

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated January 5, 2017 which found that the appellant is not eligible for income assistance under Section 13 of the *Employment and Assistance Act* (EAA) for the prescribed period because the ministry determined that the appellant was dismissed from employment for just cause.

## PART D – Relevant Legislation

*Employment and Assistance Act* (EAA), Section 13

Employment and Assistance Regulation (EAR), Section 29

## PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Record of Employment (ROE) indicating November 15, 2016 as the appellant's last day for which he was paid, that the reason for issuing the ROE is code "M" for "dismissal/ terminated within probationary period", indicating the name of a person and telephone number to contact "for further information;"
- 2) BC Driving Record Search showing no contraventions and no record of any prohibitions from driving or license suspensions as of December 29, 2016; and,
- 3) Request for Reconsideration dated December 29, 2016.

In his Request for Reconsideration, the appellant wrote that:

- He believes that he was targeted by an employee that felt threatened that the appellant would take hours away from him/her, and this employee made up a reason to fire the appellant after training him.
- He was never given any critiques [of his work performance].
- His driver's abstract is clean and a former coworker with more than 10 years of experience told him that the car's GPS does not track speed.

### ***Additional Information***

In his Notice of Appeal dated January 22, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- He worked for the company for less than 3 weeks and believes that should not disqualify him from two months of assistance.
- The official statement on his ROE is that he was fired during probation, not speeding.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry clarified at the hearing that:

- The appellant is a sole recipient and, because he has no dependent children, therefore the penalty is ineligibility for income assistance for the prescribed period, rather than just a reduction in income assistance.
- The ministry obtained the information about the appellant being fired for speeding from him, since he was obliged to update the ministry and disclose all changes to his situation. The ministry said that this information was provided by the appellant verbally, and could not explain why a summary of the conversation between the appellant and the ministry was not included in the evidence.
- The Driving Record Search indicates no infractions as of December 29, 2016, but the ministry suggested that there may be infractions that have not yet been posted to the record due to a processing delay.
- It is unknown whether the ministry contacted the appellant's employer to obtain more information about the reason for the appellant's dismissal.

The panel considered the information in the appellant's Notice of Appeal as containing no new evidence and as being a written submission with argument on the appellant's behalf.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reconsideration decision, which found that the appellant is not eligible for income assistance under Section 13 of the *Employment and Assistance Act* (EAA) for the prescribed period because the ministry determined that the appellant was dismissed from employment for just cause, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstance.

Section 13 of the EAA provides:

### **Consequences of not meeting employment-related obligations**

- 13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if
- (a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has
    - (i) failed to accept suitable employment,
    - (ii) voluntarily left employment without just cause, or
    - (iii) been dismissed from employment for just cause, or
  - (b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.
- (2) For the purposes of subsection (1),
- (a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
  - (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.
- (3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Section 29 of the EAR provides in part:

### **Consequences of failing to meet employment-related obligations**

- 29 (1) For the purposes of section 13 (2) (a) [*consequences of not meeting employment-related obligations*] of the Act,
- (a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later of the following dates:
    - (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
    - (ii) the date the default occurred, and
  - (b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:
    - (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
    - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.
- (2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [*consequences of not meeting employment-related obligations*] of the Act.
- (3) For the purposes of section 13 (2) (b) [*consequences of not meeting employment-related obligations*] of

the Act, the period of ineligibility for income assistance lasts

(a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

- (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
- (ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:

- (i) the family unit has been ineligible for income assistance for one calendar month;
- (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. . . .

### *Ministry's Position*

The ministry's position is that the appellant is not eligible for income assistance under Section 13(1)(a)(iii) and 13(2)(b) of the (EAA for the prescribed period because the ministry determined that the appellant was dismissed from employment for just cause. The ministry pointed out at the hearing that the appellant does not have dependent children and he is, therefore, subject to the penalty of ineligibility for income assistance for the prescribed period, pursuant to Section 13(2)(b) of the EAA. The ministry argued that the prescribed period under Section 29(3)(a)(ii) of the EAR lasts for two calendar months from the date the default occurred, or from the date of the appellant's dismissal on November 15, 2016. The ministry argued that the appellant was dismissed for speeding while driving the company vehicle and, in the ministry's opinion, this is just cause for being terminated. The ministry argued that the appellant does not dispute that his ROE indicated that he was dismissed by his employer on November 15, 2016 and, therefore, his family unit is ineligible for income assistance for December 2016 and January 2017, pursuant to Section 29(3)(a) of the EAR.

### *Appellant's Position*

The appellant's position, as set out in his Notice of Appeal, is that he worked for the company for less than 3 weeks and believes that being terminated during a probationary period should not disqualify him from two months of assistance. The appellant wrote that the official statement on his ROE is that he was fired during probation, not that he was fired for speeding. The appellant wrote in his Request for Reconsideration that he believes that he was targeted by an employee and this employee made up a reason to fire the appellant, since he was never given any critiques of his work performance. The appellant wrote that his driver's abstract is clean and a former coworker with more than 10 years of experience told him that the car's GPS does not track speed.

### *Panel Decision*

Section 13 of the EAA provides a consequence for a recipient not meeting employment-related obligations, including: if at any time while a recipient in the family unit is receiving income assistance the recipient has been dismissed from employment for just cause [Section 13(1)(a)(iii)]. As this provision is a sanction, or a penalty, applied to a recipient's family unit, there must be clear evidence that the prohibited action has occurred, specifically that the appellant was dismissed from his employment for 'just cause.' The appellant disputed that he was dismissed for just cause as he wrote that the ROE indicated only that he was fired during probation. Although the ministry stated that the appellant reported to the ministry that he had been fired from his employment 'due to speeding while driving the company vehicle', the appellant wrote in his Request for Reconsideration that he believes he was targeted by an employee who made up this reason to fire the appellant and that essentially there is no proof that he was speeding since his driver's abstract is clean and he was told by a long-time former employee of the company that the vehicle's GPS does not track speed.

As the appellant pointed out, he had only worked for the employer for less than 3 weeks and was still within the probationary period, a period during which the employer has an opportunity to evaluate whether the employee is well-suited for the position and a relaxed standard applies in giving a reason for a summary dismissal. Given an opportunity to explain the “reason for issuing this ROE,” the employer wrote in section 16 of the ROE: “dismissal/ terminated within probationary period” and provided the name of a contact person and telephone number to obtain further information.

There is no evidence before the panel that the ministry contacted the employer or that the employer provided evidence to show just cause for the appellant’s dismissal, such as: 1) the existence of a company policy prohibiting driving of the company vehicle in excess of the posted speed limit, 2) that the appellant was made aware of this policy through his training, 3) that the appellant in fact drove a company vehicle in excess of the posted speed limit and how much he drove in excess of the posted speed limit, and 4) whether the excess speed was observed by a passenger in the vehicle, or recorded through some tracking device, or documented through public complaint, or by being convicted of a speeding infraction. The appellant provided a copy of a Driving Record Search showing no contraventions and no record of any prohibitions from driving or license suspensions as of December 29, 2016, which the panel accepted as the best evidence of no convictions for speeding infractions as of that date. The ministry concluded that there was sufficient evidence that the appellant had been dismissed from his employment for just cause based solely on the appellant’s alleged statement of his understanding of the reason given for his dismissal. The panel finds that the ministry was not reasonable in drawing this conclusion, without further evidence from the employer, especially when the appellant questioned the legitimacy of the reason for dismissal given to him.

*Conclusion*

The panel finds that the ministry decision, which found that the appellant is not eligible for income assistance for the months of December 2016 and January 2017 pursuant to Section 29 of the EAR because the ministry determined that the appellant was dismissed from employment for just cause, under Section 13 of the EAA, was not reasonably supported by the evidence. Therefore, the panel rescinds the ministry’s reconsideration decision, and the appellant is successful in his appeal.