

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated October 12, 2018, made by the Ministry of Social Development and Poverty Reduction (the ministry), which determined that the appellant does not qualify for income assistance for the months of September and October because she was dismissed from her employment for just cause which disqualifies her from receiving income assistance for two months from the date of her application in accordance with sections 13 of the Employment and Assistance Act (EAA) and 29 of the Employment and Assistance Regulations (EAR).

PART D – RELEVANT LEGISLATION

The relevant legislation is sections 13 of the EAA and 29 of the EAR.

PART E – SUMMARY OF FACTS

The appellant is a single employable applicant. She moved to BC from _____ and was employed until the time of her application in September 2018. The appellant stated that she was in receipt of disability assistance in due to a mental condition. Medications have helped her while in BC, but her intent is to go back on disability as it is difficult for her to maintain employment given her mental condition.

On September 21, 2018, the appellant applied for income assistance. The ministry states that on September 27, the appellant advised the ministry that she had been dismissed from her employment for cause, although the appellant disputes both that she said this and that she was dismissed for cause. On October 2, the ministry contacted the appellant's employer, but was unable to ascertain the reason for her dismissal. On October 3, the appellant provided the ministry with a doctor's note indicating that she was pregnant. On October 4, the appellant provided the ministry with two Records of Employment (ROEs). The first indicated that she had been employed from February 27, 2018 to September 2 and been dismissed for cause. The second, that she had been employed elsewhere for one day, September 27, and again been dismissed for cause. On the same date, the appellant submitted a letter from her landlord dated October 1, 2018 stating that she would be evicted for non-payment of rent on October 10.

At the hearing the appellant stated that she has subsequently been evicted and is staying in a shelter. She also disputed that she had been dismissed for cause from her employment, stating that it was actually due to the fact that her employer discovered that she was pregnant. She was also unhappy with being assigned to washing dishes when she is a trained cook.

In her application for appeal the appellant included a note from a Nurse Practitioner dated October 16, 2018, stating: "[The appellant] is currently pregnant and homeless. She has recently engaged in medical care at our clinic. Due to mental health concerns [the appellant] is currently not able to work. She has begun psychiatric care at our clinic."

The ministry did not object to the admission of this information. In accordance with section 22(4) of the EAA, the panel finds that this note is admissible because the information it contains is in support of the information that was before the ministry at the time of the reconsideration decision. This note confirms the facts that the appellant was pregnant, that she faced eviction and that she has mental health concerns. Whether or not the appellant is able to work is not relevant to the determination of her eligibility for income assistance.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision finding the appellant is not eligible to receive income assistance for the months of September and October because she was dismissed from her employment for just cause which disqualifies her from receiving income assistance for two months from the date of her application.

The relevant legislation is sections 13 of the EAA and 29 of the EAR:

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) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has

- (i) failed to accept suitable employment,
- (ii) voluntarily left employment without just cause, or
- (iii) been dismissed from employment for just cause, or

(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.

(2) For the purposes of subsection (1),

(a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

(3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Consequences of failing to meet employment-related obligations

29 (1) For the purposes of section 13 (2) (a) [*consequences of not meeting employment-related obligations*] of the Act,

(a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later of the following dates:

- (i) the income assistance application date under this regulation;
- (ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:

- (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
- (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.

(2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [*consequences of not meeting employment-related obligations*] of the Act.

(3) For the purposes of section 13 (2) (b) [*consequences of not meeting employment-related obligations*] of the Act, the period of ineligibility for income assistance lasts

(a) for a default referred to in section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

- (i) the income assistance application date under this regulation;
- (ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:

- (i) the family unit has been ineligible for income assistance for one calendar month;
- (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.

Section 13(1)(a)(iii) of the EAA and 29(3)(a)(i) of the EAR are clear that an applicant who has been dismissed from employment for cause within the last 60 days is disqualified from receiving income assistance for two months from the date of their application. The information before the ministry at the time of the reconsideration decision in the form of the appellant's ROEs was that she had been dismissed for cause on September 2, 2018 and September 27, 2018, well within 60 days of her application on September 27. The appellant's testimony that she was not dismissed for cause is not substantiated by the evidence of the ROEs. The facts that the appellant is pregnant and homeless and has a mental condition are unfortunate but not relevant to a determination of her eligibility to receive income assistance for the months of September and October.

Accordingly, the panel concludes that the ministry's decision that the appellant is not eligible to receive income assistance for the months of September and October 2018 was a reasonable interpretation of the applicable legislation and confirms the ministry's decision.

PART G – ORDER	
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	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input 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"/>	

PART H – SIGNATURES	
PRINT NAME Marcus Hadley	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/11/08

PRINT NAME Susan MacKey	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/11/08

PRINT NAME Joseph Rodgers	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/11/08