

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated July 5, 2018 which found that the Appellant was ineligible for income assistance (IA) for a prescribed period of time due to quitting employment without just cause within two months of applying for assistance pursuant to Section 13(1)(a) and 13(2)(b) of the *Employment and Assistance Act*. The ministry also determined that the prescribed period of ineligibility for assistance was two calendar months as set out in section 29(3)(a) of the Employment and Assistance Regulation.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act* (EAA) Section 13

Employment and Assistance Regulation (EAR) Section 29(3)(a) and (4)

## **PART E – SUMMARY OF FACTS**

The Appellant applied for IA as a sole recipient with no dependents in May 2018.

The information before the ministry at reconsideration included the following:

- Request for Reconsideration dated June 20, 2018 in which the Appellant stated that he was a part-time student and that the reason he quit his job was that he was given the choice of quitting or being fired within his probationary period; and,
- Record of Employment (ROE) in the name of the Appellant dated May 16, 2018 showing total insurable earnings in the amount of \$2,350.40 over seven bi-weekly pay periods between February 2, 2018 and May 7, 2018 and “quit” in the section indicating the reason for issuing the ROE.

### ***Additional Information***

In his Notice of Appeal (NOA) dated July 15, 2018, the Appellant stated that he disagreed with the Ministry’s decision because he was asked to quit his job or told by his employer he would be fired, and that even though he was going to school he was only attending two and a half days per week.

### ***Admissibility of Additional Information***

Section 22(4) of the 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 Ministry when the decision being appealed was made and “oral and written testimony in support of the information and records” before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a 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.

The Panel considered the information in the NOA to be argument. No additional new evidence was presented at the hearing.

### ***Oral Evidence Presented at the Hearing***

The Appellant did not attend the hearing. After confirming that notice of the hearing was delivered to the Appellant at least 2 business days before the hearing, the Panel proceeded with the hearing pursuant to section 85(2) of the EAR.

At the hearing, the Ministry stated that it looks at all of the information submitted by a recipient or applicant for IA in determining whether he or she is required to serve a two month sanction of ineligibility, particularly when the client quits employment. This is necessary because the Ministry must determine whether there is evidence of just cause in quitting a job, such as unpaid hours, harassment or abuse. In this case, the Appellant stated that he quit his job because the employer had determined that his breaks were too long and there was no evidence to show that this was not the case or that he had tried to resolve the issue with his employer.

The Ministry acknowledged that the Appellant was still within the three month probationary period, and explained that it will sometimes make an exception during the probationary period if a recipient or applicant for IA is unfit for the job, e.g. if he or she is unable to find daycare for a dependent child or if he or she does not possess the necessary skills to do the job. However, the onus is on the recipient or applicant to provide evidence of the unfitness, and none was provided in this instance.

The Ministry also stated that a recipient or applicant who had been ineligible for IA due to quitting employment without just cause within two months of applying for assistance could reapply for IA after the 60 day sanction period.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's decision, which found that the Appellant was ineligible for IA for two calendar months due to quitting employment without just cause within two months of applying for assistance, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant legislation is as follows:

### **EAA**

#### **Consequences of not meeting employment-related obligations**

- 13 (1)** Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if
- (a) ... within 60 days before an applicant in the family unit applies for IA, the applicant or recipient has
    - ... (ii) voluntarily left employment without just cause, or ...
- (2)** For the purposes of subsection (1),
- ... (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

### **EAR**

#### **Consequences of failing to meet employment-related obligations**

- 29 (3)** For the purposes of section 13 (2) (b) [consequences of not meeting employment-related obligations] of the Act, the period of ineligibility for IA lasts
- (a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:
    - (i) the date of the applicant's submission of the application for IA (part 2) form under this regulation;
    - (ii) the date the default occurred ...
- (4)** Section 13 [*consequences of not meeting employment-related obligations*] of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:
- ... (b) sole applicants or sole recipients who have at least one dependent child who
    - (i) has not reached 3 years of age, or
    - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
  - ... (d) sole applicants or sole recipients who are providing care to a child in care who
    - (i) has not reached 3 years of age, or
    - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
  - (e) persons who receive accommodation and care in a special care facility or private hospital;
  - (f) applicants or recipients admitted to hospital because they require extended care;

- (g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
- (h) applicants or recipients in a family unit that includes only applicants or recipients who are
  - (ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,
  - (iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
  - (iv) persons not described in section 7 (2) [*citizenship requirements*],
  - (v) persons who have persistent multiple barriers to employment, or
  - (vi) persons who have reached 65 years of age;
- ... (j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [*agreements with child's kin and others*] of the *Child, Family and Community Service Act* for a child who
  - (i) has not reached 3 years of age, or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [*other powers and duties of directors*] of the *Child, Family and Community Service Act* for a child who
  - (i) has not reached 3 years of age, or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment.

\* \* \* \*

The Ministry's position is that that the Appellant was ineligible for IA for two calendar months because he quit employment without just cause within two months of applying for assistance. The Appellant's position is that he should not have to serve the sanction period because he was told by his employer that he would be fired if he did not quit his job, and because he was still within the probationary period.

### ***The Panel's Decision***

Section 13(1) of the EAA states that the family unit of an applicant is subject to the consequence described in subsection (2) if, within 60 days before an applicant in the family unit applies for IA, the applicant or recipient has voluntarily left employment without just cause. Subsection (2) provides an exclusion for family units that include dependent children. The Panel finds that the Ministry reasonably determined that the Appellant had applied for IA within 60 days of voluntarily leaving employment without just cause and that he had no dependent children.

Section 29 (3) of the EAR states that, for a family unit that does not include dependent children, if within 60 days of an applicant applying for IA, the period of ineligibility for IA lasts until 2 calendar months have

elapsed from the later of the date of the applicant's submission of the IA application form and the date the default occurred. The Panel notes that the evidence shows that the Appellant applied for IA on May 24, 2018 and that he quit his employment on May 12, 2018. The Panel finds that the Ministry reasonably determined that the period of ineligibility for IA lasts until 2 calendar months have elapsed from May 24, 2018, the date of the Appellant's submission of the IA application form.

Section 29(4) EAR provides that the consequences of failing to meet employment related obligations do not apply if certain conditions are met, such as: applicants with a dependent child under the age of 3, applicants receiving accommodation and care in a special care facility or private hospital, applicants admitted to hospital because they required extended care, persons residing with and caring for a spouse who has a physical or mental condition that precludes the person from leaving home for the purposes of employment, persons participating in a treatment program approved by the Minister, persons who have separated from an abusive spouse, persons who do not meet specified citizenship requirements, persons with persistent multiple barriers to employment, or persons who are 65 or older. The Panel finds that the Ministry reasonably determined that there is no evidence to demonstrate that the Appellant met any of the exemptions listed under section 29(4) EAR, nor did he argue that any of them were relevant to him.

### ***Conclusion***

The Panel finds that the Ministry's decision that the Appellant was required to serve a two month sanction of ineligibility for IA due to quitting employment without just cause within two months of applying for assistance and that the prescribed period of ineligibility for assistance was two calendar months, is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore the Ministry's decision is confirmed. The Appellant is not successful in his appeal.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME <b>Simon Clews</b>	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) <b>2018/08/02</b>

PRINT NAME <b>Sanjay Gulati</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2018/08/02</b>

PRINT NAME <b>David Handelman</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2018/08/02</b>