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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 11, 2019 where the ministry determined that the appellant was not eligible for income assistance as she was enrolled as a full time student in a funded program of studies which is not permitted under section 1 and 16 of the Employment and Assistance Regulation (EAR).

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation Section 1 and 16.

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PART E – SUMMARY OF FACTS**Information before the Ministry at reconsideration:**

The appellant is receiving regular income assistance and in a review of her file on January 14, 2019 the ministry determined that the appellant was attending a tourism/hospitality program at a community college. On January 17, 2019 the ministry received documents from the appellant indicating she was taking 3 courses and upon contacting the college determined that those constituted full time attendance in a funded program of studies. Documentation received and reviewed by the ministry included correspondence from Student Aid BC confirming student loan disbursement and statements from a community college confirming course registration for 3 courses as well as receipts for text book purchases. The ministry further noted that the appellant had made application for Persons with Disabilities (PWD) assistance and had been denied. On January 23, 2019 the ministry determined that the appellant was a full-time student and was no longer eligible for regular income assistance. In section 2 of the Request for Reconsideration the ministry stated that the appellant was no longer eligible for income assistance as she was a full-time student in a funded program of studies, did not receive pre-approval from the minister to attend the program and was not mandated to attend as a part of an employment plan.

In the section 3 of the Request for Reconsideration dated January 29, 2019 the appellant stated that she believed her case had unique circumstances and that she had on file a note from her physician indicating she was not employable and that she would be filing a new PWD application. She stated that she was not employable due to an automobile accident which was not her fault and that she was told to re-educate. Student loans provide less funds than her income assistance and are insufficient to meet her expenses.

On February 11, 2019 the ministry denied the appellant's request stating that the appellant was enrolled as a full-time student in a funded program of studies and was thus not eligible for income assistance.

Notice of Appeal

On February 18, 2019 the appellant submitted a Notice of Appeal in which she asserted that when she was put on assistance, she was told that she could attend school so that she could become employable as her accident left her unemployable. She was in the process of a re-application for PWD and had qualified for disability under student aid guidelines. She was never told she couldn't attend school and believed she had permission/approval due to a conversation with a ministry worker and reviewing the provisions of Section 16 (1) respecting ineligibility due to being in a funded program of studies without prior approval of the minister. This discussion occurred because there is a large gap between what she receives from student loans and income assistance. She was never told she had to request permission or apply for approval and because she was given incorrect information, she should be able to continue with her schooling and receive assistance while she awaits her PWD application.

Hearing

The appellant stated that she believed that the ministry had dropped the ball. She noted that she had originally filed for assistance when she was in the process of preparing an application for PWD designation based on a letter from her physician stating that she was unable to work. At the time of application for Income assistance she was clear to her worker that she was planning on attending school due to the substantial gap in income between income assistance and student loans. She further noted that PWD was denied and that she was reapplying. She was aware of the requirement for approval from the ministry and thought she had received it. She is currently working for a local company part time and her course of studies in Tourism and Hospitality will aid her in that regard. She cannot understand why it was okay to attend school from September through December 2018 and receive assistance but in February it was not. She is very frustrated as she has 3 children and a lot of bills.

In support of the reconsideration decision the ministry indicated that a review of their files indicates that there was no evidence of a pre-approval to attend a funded program of studies full-time and that would have been a pre-requisite for the appellant to receive income assistance. The ministry stated they were unable to speak to the issue of a verbal approval but acknowledged that the monthly reporting stubs for the period in question indicate she was attending school but did not reveal she was receiving financial assistance although there is a space requiring that information. The ministry stated that it would not be a usual situation for a person in the appellant's position to



receive such an approval as they would be referred to a specific program initiative called the Single Parent Employment Initiative (SPE) where a separate approval would be given. In response to a question respecting the appellants status of having dependant children and the applicability of Section 16, sub-section (1.1) and (1.2) the ministry stated that this section covers the SPE program. The ministry stated the appellant did not receive this separate program approval and noted the appellant has an employment plan but was not required to enroll in the program of studies as a condition of that plan and thus would not satisfy that requirement of the program.

The Panel can only admit evidence that was before the Ministry at the time of reconsideration and evidence that is in support of the information and records that were before the Ministry at the time of reconsideration. In the Panel's consideration of the information provided by the ministry at the hearing it was noted that there were several references to material in the file such as monthly reporting stubs and letters of request for information that was not included in the evidence cited by or appended to the reconsideration decision. However, the Panel concluded that this oral material was part of the ministry file and thus was in support of evidence at the time of reconsideration. The Panel concludes that this material is admissible.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry decision which determined that under Section 1 and Section 16 of the Employment and Assistance regulation the appellant was ineligible for assistance because she was a full time student in a funded program of studies as defined under EAR Section 1 and under EAR Section 16, a recipient is ineligible for assistance if enrolled in a funded full time course of studies or has not received prior approval of the minister to be in a unfunded full time course of studies, was a reasonable application of the legislation in the appellant's circumstances, or was reasonable supported by the evidence?

Relevant Legislation

Employment and Assistance Regulation -Section 1

Definitions

1 1) In this regulation:

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

"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;

Employment and Assistance Regulation -Section 16

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.

[am. B.C. Regs. 284/2003; 145/2015, Sch. 1, s. 4.]

Ministry Decision

The ministry position is that the appellant is not eligible for income assistance because it has been determined that she is enrolled in a full-time funded program of studies and that the provisions of Section 1 and Section 16 of the EAR specifically make her ineligible for assistance.

Appellant's Position

The appellant's position is that she disagrees with the ministry's decision because she was not employable due to her accident, is re-applying for person with disabilities status and was told to re-educate for a future position. Under her student aid funding she has insufficient funding to meet her financial obligations. In her Notice of Appeal the appellant adds that she believes she had received permission/approval to attend school in conversation with a ministry worker and she was never told she had to request permission or apply for approval in order to go to school.

Panel Decision

The fact that the appellant is a full-time student in a funded course of studies is not in dispute as is the fact that the appellant received income assistance payments from September through December of 2018 and submitted stubs disclosing that she was attending school but not that she was in receipt of funding for school. The information supporting this is appended to the reconsideration decision. The appellant believes she received verbal approval but has no documentary evidence. The ministry finds no evidence of approval in their files.

The ministry has applied the provisions of EAR Section 1 and determined that the appellant's circumstances meet the definition of a full-time student and that she is in a funded course of studies. The documents submitted by the appellant and the ministry conversations with the college confirm this. The evidence is clear, and the panel finds itself in agreement with the ministry position. The ministry refers to EAR Section 16 and concludes that the appellant was not eligible for income assistance as she was a full-time student in a funded program of studies in accordance with Section 16 subsection (1) (a).

The Panel notes the clear evidence of full-time attendance in a funded program of studies and agrees with the ministry's determination under Section 16 subsection (1) (a). The panel notes that Section 16 subsection (1) is subject to subsection (1.1) which excludes from the provisions of subsection (1) (a) a recipient enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2). Subsection (1.2) allows the minister to approve a person to enrol in a funded program of studies if the person is a sole recipient of income assistance who has a dependant child, or provides care to a dependant child, is required to enroll in the program of studies as a condition of an employment plan and 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. The ministry in its reconsideration decision did not specifically refer to these provisions or document their determination of non-applicability. The request for reconsideration generally noted that the appellant did not receive pre-approval and attendance in a full-time program of studies was not a requirement of the appellant's employment plan. The ministry representative in the hearing confirmed this provision is used for the SPE program. The ministry stated that the appellant did not receive the necessary pre-approval and the requirement for an employment plan specifying enrollment in a course of studies was not present. Based on the absence of a pre-approval from the ministry as well as the lack of a provision in the appellant's employment plan for attendance in a full-time program of funded studies, the panel concurs with the ministry determination that this provision does not apply.

Finally, the panel notes that the appellant in her Notice of Appeal suggests that she had received verbal approval by the ministry worker and that she received payments from September through December 2018 despite disclosing attendance at a program of studies in her monthly reporting stub. To the appellant this constitutes evidence of approval. The ministry could not explain this discrepancy beyond an error by the staff checking the reporting stubs which noted attendance in a program of studies but not the receipt of funding and relies on the circumstances of the appellant where such an approval would be unusual together with the fact that the files contain no evidence of approval to determine that an approval was given.

In considering the conflicting views the panel assigned relatively more weight to the ministry evidence based on the absence of an approval in the files and evidence that the appellant's circumstance would make such an approval unusual. The appellants recollection of a verbal approval is undoubtedly real but in the absence of anything to corroborate that recollection other than the continuation of payments is less convincing and therefore was given relatively less weight.

Conclusion

The panel confirms the ministry's reconsideration decision as it was a reasonable application of the legislation. The appellant is not successful on appeal.

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Marnee **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 Keith Lacroix	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019-03-08

PRINT NAME Marnee Pearce	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)

PRINT NAME Sean Carberry	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) March 10, 2019