



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated January 16, 2017. The ministry determined that it was unable to approve the appellant’s request that his application for assistance be backdated for October and November 2016. The ministry relied upon sections 26 (2) (b) and (c) and 28 of the Employment and Assistance Regulation (EAR) and section 8 of schedule A to the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 26, 28 Schedule A, section 8

PART E – Summary of Facts

In the appellant's notice of appeal dated January 31, 2017, the appellant chose, as the type of appeal hearing, an oral hearing by telephone. The appeal record was delivered to the appellant February 6, 2017 and that delivery was confirmed by the Tribunal by the relevant Canada Post tracking number. The appeal record contains in it instructions for government conferencing which will facilitate the oral hearing by telephone. The hearing was set for 9:30 AM on February 21, 2017. The panel members and a representative of the ministry were all able to meet by teleconference using the instructions for government conferencing. However, the appellant did not attend by teleconference. After waiting until 9:45 AM, the panel chair undertook an electronic roll call to confirm participants on the teleconference line. The appellant was not part of the electronic roll call and accordingly was noted as not being in attendance. The appeal proceeded without the appellant as the panel is entitled to do pursuant to section 86 (b) of the EAR which states that the panel may hear an appeal in the absence of a party if the party was notified of the hearing.

The appellant's previous income assistance file closed September 8, 2016 with the appellant last receiving assistance for July 2016.

The appellant reapplied online for assistance October 20, 2016.

On October 31, 2016 the ministry completed part 1 of the appellant's assistant application with the appellant and the appellant was advised that he was required to submit the requested documents no later than November 7, 2016. The appellant was advised that if no documents were submitted, his application would close.

On November 7, 2016 the appellant's application for assistance closed due to no contact.

On November 24, 2016 the appellant contacted the ministry. He was told he was required to reapply for assistance.

On November 25, 2016 the appellant reapplied online and submitted the documents.

On November 29, 2016 the ministry completed the application process with the appellant and the appellant was advised to sign the application for assistance i.e. part 1 and part 2.

On December 15, 2016 the appellant's eligibility for assistance was established effective November 29, 2016. For November 2016 the ministry approved a \$95 comforts allowance and an \$80 accommodation and care payment for a third-party provider to cover November 29 and 30, 2016. For December 2016 the ministry approved a \$95 comforts allowance and a \$35 Christmas supplement for the appellant. The ministry also approved a \$1,240 accommodation and care payment to the third-party provider for December.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry correctly determined the effective date of the appellant's eligibility for assistance.

The relevant portions of the EAR are as follows:

Effective date of eligibility

26 (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.

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

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.



Income Assistance Rates

- 8 (1) For a person who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of
- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
 - (b) a comforts allowance of \$95 per person for each calendar month.
- (2) If the special care facility is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:
- (a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;
 - (b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

In the appellant's request for consideration the appellant requested that his application for income assistance be backdated to October 20, 2016. He stated that he was "cut off last August" and found that he was in "great need and got into trouble". He stated that he would like to afford his "status card", indicated that he had an ICBC debt, and would like to join boxing.

The appellant stated that when he applied for assistance his worker and he did get the necessary documents "but did not connect the dots to get them to you."

The appellant stated that he found out on November 23, not November 7, that his application was abandoned. After this he completed the documents required and delivered the documents to the "right places".

In his notice of appeal the appellant noted that when he applied for income assistance on October 20 he was required to have identification which he did not have. He went with his case manager to apply for identification and "some time was taken" in that regard. He states he was not aware of the timeline, only that he needed to get the identification. He had also "completed the bank statements".

He notes that he was not made aware until November 23 that his application was closed. Upon being told this he reapplied for assistance and completed the paperwork required. He was working with his case manager “all this time and it is possible that some of the communication was not made as to who did what in this process”.

The appellant stated that had he not been cut off from his income assistance last summer he may have made better decisions and choices if there was some income.

In its reconsideration decision the ministry noted that section 8 of Schedule A of the EAR provides that a person who receives accommodation and care in a special care facility or private hospital or who was admitted to a hospital because he or she requires extended care, the amount of income assistance is the sum of the actual cost, if any, to the applicant or a recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus a comforts allowance of \$95 per person for each calendar month.

The ministry also noted that section 23 (referring in fact to section 26) of the EAR provides that the effective date of eligibility for income assistance in respect of an applicant residing in a special care facility (section 8) begins on the date of the applicant’s submission of the application for income assistance (part 2) form. A family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit eligible.

The ministry has acknowledged that the appellant began the application process October 20, 2016. The minister pointed out that the appellant did not complete part 2 of the application until November 29, 2016. The minister concluded that as such the appellant was ineligible for any income assistance for October 2016. The minister noted that in respect of the November assistance the ministry provided the appellant with a \$95 comforts allowance and authorized \$80 accommodation and care for third-party provider equivalent to \$40 per night for November 29 and November 30, 2016. The ministry concluded that in accordance with the provisions of the legislation it was not able to provide the appellant with additional accommodation and care because the effective date of the appellant’s application for income assistance was November 29, 2016.

The ministry noted that section 26 (2) (b) EAR in respect of the shelter allowance does not apply because the appellant was residing in a special care facility therefore the effective date of eligibility for both comforts and per diem began November 29, 2016. The ministry noted that the \$95 comforts allowance is prorated on the first month as it is not support. [Note however that in fact the comforts allowance is not and was not prorated and this was confirmed by the ministry representative during the hearing.] The user charge for a special care facility is for “accommodation and care” which is distinct from “support and shelter”; and therefore are treated differently for the purposes of determining the amount of assistance to be provided in a particular month.

At the hearing of the appeal the ministry representative relied upon the ministry reconsideration decision of January 16, 2017. She noted that the appellant applied for assistance October 20, 2017 and was advised of the file close date if documents were not received as required. She noted that the file was in fact close November 7, 2016 due to no contact. She noted that the appellant made further application November 24, 2017 and was determined to be eligible as of November 29, 2016 after completion of part 1 and part 2 of the application for assistance.

The ministry representative relied upon the legislative interpretation as set out in the reconsideration decision, and confirmed that the reference in the reconsideration decision to section 23 of the EAR was in fact meant to be a reference to section 26.

The ministry representative noted that eligibility for assistance is not backdated and did not believe that the ministry had any discretion in respect of any request for backdating eligibility for assistance. She noted that the date for eligibility is determined pursuant to the terms of the legislation.

In response to a question from the panel, the ministry representative was unable to advise as to what documents were apparently faxed by the appellant's advocate to the ministry on October 24, 2016. There is, in the appeal record, a fax coversheet noting that some document is faxed from the appellant's advocate to the ministry on October 24, 2016 but the identification of the document faxed is not indicated. Although identification of the document faxed is speculative, it was noted that after the October 20 date, on October 31, 2016 the appellant was advised that he was required to submit requested documents no later than November 7, 2016. It is inferred therefore that whatever was faxed on October 24, 2016 was not sufficient.

Pursuant to section 26 of the EAR a family unit is not eligible for income assistance in respect of the period that occurred before the date the minister determines the family unit is eligible for the income assistance.

An exception is provided in section 26 (2) which, under subsection (2) (b) provides that a family unit becomes eligible for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission.

The panel agrees with the ministry's position that section 26 (2) (b) in respect of the shelter allowance does not apply because the appellant was residing in a special care facility before the effective date of eligibility for comforts and the per diem began November 29, 2016.

Pursuant to section 26 (2) (c) a family unit becomes eligible for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.

The evidence is uncontradicted that the appellant did not submit the requested documents on or before November 7, 2016. This is acknowledged by the appellant who has indicated that there was a breakdown in communication. The legislation clearly provides that a family unit becomes eligible for income assistance on the date of the applicant's submission of the application for income assistance (part 2) form. Although the appellant began the application process October 20, 2016, he did not submit the application for income assistance (part 2) form until November 29, 2016. Accordingly, the panel concludes that the ministry's reconsideration decision that the effective date of the appellant's eligibility for assistance was November 29, 2016 was a reasonable application of the applicable enactment in the circumstances of the appellant and reasonably supported by the evidence. The panel therefore confirms the reconsideration decision.