

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the Ministry) reconsideration decision made under section 62.1(1) of the *Employment and Assistance Regulation* dated February 1, 2018 that denied the Appellant's request for a school start-up supplement on the grounds that such supplements are only available to

- a family unit eligible for income assistance or hardship assistance
- which includes a person under 19 years of age, and
- who is a full-time student

and the Appellant is over 19 years of age, and therefore does not qualify for the supplement.

PART D – RELEVANT LEGISLATION

Administrative Tribunals Act, (ATA) section 46.3(1)

Human Rights Code (HRC), section 8

Employment and Assistance Act, (EAA) section 19.1(f)

Employment and Assistance Regulation (EAR), section 62.1(1)

PART E – SUMMARY OF FACTS

Evidence at the Time of Reconsideration

The evidence before the Ministry at the time of Reconsideration consisted of:

A. The decision to be reconsidered dated January 1, 2018, which gave as the Appellant's reason for requesting reconsideration the employment counsellor's recommendation to return to school is the best option for the Appellant's skills.

B. The Appellant's Request for Reconsideration dated January *unreadable date*, 2018 which stated "*Using Employment counsellor recommendation to return to school as best option for my skills see attached*" and which attachments were

- A letter dated January 19, 2018, from a Career Development Counsellor indicating that the Appellant has expressed a need for assistance in obtaining school supplies to complete a particular program at a Community College, and outlining what supplies were needed
- A commitment letter dated January 2, 2018 whereby the Appellant agreed to stay in the monthly contact with his Employment Counsellor
- An authorization to disclose and exchange information, client consent form, signed by the appellant and the Career Development Counsellor on January 2, 2018

Evidence provided on Appeal

Notice of Appeal

In his notice of appeal dated February 14, 2018 the Appellant said his reasons for appealing were

- Age Discrimination
- Need supplies for school

Appellant's Additional Evidence

The Appellant submitted no additional evidence on appeal.

Appellant's Information

The Appellant submitted that he is in receipt of assistance, but wants to free himself from assistance and pursuing more education is a way to achieve that. He submitted that he did a job search following which his employment counsellor advised him to go back to school for a particular program, that he has followed all of the proper procedures, and enrolled at the community college with a view to transferring to University. His Employment Insurance Reachback Program counsellor also advised that he was eligible for funding to go back to school. He said that at the end of his academic year he will have completed five courses before he starts at University in the fall of 2018. The Appellant explained difficulties he had had with WorkBC because of a complaint he made against it, but said he did qualify for funding to attend a community college. He has received assistance from, as well as volunteered at, social service agencies in his home city, and continues to do so. The Appellant said that while he has always been working in the particular field he is now pursuing at college, he has no formal qualifications, and that limits him.

Need

The Appellant submitted that he has limited resources and it is a struggle to continue with his studies, and although tuition is paid for him, it does not cover required supplies. The ministry does pay him \$710 per month, from which is deducted \$10 for past issues. As a result the supplies he is required to purchase come out of his food budget. Because of that, he only eats one meal a day.

Ministry Position

The ministry relied on the Reconsideration Decision, which stated

- On January 18, 2018 the Appellant requested a school start-up supplement because he was a full-time student at the community college
- At the time he applied, the Appellant was advised he was not eligible for the supplement because it was available only for people under 19 years of age
- That the appellant provided a letter from his Employment Counsellor at a social service agency advising that the agency was unable to assist the Appellant in obtaining the resources he required
- That the Appellant had submitted a request for reconsideration together with the letter referred to in B above

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry decision dated February 1, 2018, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The ministry decision held that the Appellant was not entitled to a school start-up supplement because he did not meet the criteria of section 62.1(1) *EAR*, and specifically because school start-up supplements are available only to

- a family unit eligible for income assistance or hardship assistance,
- which includes a person under 19 years of age, and
- who is a full-time student

and because the Appellant is over 19 years of age, he does not qualify for the supplement.

Applicable Legislation

The *Human Rights Code* provides:

Discrimination in accommodation, service and facility

- 8 (1) A person must not, without a bona fide and reasonable justification,
- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
 - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

The *Administrative Tribunals Act* provides:

Tribunal without jurisdiction to apply the *Human Rights Code*

- 46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

The *Employment and Assistance Act* provides:

Application of *Administrative Tribunals Act*

- 19.1 The following provisions of the *Administrative Tribunals Act* apply to the tribunal:
- (f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];

The *EAR* provides:

School start-up supplement

- 62.1 (1) The minister may provide an annual school start-up supplement to or for a family unit that is eligible for income assistance or hardship assistance if the family unit includes a person under 19 years of age who is attending school full time.

Within section 62.1(1) *EAR* there are three criteria:

(i) *Eligibility for Income Assistance or Hardship Assistance*

The Appellant confirmed that he was a person in receipt of assistance, and the ministry agreed. This factor was therefore not in issue.

(ii) *Full-Time Student*

Both the Appellant and the ministry agreed that the appellant was in full-time attendance at a

community college. He therefore satisfied the condition requiring him to be in attendance at school full-time. This factor was therefore not in issue.

(iii) Person Under the Age of 19 Years Within the Family Unit

The Appellant agreed that he was over the age of 19 years. The ministry confirmed that it had denied the Appellant the supplement because he was older than 19 years.

*Appellant's Submission
Discrimination and Need*

The Appellant submitted that because the ministry may provide a school start-up allowance, but limits it to people under 19, he is the victim of age discrimination, because he is older than that, but still needs the supplement. He also submitted that because the ministry will not provide him with the start-up allowance he seeks, he will be making a Human Rights complaint of age discrimination.

The Appellant further submitted that the effect of not providing him with the start-up allowance is that he is handicapped in his efforts to gain an education and free himself from social assistance. He submits he has the ability to succeed at school but as a result of the age discrimination, he does not have sufficient money for his daily living, and the supplies that are necessary for his education, and that therefore he is being set up for failure.

Ministry Submission

That after reviewing the Appellant's file, his Request for Reconsideration, and the applicable legislation, the minister determined that the Appellant was not eligible for the school start-up supplement as requested because that supplement is only available to someone under 19 years of age and that as the Appellant is older, the Appellant does not qualify for the supplement.

The ministry further submitted that its hands were tied by the legislation which limits the allowance the Appellant seeks to those under 19 years of age, and in response to a question by the Appellant, who stated that the government is changing various aspects of the legislation, that the legislation is not yet changed and the ministry must follow the legislation as it currently stands.

Panel Finding

Panel Finding - Age Discrimination

The panel finds that the Appellant's complaint of age discrimination falls under section 8 of the *Human Rights Code* as it is a complaint of age discrimination relating to a service or facility customarily available to the public, namely education.

Because the panel finds that the Appellant's complaint of age discrimination falls under the *Human Rights Code*, section 46.3 of the *Administrative Tribunals Act* and section 19.1 of the *Employment and Assistance Act* prohibit the Panel from dealing with the complaint of age discrimination.

The panel therefore finds that it is without jurisdiction to hear the Appellant's complaint of age discrimination.

Panel Finding - Need

The panel finds that section 62.1(1) *EAR* is a complete code, contains 3 requirements for eligibility for the supplement, and that an applicant for a school start-up supplement must meet all 3 requirements in order to be eligible for the supplement, and that need is not one of those factors.

The only factors that may be taken into account are whether or not the Appellant is eligible for income assistance, is a full time student and whether or not the appellant is under 19 years of age.

The panel finds that need may not be taken into account when determining whether or not an applicant for the school start-up supplement should receive the supplement or not.

There was no issue as to whether or not the Appellant was eligible for income assistance as he was receiving \$710 per month from the ministry. There was no issue as to whether or not the Appellant was in full-time assistance at school. The issue was whether or not the appellant qualified under the requirement and that he be under 19 years of age. There is no issue that the appellant was over 19 years of age.

The panel finds that as the Appellant was over 19 years of age, he did not satisfy all 3 requirements of section 62.1(1) *EAR* and he is therefore ineligible for the school start-up supplement.

Panel Finding

The panel finds that the ministry's determination, specifically that the criterion of requiring an applicant for the school start-up supplement to be under 19 years of age had not been met, to be reasonably supported by the evidence and a reasonable application of the applicable enactment, namely the *Employment and Assistance Regulation* section 62.1 (1), in the circumstances of the Appellant.

The panel confirms the ministry's reconsideration decision. The appellant is not successful on his appeal.