



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 4, 2017, which held that the appellant is not eligible for income assistance (IA), pursuant to section 16 of the Employment and Assistance Regulation (EAR), because he is registered as a full-time student in a fundable program of studies.

PART D – Relevant Legislation

Employment and Assistance Regulation – section 16

PART E – Summary of Facts

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

1. Notification of assessment for a student loan dated July 21, 2016 and is effective from October 17, 2016 to May 19, 2017. It indicates that total education costs are \$18,605, that the appellant is expected to make a minimum contribution of \$1,263, and that he is eligible to receive \$9,485 in student loan and low income grant funding, leaving \$7,857 in unmet need for that period.
2. Notification of assessment for a student loan dated July 21, 2016 and is effective from May 22, 2017 to December 15, 2017. It indicates that total education costs are \$18,605, that the appellant is expected to make a minimum contribution of \$1,263, and that he is eligible to receive \$9,485 in student loan and low income grant funding, leaving \$7,857 in unmet need for that period.
3. Letter from the appellant's college dated December 13, 2016, which confirms that the appellant is enrolled in a full time program that began on October 17, 2016 for 61 weeks. It also confirms that the appellant has been approved for a student loan of \$18,970 and that no funds will go directly to living expenses.
4. Request for Reconsideration (RFR), signed and dated December 20, 2016, which states in part that the appellant:
 - Suffers from severe recurring anxiety and panic attacks which significantly impact his ability to maintain himself.
 - Attended the BC Works program and was told to seek a student loan to achieve his goals in addition to the IA for basic needs.
 - A student loan is not income and it was not approved for basic living costs.
 - Requires Persons with Persistent Multiple Barriers (PPMB) benefits because he is unable to work due to multiple barriers.

Evidence on Appeal

Unsigned Notice of Appeal (NOA), dated January 20, 2017. The NOA was accompanied by a 6-page letter which presented the appellant's arguments, 3-page employment plan overview, and a 2-page training and education overview.

With the NOA the appellant submitted a letter from his MLA's constituency assistant. The letter states that the appellant requires an in person/oral hearing and that he will be accompanied by his advocate at the hearing.

Evidence At the Hearing

At the hearing the appellant stated the following:

- He had to participate in the Employment Program (EP) in order to get off of assistance.
- His EP plan is still in place and he has not been removed from it.
- He was offered a training program to become a front-end loader and he declined as this career was not suitable for him.
- He found a program which is more suitable for him and that he could become more employable with but the ministry did not assist him.
- He did not apply as a student rather he is a participant of the EP and then became a student.

-
- He has a career path that will take him off of assistance.
 - He pays \$400 for rent and gets only \$600 from assistance.
 - He has a student loan which is not income and is repayable.
 - He approached the Work BC contractor about obtaining funding for the course he wants to take but was denied because it was not a program approved for funding by Work BC and told to remain on IA or take a trade.
 - He did not seek information or consent from the ministry prior to enrolling in his course or obtaining the student loan.
 - He was not informed by the Work BC contractor that if he got a student loan he would be ineligible for IA.
 - He does not have a dependent child and intends to reapply for PPMB once he has found a doctor who can assist him with the application.
 - He is caught in the system and has been since age 4 when he was first placed in foster care and developed problems at school thus eventually turning to crime to survive.

At the hearing the ministry relied on its reconsideration decision and added that the ministry does not fund all programs that are available to the public at large. Rather the ministry funds select programs only and the program the appellant choose for himself is not one which is funded.

Admissibility of Additional Evidence

The ministry did not object to admitting the information that accompanied the NOA and letter from the MLA.

On review of the evidence, the panel notes that the 6-page letter, 3-page overview of the employment plan and 3-page training and education overview is in support of or corroborates the information and records that was before the ministry at the time of reconsideration. The panel therefore finds that the appellant's reference to this information is admissible as it is in support of 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 assigned little weight to this information because it focuses on the Employment and Assistance Act and does not make reference to the Employment and Assistance Regulation.

PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated January 4, 2017, which held that the appellant is not eligible for income assistance due to being registered as a full-time student in a fundable program of studies pursuant to section 16 of the EAR.

Section 16 of the EAR states that:

Effect of family unit including full-time student

16 (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student

- (a) in a funded program of studies, or
- (b) in an unfunded program of studies without the prior approval of the minister.

(1.1) Subsection (1) (a) does not apply to a family unit that includes a recipient who is enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2) during the period described in subsection (2).

(1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person

- (a) is a sole recipient of income assistance who
 - (i) has a dependent child, or
 - (ii) provides care to a supported child,
- (b) is required to enroll in the program of studies as a condition of an employment plan and
- (c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist.

(2) The period referred to in subsection (1)

- (a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and
- (b) is not longer than one year.

EAA:

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person

appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

Position of the Parties

The appellant argues that the principle of the EAA is to get recipients ready for employment and that he has taken steps to find an appropriate and available program so that he can be employable. He further argues that others in his program are funded by the ministry and that he is treated unfairly. The appellant argues that section 16 of the EAR is not relevant because it is policy and contravenes the spirit of the EAA. The relevant enactments, which in this case are the EAA and the *Interpretation Act*, are the legislation the ministry must adhere to. The appellant argues that section 16 does not apply to him because he is not a student seeking funding but rather a participant in the EP seeking funding.

The ministry argues that the appellant is enrolled as a full-time student in a funded program of studies for which he has not received the prior approval of the ministry and therefore pursuant to section 16 of the EAR he is not eligible for IA for the period of time that he remains a full time student.

Panel's Decision

The panel notes that in all cases, its jurisdiction is restricted to determining whether or not the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. As such, the panel can either confirm the ministry's decision or rescind it pursuant to section 24 of the EAA.

With respect to the relationship between an Act, the Regulations and ministry policy or guidelines, the panel recognizes that the EAA contains within it the entitlements which the ministry may prescribe to IA recipients, while the EAR, which is the set of regulations made under the authority of the EAA, contains the framework and conditions under which the prescribed entitlements set out in the EAR must be delivered. Regulations set out in greater detail the rules relating to the application and enforcement of the legislation to which they relate, and as such regulations are subordinate legislation which have greater authority than ministry policy or guidelines. Therefore, the panel finds that the EAR is as prescriptive as the EAA with respect to any decision made by the ministry or considered under appeal by the Tribunal.

Section 16 of the EAR

Section 16 of the EAR states that a family unit is not eligible for IA if an applicant or recipient is enrolled as a full-time student in a funded program of studies. The appellant does not dispute that he

was enrolled as a full-time student and received funding for his program of choice. The evidence also demonstrates that the appellant is a full-time student who received funding for the program in which he enrolled and which is not funded or approved by the ministry or Work BC.

The appellant argues that others in his program have funding from the ministry. The panel finds that it cannot comment or consider issues that are not before it and for which the evidence is not available.

The appellant argues that he is not a student seeking funding but is an EP participant seeking funding for a program so that he might become employable. Section 16 of the EAR applies to any IA applicant or any IA recipient for the period of time during which he or she is a full time student in a prescribed program of studies. The panel finds that Section 16 of the EAR is therefore equally applicable to both new IA applicants and current IA recipients. Therefore the fact that the appellant is a current participant in the EP is not grounds for exception to the requirements of section 16 of the EAR.

The appellant stated that the program in which he enrolled was more suitable to meet his goals for employment and that the front-end loader course offered by Work BC was not suitable for him. When asked, the ministry stated that it does not fund all programs that are available to the public at large. Rather the ministry funds select programs only and the program the appellant choose for himself is not one which is funded. The appellant also stated that the Work BC contractor advised him to remain on IA for a few more years. The panel finds that the evidence does not demonstrate as such.

The panel finds that the evidence demonstrates that the ministry reasonably determined that the appellant is not eligible for IA because he is enrolled as a full-time student in a funded program of studies and had not received the prior approval of the minister, pursuant to section 16 of the EAR.

Conclusion

The panel finds that the ministry's decision which found that the appellant is not eligible for IA pursuant to section 16 of the EAR, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is not successful in his appeal.