

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated June 8, 2018 which held that, pursuant to s.16 of the Employment and Assistance Regulation (“EAR”), the appellant was not entitled to income assistance (“IA”) by reason that she is a full-time student in a funded program of studies. Specifically, the Ministry determined that pursuant to s.1 EAR and s.1 of the Canada Student Financial Assistance Regulations (“CSFAR”), the appellant was a full time student by reason that she was enrolled in nine credits of courses, which the college that she was attending recognized as full-time study.

PART D – RELEVANT LEGISLATION

Section 22(b) Employment and Assistance Act (“EAA”)

Section 1, Section 16, Section 86(b) Employment and Assistance Regulation (“EAR”)

Section 1, Sections 5(1), 7(1), 33 Canada Student Financial Assistance Regulations (“CSFAR”)

PART E – SUMMARY OF FACTS

The following information was available at reconsideration:

On May 23, 2018 the appellant attended at her local office for her June IA. She stated that she was taking two courses at a college (the "College"). The appellant told the Ministry that she obtained \$800 from a friend of her mother's to pay for her tuition at the College and that she still owes \$600 in tuition. The appellant stated that she was previously homeless and it has taken enormous effort for her to come this far. The Ministry requested that the appellant submit her course schedule as well as a letter of confirmation from the friend who paid the \$800 in tuition (the "Documents").

On May 24, 2018 the appellant advised the Ministry that she was unable to obtain the Documents that they requested from her.

On May 25, 2018 the appellant submitted the Documents which showed that she was registered in three courses at the College. The appellant was denied IA by reason that the Ministry determined that she met the definition of a full-time student.

On May 29, 2018 the appellant submitted her request for reconsideration ("RFR"). In the appellant's RFR she stated she was not sure how to choose out of the three options provided by the Ministry being: 1) remain on assistance, drop out of school to devote full days to applying for work, despite only being qualified to be a waitress 2) acquire a diagnosis as a person with a mental illness because she would be approved for her education if she is a person with disability or 3) accept the decision and go back to being homeless and hungry while going to school. The appellant stated that because she is obtaining assistance with her tuition she hopes the Ministry will reconsider her eligibility. She is trying to better her life for the future and get out of the system all together.

The appellant's class schedule shows that she is enrolled in two two-hour courses on Mondays and Wednesdays and one two-hour course on Tuesday and Thursday for a total of 12 hours of courses per week.

A letter from the appellant's mother's friend (the "Friend") confirms that the friend paid the tuition fees for the appellant. The Friend confirms that she is willing to continue to subsidize the appellant's tuition fees but unable to assist with the appellant's living expenses.

At the hearing:

The appellant was not present at the hearing. The panel confirmed that the notice of hearing was delivered to the appellant on July 12, 2018 at her address. Pursuant to s.86(b) EAR the panel determined that they could proceed with the hearing.

The Ministry relied on their reconsideration decision. The Ministry found the appellant to meet the definition of "full time student" by reason that the appellant provided the Ministry her schedule and her schedule shows that she is attending three courses, which the appellant does not dispute. The Ministry doesn't have information about when the courses commenced or when they are/will be completed. The Ministry submits it has no discretion to continue the appellant's IA while she attends a full-time course load in a funded program of studies.

The Ministry explained that it has the ability to look up what courses/educational institutions are funded through student and financial assistance. As the institution that the appellant is attending is a well known institution, the Ministry provided evidence that her courses would be fundable. The panel finds, pursuant to s.22(b) EAA, this evidence to be oral testimony in support of the information that was before the Ministry at reconsideration and accepts this additional oral evidence.

When asked if the appellant was working, The Ministry stated that she was not working as she was on IA and as there was no evidence that she was participating in a work program.

PART F – REASONS FOR PANEL DECISION

The issue on appeal:

The issue on appeal is whether the Ministry reasonably determined that, pursuant to s.16 EAR, the appellant was not entitled to IA by reason that she is a full-time student in a funded program of studies. Specifically, was it reasonable for the Ministry to determine that pursuant to s.1 EAR and s.1 of the CSFAR, the appellant was a full-time student by reason that she was enrolled in nine credits of courses, which the college that she was attending recognized as full-time study.

The legislation provides:

Employment and Assistance Regulation ("EAR")

Section 1

"full-time student" has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

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.

Canada Student Financial Assistance Regulations SOR/95-329

Section 1

full-time student means a person

(a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute

(i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or

(ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,

(b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and

(c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be. (étudiant à temps plein)

"funded program of studies" means a program of studies for which funding provided to students under the Canada Student Financial Assistance Act may be provided to a student enrolled in it;

The panel finds:

The appellant is ineligible for IA under s.16 EAR, if she is in a funded program of studies and be a full time student.

Funded program of studies is defined in CSFAR as being "a program of studies for which funding provided to students under the Canada Student Financial Assistance Act may be provided to a student enrolled in it."

The Ministry provided evidence at the hearing that the program of studies that the appellant was in, was in fact a funded program of studies. The Ministry stated that it has access to online information about when College and University programs are funded programs, and that in this case the institution that the appellant was attending was fundable. The panel finds the Ministry's determination that this was a fundable program of studies to be reasonable based on their evidence.

The second criterion for ineligibility under s.16 EAR is that the appellant must be a full-time student. The definition of "full-time student" in EAR imports the definition of "full-time student" from CSFAR. That definition has three requirements – all of which must be met to meet the definition of full time student. To paraphrase the legalisation, "full-time student" means someone who meets the course load requirements (part "(a)" of the definition), has no other occupation (part "(b)" of the definition), and by virtue of completing various steps set out in subsection 5(1) or 7(1) or section 33, may be made a direct loan or a grant by the federal Minister (part "(c)" of the definition). It is clear by the conjunction "and" after subsection (b) that all three criteria set out in the definition must be met in order for the appellant to be found to be a full-time student. The question is whether the Ministry reasonably determined that the appellant was a full-time student in consideration of this definition.

(a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute

(i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or

(ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,

In the reconsideration decision, the Ministry reviewed the first requirement and determined that the appellant, who does not have a permanent disability, was attending a 60% course load. The Ministry noted that the appellant did not provide the Ministry with the actual length of her studies, as requested by the Ministry, however the Ministry was able to determine that the particular college that the appellant attends constitutes full time studies as three courses of three credits each. The panel finds that it was reasonable for the Ministry to determine that three courses of three credits constitute a full time course load given that the appellant's class schedule shows that she was enrolled in three course per week. Therefore, it was reasonable for the Ministry to determine that the appellant met the criteria in subsection (a).

(b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and

With respect to (b), the Ministry stated at the hearing that the appellant was not working, is on IA, and is not participating in an employment program or work plan. The panel finds that it was reasonable for the Ministry to determine that the appellant was not working and that her primary occupation was the pursuit of studies. The evidence from the appellant that she would need to “drop out of school to waitress” also makes it clear that the appellant’s main pursuit at this time was her studies. The panel notes it would have been helpful for the Ministry to address subsection (b) in their written decision so that it was clear that they completed the full analysis of determining whether or not the appellant’s primary occupation was the pursuit of studies.

*(c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be.
(étudiant à temps plein)*

With respect to the last criterion, specifically, “the requirements of subsection 5(1) or 7(1) or section 33, as the case may be,” those provisions set out the conditions under which the federal Minister responsible may make a loan or Canada student grant to a full-time student. They are detailed requirements that only apply in the context of a student who has in fact applied for and is pursuing student financial aid from the federal government.

In this case, without information provided by the appellant or another third party, the Ministry has no obvious way to know whether that last criterion has been met, or indeed whether the appellant has taken any steps toward obtaining funding from the federal government. The appellant, however, would be in a position to provide such information.

By, incorporating subsection (c) into the definition of full-time student within the EAR the legislature has made it such that the Ministry is only able to revoke eligibility of IA on the basis of a recipient’s full-time student status if that recipient meets the requirements to enable the federal Minister responsible for student loans to make the recipient a direct student loan or a Canada student grant. An IA recipient could avoid ever meeting the definition of full-time student in the EAR by never applying for or doing what is required to obtain federal financial assistance. Such a recipient could thereby continue to be eligible for IA regardless of how many courses they were taking.

In this case, the Ministry appears to simply ignore subsection (c) when applying the definition of full-time student. The Ministry attributed no meaning or relevance to subsection (c) and provided no information or evidence about whether or not the appellant could meet the requirements of subsection (c). It may be that it would be absurd to find that a student was not a full-time student by reason that they simply failed to apply for student loans. If so, the Ministry could have explained that the result of applying subsection (c) is so absurd (or so contrary to the intent of the EAA or EAR), that its inclusion within the EAR was clearly an error. Alternatively, perhaps the Ministry could have interpreted the words “has the same meaning as in the [CSFAR]” in section 1 the EAR restrictively to refer only to subsections (a) and (b) of the definition in the CSFAR. However, the Ministry did not deal with subsection (c) at all. It is entirely possible that the appellant meets the requirements of subsection (c) in this case. The panel, however, does not have information about whether that is the case, or any analysis from the Ministry on why it would find that to be the case. The Ministry did not reasonably interpret s. 16 of the EAR when it failed to consider subsection (c).

Based on the above, the panel finds that it was not a reasonable interpretation of the legislation for the Ministry to determine that the appellant was a full-time student. The panel rescinds the Ministry’s decision.

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

MEGHAN WALLACE (by telephone)

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/July/24

PRINT NAME

KATHY GRANT (by telephone)

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/24

PRINT NAME

KIM READ (by telephone)

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/24