

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 9, 2018 which held that the appellant is not eligible for income assistance because she does not meet the two year financial independence criteria under Section 8 of the *Employment and Assistance Act* (EAA) and Section 18 of the *Employment and Assistance Regulation* (EAR). The ministry was not satisfied that the appellant had been employed for remuneration for at least 840 hours in each of the two consecutive years or had earned remuneration for employment of at least \$7,000 in each of the two consecutive years, and the ministry found that she does not fall within any of the excluded categories under Section 18(3) of the EAR.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Section 8

Employment and Assistance Regulation (EAR), Section 18

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Two-Year Independence Assessment form dated June 18, 2018 in which the appellant indicated that she was not employed for 840 hours in each year of any consecutive two-year period and that her income from employment was not at least \$7,000 in each year of any consecutive two-year period; and,
- 2) Request for Reconsideration dated June 25, 2018.

In her Request for Reconsideration, the appellant wrote:

- During the last 4 years, she has worked for 9 days in July and 15 days in August. She was paid cash so she has no cheques or pay stubs to show. She was paid \$50 per day.
- In 2014 she worked in a seasonal job for 2 to 3 times per week for 10 to 12 weeks. For the years 2015, 2016 and 2017, she worked at this job for 3 to 4 times per week for 10 to 12 weeks. She worked 6 to 8 hours per day and made an average of \$41.25 to \$55 per day. She does not have any stubs or cheques.
- In the last 4 years, she has also worked babysitting. In 2015 and 2016 she was paid anywhere from \$30 to \$60 per sitting as sometimes it would be for overnight. She did this at least 3 times a year, probably more, but she did not keep track. These were cash jobs so she cannot prove that she made any money.
- When she was asked over the phone if there was any more money to declare, she said no because she did not know she could claim money she was paid cash for any hours that she worked. She understood that she would need stubs to prove what she made and how many hours she worked.
- Her bank account has been closed due to inactivity so she cannot show that she deposited money into her bank.

Additional information

In her Notice of Appeal dated July 18, 2018, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that she believes she did meet the requirement of 2 years of employment. She had a few cash jobs and seasonal work plus she worked in a service industry. She should have met the requirements for the years 2014 and 2015. She can provide telephone numbers for the people she worked for, if required.

At the hearing, the appellant stated that:

- Whenever she calculates the time that she worked in her seasonal work and the cash jobs, she comes within about 100 hours of the requirements in one year.
- She did not submit the information about the cash jobs in the beginning because she thought the ministry would not consider work where there were no records available.

She answered “no” on the Two-Year Independence Assessment form to the questions about whether she was employed for 840 hours or her income from employment was at least \$7,000 in each year of any consecutive two-year period because she thought her work would not count since she could not prove it.

- She understands that she clearly does not meet the requirements if the cash jobs are not included.
- She also worked in a retail job in 2016 and also for a service-related business, which included preparing one service for opening as well as selling another service. She did not receive a Record of Employment (ROE) from either of these employers.
- Her seasonal work was paid by direct deposit into her bank account, which was subsequently closed for inactivity.

The ministry relied on the reconsideration decision which states that the appellant applied for income assistance and signed the Two-Year Independence Assessment form dated June 18, 2018. On this form, the appellant confirmed that she had not worked and earned more than \$7,000 in each of any two consecutive year period, she had not worked 840 hours in each of any two year consecutive period, she does not have a medical condition which will prevent her from working, she had not been supported by an employed spouse, she had not been incarcerated in a lawful place of confinement for a total of 6 months in the past 2 years, she was not in the care of the Ministry of Children and Family Development when she turned 19 years old, she had not been granted a two-year certificate or diploma, and she was not providing care to a foster child or receiving benefits for a child in the home of a relative.

At the hearing, the ministry stated:

- Where all indications are that the applicant has been financially independent and has exhausted all avenues for verification of hours worked/income earned, the ministry policy allows for a signed declaration by the applicant. The declaration must describe the employment history, earnings and duration as well as details of the applicant’s attempts to get verification records. According to the ministry policy, earnings not reported by the applicant for income tax purposes may be accepted.
- The information that the appellant has provided to the ministry to date is insufficient to show that the requirements for number of hours and amount of income for a two consecutive year period have been met.
- The appellant has not shown that she has exhausted all avenues for verification by providing details of her efforts to get these records.
- If the employer is not forthcoming with a ROE or will not provide confirmation of duration of employment or amount earned when the appellant makes a request, the assistance of an advocate or other community services may be useful.

Admissibility of Additional Information

The panel accepted the appellant's information regarding her seasonal work and the cash jobs, as detailed in her Request for Reconsideration, as information regarding the appellant's ability to be financially independent and being in support of the information and records before the ministry on its reconsideration. However, the panel did not admit the appellant's oral testimony or the information in her Notice of Appeal regarding the appellant's work in 2016 in a service-related business as this was not part of the information before the ministry at the time of its reconsideration, as required by Section 22(4) of the Employment and Assistance Act.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the ministry reasonably concluded that the appellant was not eligible for income assistance because she does not meet the two year financial independence criteria under Section 8 of the EAA and Section 18 of the EAR, and does not fall within any of the excluded categories under Section 18(3) of the EAR.

Section 8 of the EAA provides:

Requirement for 2 years employment

8. (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have
- (a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,
 - (b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or
 - (c) been employed for remuneration for a portion of two consecutive years and for the balance of those years either
 - (i) served a waiting period in respect of, or received benefits under, a claim under the *Employment Insurance Act* (Canada), or
 - (ii) received income under a public or private income replacement program or plan.
- (2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

Section 18 of the EAR provides in part:

Requirement for 2 years employment

18. (1) For the purposes of Section 8(1)(a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the two consecutive years.
- (2) For the purposes of Section 8(1)(b) of the Act**, an applicant must have earned remuneration for employment of at least \$7,000 in each of the two consecutive years.
- (3) Section 8 of the Act does not apply to the family units of the following categories of applicants:**
- (a) applicants who have not reached the age of 19;
 - (b) applicants who are pregnant;
 - (c) applicants who have a medical condition that, in the opinion of the minister,
 - (i) will prevent the applicant from working for at least the next 30 days, or

- (ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form;
- (d) applicants with dependent children;
- (e) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (f) applicants who are providing care to a child in care;
- (g) applicants who were supported by an employed spouse for at least 2 years;
- (h) applicants who were supported by an employed spouse for a portion of a two year period and met a requirement of section 8 (1) of the Act for the balance of the two year period;
- (i) applicants who were incarcerated in a lawful place of confinement for at least 6 months of the 2 year period immediately preceding the date of application for income assistance;
- (j) applicants who were in the care of a director under the *Child, Family and Community Service Act* or who had an agreement with a director under section 12.2 of the *Child, Family and Community Services Act* until the applicant's 19th birthday;
- (k) applicants who
 - (i) have separated from an abusive spouse, or
 - (ii) changed place of residence to flee an abusive relative, other than a spouse, within the past 6 months if, in the minister's opinion, the applicant's ability to work is consequently impaired;
- (l) applicants who have been awarded a 2 year diploma or certificate, a bachelors degree or a post-graduate degree from a post-secondary institution;
- (m) applicants who have persistent multiple barriers to employment;
- (n) applicants who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the applicant from leaving home for the purposes of employment;
- (o) applicants who are providing care for a child under an agreement referred to in section 8 of the *Child, Family and Community Service Act*;
- (p) applicants who are providing care for a child under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*. . . .

In the reconsideration decision, the ministry determined that the appellant is not eligible for income assistance as she has not provided sufficient information to establish that she met the two year financial independence criteria. The appellant signed the Two-Year Independence Assessment form and confirmed that she had not worked and earned more than \$7,000 in each of any two consecutive year period and she had not worked 840 hours in each of any two consecutive year period, but the appellant explained that she did not realize at the time that she signed this form that the ministry would consider the time spent and income received from work where she was paid in cash, and she has now provided this information to the ministry.

The ministry confirmed that where the applicant has exhausted all avenues for direct or indirect verification of the time spent and income received, the ministry policy allows an applicant to sign a declaration setting out this information. However, the ministry was not satisfied that the appellant had pursued all methods of verification as she had not set out the details of her attempts to obtain verification documents. At the hearing, the appellant stated that her seasonal job was paid by direct deposit into her bank account but her account had been closed due to inactivity and she could not get these records. However, the appellant did not detail her efforts to get copies of her bank account statements from the bank, and she stated that she did not approach the employer for her seasonal job to try to get confirmation of her employment history.

In her Request for Reconsideration, the appellant wrote that during the last 4 years [2014, 2015, 2016, 2017], she worked in a cash job for 9 days in July and 15 days in August [total of 23 days] and paid \$50 per day, or a total of \$1,150 per year. The appellant wrote that in 2014 she worked in a seasonal job for 2 to 3 times per week for 10 to 12 weeks. Using the maximum time (3 times per week for 12 weeks, or 36 days at 8 hours per day) and the maximum pay (\$55 per day) as declared by the appellant, the total amount earned for 2014 from the seasonal job would be \$1,980 and the total hours worked would be 288 hours. The appellant wrote that for the years 2015, 2016 and 2017, she worked at the seasonal job for 3 to 4 times per week for 10 to 12 weeks. Again, using the maximum time (4 times per week for 12 weeks, or 48 days at 8 hours per day) and the maximum pay (\$55 per day), the total amounts earned from the seasonal job for 2015, 2016 and 2017 would be \$2,640. The appellant wrote that in the last 4 years, she has also worked babysitting and, in 2015 and 2016, she was paid anywhere from \$30 to \$60 per sitting and she did this at least 3 times a year. Using the maximum time and pay, the babysitting job would add \$180 in each of 2014, 2015, 2016 and 2017.

Therefore, the total remuneration for 2014 is \$3,310 and the total remuneration for 2015, 2016 and 2017 is \$3,970 per year. The requirement of Sections 8 of the EAA and Section 18 of the EAR is that the applicant must earn remuneration for employment of at least \$7,000 in *each* of the two consecutive years [emphasis added]. As the maximum totals as declared by the appellant fall short of the requirement for a total of \$7,000 in each of two consecutive years, the panel finds that the ministry reasonably determined that the requirement of Section 8(1)(b) of the EAA and Section 18(2) of the EAR had not been met.

In terms of the hours spent in employment, using the maximum time of 12 hours per day for 23 days for one of the appellant's cash jobs, this would result in 276 hours in each of 2014, 2015, 2016 and 2017. For the seasonal work, 8 hours per day for 3 days a week for 12 weeks results

in 288 hours in 2014 and 8 hours per day for 4 days a week for 12 weeks results in 384 hours in 2015, 2016 and 2017. For the babysitting, using 3 times per year at 24 hours a day, this results in 72 hours in each of 2014, 2015, 2016, and 2017. Therefore, the total hours spent in employment for 2014 is 636 and the total hours for 2015, 2016 and 2017 is 732 hours each year. As the maximum totals as described by the appellant fall short of the requirement for a total of 840 hours in each of two consecutive years, the panel finds that the ministry reasonably determined that the requirement of Section 8(1)(a) of the EAA and Section 18(1) of the EAR had not been met.

The ministry wrote in the reconsideration decision that the appellant had not indicated that her situation meets any of the categories that would allow the ministry to waive the two years of financial independence eligibility criteria. In the Two-Year Independence Assessment form, the appellant's responded "no" to each of the questions relating to the excluded categories, and the appellant did not argue that she falls within one of the excluded categories. Therefore, the panel finds that the ministry reasonably concluded that the appellant does not fall within any of the excluded categories under Section 18(3) of the EAR.

Conclusion

The panel finds that the ministry decision that the appellant is not eligible for income assistance because she does not meet the two year financial independence criteria and does not fall within any of the excluded categories under Section 18(3) of the EAR, was reasonably supported by the evidence and the panel confirms the ministry decision. Therefore, the appellant's appeal is not successful.

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-08-31

PRINT NAME

Jennifer Armstrong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-08-31

PRINT NAME

Chris McEwan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-08-31