligible to receive income assistance under section 6 of the EAR on March 31, 2010 remains eligible for CIHR benefits following the repeal of section 6 of the EAR as long as the eligibility criteria of section 6 of the EAR continue to be met. Section 6(2) of the EAR sets out the criteria for eligibility for CIHR income assistance and subsection (2.1) sets out five specific circumstances under which a child is not eligible under section 6, including

the failure to meet the criteria of subsection (2).

At issue is the meaning of s.6(2), and whether the appellant continued to remain eligible under that provision. In the panel's view, the use of the term "the relative" rather than "a relative" in s.6(2)(b) indicates that it is the specific relative with whom the child resides that must be considered to determine eligibility. This language indicates that the child remains eligible so long as he continues to reside with "the" relative, and that each time the child is placed with a different relative eligibility must be re-determined.

In the appellant's case, as long as he continued to reside with the grandparents, he maintained eligibility for the CIHR assistance, but once he shifted to his uncle, the chain of eligibility was broken and a new determination of eligibility had to be made. Accordingly, the panel concludes that the ministry reasonably determined that the appellant ceased to be eligible as of September 2016 when he moved from his grandparents to reside with his uncle in another city.

The panel also finds that the ministry has reasonably determined that the appellant cannot re-apply for CIHR assistance because as of April 1, 2010, CIHR assistance has only been available under the CIHR Regulation, which requires continuing eligibility.

The panel acknowledges the difficult circumstances faced by the appellant and accepts that it may be a financial burden on the appellant's grandparents to continue to provide care for the appellant while he completes his program in another city. However, the panel finds that the legislation does not provide any discretion to the ministry to continue to provide funding under the CIHR Regulation as the appellant no longer meets the criteria set out in the CIHR Regulations as it read March 31, 2010.

Conclusion

The panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision and the appellant is not successful in his appeal.