**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated May 16, 2018, which held that the appellant is not eligible for income assistance (IA) due to a failure to meet the legislative requirements pursuant to Section 7(1) and 7.1(1) of the Employment and Assistance Regulation (EAR).

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Act - section 7 (1) and 7.1 (1)

**PART E – SUMMARY OF FACTS**

The appellant attended the hearing with his 3 young children.

The evidence before the ministry at the time of reconsideration consisted of:

1. Various documentation, (such as credit card statements, bank statements, and 2016 & 2017 income tax returns), which demonstrated that the appellant (and his family) is low income and has taken on debt to make ends meet.
2. 3 of the appellant's wife's pay stubs from work dated April 25, 2018 ($564.92), April 30, 2018 ($555.91), May 11, 2018 ($525.10) and May 25, 2018 ($839.26).
3. Work permit in the name of the appellant which expires November 10, 2018.
4. Work permit in the name of the appellant's wife which expires November 15, 2018.
5. May 25, 2018 letter from the appellant and addressed to an unknown recipient in which the appellant explains that he was unaware that he had to apply for BC Health Services.
6. September 30, 2016 letter from the ministry to a medical practitioner confirming that the ministry has applied for a medical services plan for the appellant and his family effective September 1, 2016.
7. Letter stamped April 18, 2018 from a medical practitioner to the appellant stating that he did not have medical coverage and that payment is required for services rendered.
8. 2 invoices from a medical practitioner to the appellant's wife dated May 25, 2018 ($299.30) and November 17, 2017 ($601.70).
9. Letter dated February 14, 2017 from Canada Revenue Agency (CRA) and addressed to the appellant's wife. The letter stated that she does not have status in Canada and therefore does not qualify for the Canada Child Benefit (CCB).
10. Letter dated February 14, 2017 from CRA and addressed to the appellant's wife which stated that she does not qualify for Canada Child Tax Benefit (CCTB) because she does not have status in Canada.
11. Letter dated January 30, 2012 from CRA and addressed to the appellant's wife which stated that her application for CCTB is incomplete because she did not provide proof of her or her spouse's citizenship status.
12. Letter dated August 30, 2011 from CRA and addressed to the appellant's wife which stated that her application for CCB is incomplete because she did not provide proof of her or her spouse's citizenship status.
13. Receipt from Citizenship and Immigration Canada for $1400.00 paid on February 21, 2018.
14. Copies of Canadian passports and birth certificates (from another province) for 2 of the appellant's 4 children demonstrating that 2 of his children are Canadian citizens.
15. Letter dated March 29, 2018 from the Government of Canada confirming that the appellant's application was received by Immigration, Refugees and Citizenship Canada (IRCC) on March 29, 2018.
16. Letter from IRCC dated March 8, 2018 confirming that the appellant's application for permanent residence (PR) under humanitarian and compassionate considerations was received February 21, 2018.
17. 14-page letter dated February 9, 2018 from the appellant's lawyer to Citizenship and Immigration Canada (CIC) arguing that the appellant qualifies for PR based on the best interest of the children, significant hardship/irreparable harm faced by the family if they are removed from Canada and that the appellant is now established in Canada. The letter provides family background, immigration background of the appellant and his family and legal argument. The letter indicates that the family's refugee claim was rejected on or about April 10, 2012 and their PR application was denied on or about June 2014. The family challenged this rejection in Federal Court which was dismissed on or about April 22, 2015.
18. Request for Reconsideration (RFR), signed and dated June 8, 2018, which explained the following:
    - He and his family are experiencing financial hardship because they no longer receive IA, CCTB and BC Rental Housing supplements.
    - He has 2 children that are Canadian citizens and that he and his wife have applied for PR status but this process may take several years.

- The family has not been given a removal date.
- Both he and his wife have new temporary work permits which expire November 2018.
- His wife works and he must stay home to care for their small children.

**Evidence On Appeal**

Notice of Appeal (NOA), signed and dated by the appellant, which argued that he is low income, due to the absence of childcare only either his wife or he can go to work, he is no longer receiving CCTB and that he has taken on debt of over $15,000.00 to provide for his family.

Prior to the hearing the appellant submitted the following:

- A letter addressed to the ministry and Employment and Assistance Appeal Tribunal (EAAT) signed and dated June 19, 2018, in which the appellant reiterates the information given in his RFR.
- Copies of Canadian passports belonging to 2 of the appellant's children.
- A previous decision from a different EAAT panel dated June 1, 2018, which found that the ministry was not reasonable to find that the appellant is not eligible for child benefit top-up supplement.

**Finding of Fact**

The issue before the panel is that of eligibility for IA pursuant to section 7 (1) and 7.1(1) of the EAA which pertains to the requirement of Canadian citizenship. The panel finds that any documentation pertaining to, or reference to, the appellant's financial matters are not relevant to this hearing.

**Evidence At the Hearing**

At the hearing the appellant submitted the following documents:

1. A departure order for the appellant and his wife issued August 26, 2010 and is signed by the appellant and his wife.
2. Acknowledgment of conditions – The Immigration and Refugee Protection Act (IRPA), signed by the appellant March 12, 2018. This document describes the conditions the appellant must abide by while in Canada.

At the hearing the appellant stated the following which pertain to the issues on appeal:

- He and his wife are living together and are not separated.
- He has 2 children that are Canadian citizens and they are entitled to IA
- He and his wife both have temporary work permits which will expire in November 2018.
- His wife works during the day and he cares for the children. He is looking for work that will allow him to work in the evenings but this is challenging.
- There are no changes to his or his wife's citizenship status and everything is pending at the moment.
- The Canada Border Services Agency (CBSA) is waiting for a passport from the appellant's country of origin. This process could take a very long time as said country does not have records of the appellant's citizenship. In the meantime he and his family need assistance to survive.
- His previous PR application was denied because he could not demonstrate education level or that he is established in Canada. Now he is established as his children attend and do well in school and he also has 2 Canadian born children.
- He meets the legislative requirements for IA pursuant to section 7.1(1) (b) and (d) of the EAR (exemption from citizenship requirements).
- Meeting all of the exemptions listed under section 7.1(1) of the EAR is impossible.
- The Tribunal panel could have the law changed and compel the ministry to support those who are in need.

At the hearing the ministry relied on its reconsideration decision and added the following:

- To qualify for citizenship exemption pursuant to section 7.1 of EAR, the appellant must meet all listed criteria and he only meets 2; namely 7.1(1) (b) [the applicant has one or more dependent children who are Canadian citizens] and 7.1(1) (d) [the applicant has applied for status as a PR under the immigration and Refugee Protection Act (Canada)].
- His children do not qualify for IA as an applicant must be 19 years of age or older.
- There is no evidence that a removal order cannot be executed.
- Since the appellant's and his wife's refugee claims have been denied, neither one meets the criteria of a Convention refugee or have refugee protection.

**Admissibility of Additional Evidence**

The ministry did not object to the admissibility of the additional evidence and stated that the documents are relevant to the issues on appeal.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In this case, the panel determined that the letters of departure order for the appellant and his wife, and the acknowledgment of conditions are not new information as they substantiate or corroborate the information that was before the ministry at reconsideration. Accordingly, the panel determined that letters of departure order and the acknowledgment of conditions form are in support of the information at reconsideration and is therefore admissible under section 22(4) of the EAA.

**PART F – REASONS FOR PANEL DECISION**

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated May 16, 2018 which held that the appellant is not eligible for IA due to a failure to meet the legislative requirements pursuant to Section 7(1) and 7.1(1) of the EAR.

Section 7 of the EAR prescribes the following:

**Citizenship requirements**

**7** (1) For a family unit to be eligible for income assistance at least one applicant or recipient in the family unit must be

(a) a Canadian citizen,

(b) authorized under an enactment of Canada to take up permanent residence in Canada,

(c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee,

(d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada),

(e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada), or

(f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed.

**Exemption from citizenship requirements**

**7.1** (1) Despite section 7 (1), a family unit that does not satisfy the requirement under that section is eligible for income assistance if the minister is satisfied that all of the following apply:

(a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;

(b) the applicant or recipient has one or more dependent children who are Canadian citizens;

(c) the applicant or recipient has separated from an abusive spouse;

(d) the applicant or recipient has applied for status as a permanent resident under the *Immigration and Refugee Protection Act* (Canada);

(e) the applicant or recipient cannot readily leave British Columbia with the dependent children because

(i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,

(ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or

(iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

(2) If a family unit satisfies the requirement under subsection (1), income assistance and supplements may be provided to or for the family unit on account of

(a) the sole applicant or sole recipient in that family unit, and

(b) each person in the family unit who is a dependent child.

**Applicant requirements**

**5** (1) For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless

(a) the family unit does not include an adult, or

(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

(2) A child who is not residing with his or her parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child.

(3) If a family unit includes a parenting dependent child, an application under subsection (1) may include in the family unit both the parenting dependent child and his or her dependent child.

(4) Despite subsection (1), if

(a) a parenting dependent child is a dependent youth residing with his or her parent, and

(b) the parent of the dependent youth is a recipient under the Act or a recipient within the meaning of the *Employment and Assistance for Persons with Disabilities Act*,

the dependent youth may apply for income assistance or a supplement for a family unit composed of the dependent youth and any dependant of that dependent youth.

(5) The minister may provide income assistance or a supplement to a family unit described in subsection (4) if the minister considers that this is appropriate in the circumstances.

(6) If income assistance or a supplement is provided to a family unit described in subsection (4), the minister may not provide income assistance or a supplement on account of a person in that family unit as part of any other family unit.

*The Appellant's Position*

The appellant's position is that the CBSA will take years to process his PR application and in the meantime he needs IA to support his family. He also argues 2 of his children are Canadian born and Canadian citizens who are eligible for IA. Finally he argues that he meets the requirements of exemption to citizenship requirements pursuant to section 7.1(1) (b) and (d) of the EAR.

*The Ministry's Position*

The ministry argued that the evidence demonstrates that the appellant and his spouse do not meet the citizenship requirements in accordance with section 7(1) or 7.1(1) of the EAR.

*The 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. As the panel is a non-legislative body that is separate and independent of the ministry, the panel has no authority to change legislation or compel the ministry to contravene the legislation that governs its role.

Section 7(1) of the EAR states that in order for a family unit to be eligible for IA at least one applicant or recipient in the family unit must meet one of the criteria listed in subsection (a) to (f).

*Section 7(1) (a), (b) and (d) [requirement to be a Canadian Citizen, enactment of PR or temporary resident permit issued]*

The ministry argued that the neither the appellant nor his wife are Canadian citizens, have PR or temporary resident permit. The evidence demonstrates that the appellant and his wife do not have status in Canada. The appellant does not dispute this. That is, the appellant acknowledged that he and

his wife do not have PR status, their refugee claim has been denied and they do not have a temporary resident permit. The appellant stated that he is in the process of re-applying for PR. The panel finds that neither the appellant nor his wife meet the criteria set out in s. 7(1) (a), (b) or (d) of the EAR.

The appellant argued that his 2 children are Canadian born and therefore Canadian citizens who are entitled and eligible for IA. The panel notes that section 5 (1) of the EAR requires that applicant must be an adult. Since both of the children in the appellant's family unit that are Canadian citizens are not adults, they are not eligible to apply for IA. The panel finds that neither the appellant nor his family unit meet the criteria set out in s. 7(1) (a) or (b) of the EAR.

*Section 7(1) (c) and (e) [requirement to be a Convention Refugee or given refugee protection]*
At the hearing, the ministry argued that the appellant and his wife to not meet the criteria of a Convention refugee or have refugee protection as their refugee claims have been denied. The evidence demonstrates that the appellant and his wife were denied their refugee protection on or about July 2010 with a departure order issued on August 26, 2010 for both and that they were denied their refugee claim on or about April 2012. The panel finds that the appellant or his wife have neither refugee protection nor the status of a Convention refugee and therefore neither the appellant nor his wife meet the criteria set out in s. 7(1) (c) or (e).

*Section 7(1) (f) [requirement that a removal order under the IRPA cannot be executed]*
In its reconsideration decision, the ministry stated that its immigration liaison worker confirmed with CBSA that the appellant and his wife do not meet citizenship requirements and that there is an enforceable removal order in place. The appellant stated that he has not been given a removal date but once he is given the date, he can appeal the removal in Federal court. The delay comes due to the fact that his country of origin has not provided CBSA with a legitimate passport. However, the panel notes that the appellant has not provided evidence that indicates that a removal order cannot be executed. The panel finds that the neither the appellant nor his wife meet the criteria set out in s. 7(1) (f).

*Section 7.1 (1) [exemption from citizenship requirements]*
In its reconsideration decision, the ministry argued that s. 7.1(1) does not apply in the case of the appellant or his wife because neither he nor his wife is a sole recipient with dependent Canadian children who has fled an abusive spouse. The appellant argued that he meets the exemption category because he has 2 children that are Canadian citizens and he has applied for status as a PR (criteria (b) and (d) of s. 7.1(1) of the EAR). The appellant stated that he and his wife are not separated and they remain a family unit. The panel notes that section 7.1 (1) of the EAR explicitly states that in order to be exempt from citizenship requirements, all listed criteria must be met to the ministry's satisfaction. Though the appellant meets 2 of the 5 criteria listed under section 7.1 (1) of the EAR, he does not meet all of them: namely neither he nor his wife is a sole recipient with one or more dependent Canadian children who has fled an abusive spouse. The panel finds that the appellant or his wife does not meet the criteria set out in s. 7.1 (1) 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 7(1) and 7.1 (1) 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 at appeal.

**PART G – ORDER**

**THE PANEL DECISION IS: (Check one)** ☒ **UNANIMOUS** ☐ **BY MAJORITY**

**THE PANEL** ☒ **CONFIRMS THE MINISTRY DECISION** ☐ **RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? ☐ Yes ☐ No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a) ☒ or Section 24(1)(b) ☒
and
Section 24(2)(a) ☒ or Section 24(2)(b) ☐

**PART H – SIGNATURES**

| PRINT NAME | |
|---|---|
| Neena Keram | |
| SIGNATURE OF CHAIR | DATE (YEAR/MONTH/DAY)<br>2018/06/29 |

| PRINT NAME | |
|---|---|
| Kim Polowek | |
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY)<br>2018/06/29 |
| PRINT NAME | |
| Carla Tibbo | |
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY)<br>2018/06/29 |