



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated January 26, 2017, which held that the Appellant is not eligible for income assistance (IA), pursuant to Section 16 of the Employment and Assistance Regulation, because she is registered as a full-time student in a fundable program of studies.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 16

PART E – Summary of Facts

The Appellant is in receipt of IA as a single parent with one dependent child.

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

1. The Appellant's Request for Reconsideration, dated January 25, 2017, in which the Appellant did not provide any reasons; and,
2. A letter from the Appellant's educational institution addressed to whom it may concern and dated February 2, 2017 confirming that the Appellant is attending that educational institution and was unable to apply for a student loan due to "some changes happening at [the educational institution]". The changes are not specified and the reader is invited to contact the educational institution for further details.

Additional Information

In her signed Notice of Appeal (NOA), which is not dated but which is stamped "received" by the Ministry on February 10, 2017, the Appellant wrote that she is not able to take out a student loan because she does not have a co-signer. She added that her educational institution is not able to give her a student loan because her "(educational institution) is audited". The panel accepted the information in the NOA as argument.

At the hearing, the Appellant submitted a form letter from the registrar at the Private Training and Instructions Branch (PTIB) of the Ministry of Advanced Education, dated March 16, 2017 and addressed "Dear Student" advising of the closure of the Appellant's educational institution by the end of March 2017. The letter also stated that PTIB was working to "facilitate a transfer (of the Appellant) to another school". The Ministry objected to the admission of the additional evidence. The panel did not admit the additional evidence pursuant to Section 22(4) of the *Employment and Assistance Act* because the panel found that there was no evidence that the additional information was before the Ministry, or that the information was testimony in support of information and records before the Ministry, at reconsideration.

At the hearing, the Appellant stated that she was a full-time student with a dependent child. She explained that she had completed her course of study and would be starting a practicum on March 22, 2017. She said that her training for certification started in June 2016. Her tuition costs were covered by a family member, who had set up a Registered Education Savings Plan (RESP) in her name and paid the tuition on her behalf directly to the educational institution. The Appellant explained that the RESP funding covered her tuition only, and that she had continued to rely on IA to cover her living costs. She stated that she had approached the educational institution about the possibility of obtaining a student loan to cover her living expenses but was told that she could not apply for a student loan due to "some changes happening at [the educational institution]" (see evidence before the Ministry at reconsideration above).

At the hearing, the Appellant also stated that she had approached the Ministry after starting her training program to ask how she should complete the Ministry's monthly report with specific reference to how she should respond the question asking if she was attending school. The Appellant said that the Ministry worker had told her that she was not considered a student because she was not

personally paying for the cost of tuition.

The Appellant stated at the hearing that she did not tell the Ministry that she was planning on taking the training in advance because she was unaware that she required the Ministry's pre-approval. She had also relied on the information she had received from the Ministry worker and did not indicate that she was attending school in her monthly reporting until the fall of 2016 after her dependent child turned 3 years of age (in October 2016), at which time she was required to complete an Employment Plan (EP). Prior to that she was not required to complete an EP or look for work because her child was under 3 years of age. When she completed the EP she learned that she should have been advising the Ministry that she was attending school in the monthly report. She explained that a different Ministry worker told her that she had been misinformed by the Ministry worker who said that she did not need to state that she was attending school because she was not paying tuition. She began to report that she was attending school in her October 2016 monthly report, filed in early November 2016, and the Ministry notified her that she was not eligible for IA two months later in January 2017.

The Ministry relied on its reconsideration decision, as summarized at the hearing. In addition, the Ministry stated that it could not comment on the Appellant's allegation that a Ministry worker had told her that she did not have to report that she was attending school in her monthly report because she wasn't directly responsible for paying the tuition. The Ministry also stated that it is a Ministry requirement that an IA recipient seeks the consent of the Ministry before attending school and to report that fact in the monthly report. The Ministry acknowledged that there would be no way for a prospective student to know in advance that the Ministry's pre-approval to attend school was required unless the client had also completed an EP. The Ministry also confirmed that an EP is not required until a dependent reached the age of 3 years.

Regarding the definitions of "full-time student" and "funded program of studies", the Ministry explained that it relies on the educational institution to identify whether a student's schooling meets both definitions, and that it was satisfied that the Appellant was a full-time student in a funded program of studies in this case.

PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the Ministry's reconsideration decision dated January 26, 2017, which held that the Appellant is not eligible for income assistance because she is registered as a full-time student in a fundable program of studies pursuant to section 16 of the EAR.

The relevant legislation is as follows:

EAR

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.

Appellant's Position

The Appellant's position is that the Ministry had told her that she did not need to report that she was attending school because her tuition was being paid for by someone else. Because her child was under 3 years of age when she started her schooling she did not have an EP and had no way of

knowing that she needed the Ministry's approval before returning to school. In addition, she does not qualify for a student loan and therefore, without IA, has no source of income to cover her living costs while she attends school.

Ministry's Position

The Ministry's position is that the legislation states that a family unit is not eligible for assistance if an applicant in the family unit is registered as a full-time student in a student loan fundable program of studies without the prior approval of the Ministry unless the applicant is a single parent who is required to enroll in the program of studies as a condition of an EP. As the Appellant is a full-time student in a student loan fundable program and did not obtain the Ministry's approval in advance and is not required to enroll in the Appellant's chosen program of studies as a condition of her EP, she is not eligible for assistance.

Panel's Decision

Section 16(1.2) of the EAR states that the Ministry may approve a person to enroll in a funded program of studies if the person is a sole recipient of income assistance who has a dependent child, who is required to enroll in the program of studies as a condition of an EP, and who was receiving income assistance in each of the immediately preceding 3 calendar months. As the Appellant is not enrolled in a program of studies as a condition of her EP, the panel finds that the Ministry reasonably determined that it may not approve the Appellant to enroll in any program of studies pursuant to Section 16(1.1) of the EAR.

Section 16(1.1) of the EAR states that Section 16(1)(a) of the EAR 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 Section 16(1.2) of the EAR. As the Appellant is not enrolled in a program of studies as a condition of her EP, the panel finds that Section 16(1)(a) of the EAR applies. Section 16(1)(a) of the EAR states that a family unit is not eligible for income assistance while attending school if a recipient is enrolled as a full-time student in a funded program of studies. As the Appellant is an IA recipient who is enrolled as a full-time student in a funded program of studies, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for income assistance while attending school.

Conclusion

The panel finds that the Ministry's decision that the Appellant is not eligible for IA because she is registered as a full-time student in a fundable program of studies was a reasonable application of the legislation and was reasonably supported by the evidence. The panel confirms the Ministry's reconsideration decision and the Appellant's appeal, therefore, is not successful.