

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the Ministry) dated 7 November 2019 in which the Ministry determined that the appellant is not eligible for income assistance due to being enrolled as a full-time student in a funded program of studies. In accordance with Section 16(1) of the Employment and Assistance Regulation (EAR), a family unit is not eligible for income assistance if a recipient is enrolled as a full-time student in a funded program of studies.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Section 7.
Employment and Assistance Regulations (EAR) Sections 1, 16, 28, 29, and 56; Schedule B, section 8

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

The Appellant receives income assistance as a sole recipient with PPMB designation. The file was opened in May 27, 2011. On July 23, 2019 the appellant was found eligible for Persons with Persistent Multiple Barriers (PPMB) designation after having a previous designation expire in the Fall of 2018.

On August 9, 2019 the appellant contacted the ministry to ask about funding for retraining or continuing education, and was advised to connect with WorkBC to find out what may be available. The Appellant had advised the Ministry worker that the Appellant had been in contact with a counselor at WorkBC but that the counselor indicated there was very little in terms of funding or programming that would work with PPMB designation.

The Appellant had advised the Ministry about an upcoming appointment with the counselor and would look into it further. On October 4, 2019 the Ministry became aware that the Appellant was enrolled in a full-time program of studies based out of a post-secondary educational institution with a start date of September 3, 2019. The appellant had contacted the ministry office on this date and was advised the Appellant was no longer eligible for assistance due to the status as a full-time student. The Appellant advised receiving \$7763 but had not received any funding for living expenses.

The Minister had also received its own confirmation that the Appellant was enrolled as a full-time student in a funded program of studies, that commenced September 3, 2019. The Minister has confirmation that the Appellant had received funding through the Canada Student Loan program for education costs. The Ministry stated the Appellant did not request nor receive approval from the Ministry to enroll in the program of study, does not have a dependent child or provide care to a supported child and likewise, and does not qualify for the Single Parent Employment Initiative.

The Ministry noted the Appellant was not required to enroll in the program of studies as a condition of an employment plan.

The appellant had submitted two letters. The first was a handwritten letter, dated 4 October 2019, that had been compiled essentially before advising the Ministry of enrollment as a student. The letter advised that the appellant had attempted to find work through WorkBC starting in October 2018, and finding little support for persons with PPMB had applied for a student loan and had been accepted for a technical program. The funds were sufficient to pay for most of the tuition, books and supplies. The letter concludes with a concern that the appellant will have to drop out of school and not be able to pay rent nor eat.

The second letter was dated 24 October 2019 and was in support of the appellant's request for reconsideration. The letter states that after an illness in 2016 the appellant had been advised to go on full disability but had opted not to in order not to be stigmatized in the workforce. The appellant advised that contact with WorkBC had resulted in obvious opportunities for training for people on employment insurance (EI) or disability but opportunities became vague for people with PPMB. The WorkBC representative had apparently assured the appellant "that there were things that would be covered". The appellant commented about the lack of understanding about what the PPMB designation meant and drew attention to a portion of the EAR, where at 1.1, item b and c (sic) there are apparently extenuating circumstance wherein funded programs may be available and funded through PPMB (taken to mean Section 16 (1) (1.1)).

The Appellant wrote that contact had been made with the Ministry who advised that no funding was available for re-education under this program, but that the Appellant was not told that there was a possibility for funding as a condition of an employment plan under PPMB. The Appellant, "understanding now working through an employment plan to find an education path towards sustainable employment felt the only path was to seek financial assistance in the form of a student loan".

The Appellant further advised in the second letter that a student loan of \$7083 had been provided and had been spent on tuition of \$5112, parking pass of \$285, books of over \$600 and other supplies including tools. An assessed living allowance of \$16 383 was not provided to the appellant due to expectations of receiving \$8150 during the course of the training from PPMB employment assistance.

The facts before the Ministry at reconsideration also included a copy of the Ministry Monthly Report submitted by the Appellant, dated 4 October 2019, which was annotated as attending/enrolled in school/training in a check box. The income box showed \$7763 (sic) as being received for student funding.

A copy of a downloaded acceptance form, from StudentAid BC, undated, provides information that the appellant has been approved for financial assistance under an agreement with the "Ministry of Social Development" (sic) and that as a result of living expenses being provided by the Ministry only direct education costs as assessed are being provided by the StudentAid BC loan. The form also provides that they have received the appellant's Master Student Assistance Agreement (MSFAA). The form also provides that the loan is a Canada Student Loan of \$7 083, a confirmation of enrolment with an estimated earliest disbursement of 3 September 2019. The remainder of the form provides a summary of courses taken with achievement marks.

The Minister's reconsideration decision acknowledged that the student loan did not provide a living allowance; however, it states that the legislation does not differentiate between being funded for living costs or only education costs.

The Appellant, in the Notice of Appeal, stated that not all options for education were presented to the appellant under the PPMB designation. The Appellant at hearing in response to a question of what was not presented replied that being unsure what to write felt that under the EAA there were options for supportive assistance from the Ministry while being in a funded training program but that has not been communicated.

At hearing the Appellant referred to the ministry reconsideration decision regarding Section 16 of the EAR and argued information previously provided under letter, that subsection 1.1 item b states the person "is required to enrol in a program of studies as a condition of an employment plan", and that item (1.2) (c) agrees with the Appellants present circumstances regarding receiving income assistance in each of the immediately preceding 3 calendar months.

The Appellant feels that government agencies do not know about the PPMB designation. After having no success in securing options for work programs within the PPMB designation through WorkBC the Appellant's family and friends suggested seeking financial aid.

Following a period of serious illness, the Appellant's Physician recommended the Appellant apply for full disability status, however the appellant was concerned that to do so may make future potential employers resistant to hire.

In response to questions the Appellant advised holding off contacting StudentAid BC for additional funding since the reconsideration decision pending the result of this appeal, but confirmed speaking to

student aid at the institution to establish other options. The Appellant confirmed ongoing attendance at school, made possible at present only by using some savings and the appellant's landlord postponing a month's rent.

The Appellant believes that his loan situation is not a funded program of studies as the loan only covers the cost of tuition etc. and does not include living costs. At the moment the Appellant advises the Ministry has ceased the provision of income assistance.

At hearing the Appellant argues that it was a personal belief that WorkBC had provided the Appellant's file to the Ministry through a sharing agreement and that the Ministry had been in discussion with StudentAidBC as the downloaded form clearly stated the student loan was provided under such an agreement.

The appellant provided the StudentAidBC information to the Ministry. It is a downloaded report from the Appellant's computer file and the Appellant has no idea why the form contains the statement regarding the assessment for funding being under an agreement with the Ministry. On the application form the Appellant had not ticked the box for having a disability but did append a note in the section advising of PPMB status so they were aware. The Appellant feels this annotation to be a normal outcome of StudentAid BC dealing directly with the Ministry.

In response to a question of any personal knowledge of BCStudentAid or WorkBC actually dealing with the Ministry the appellant admitted to not knowing.

The Appellant submitted in oral evidence that there was a \$16 000.00 potential living cost that was assessed but not provided due to the ongoing income assistance being provided by the ministry.

The appellant commented that in an initial contact in 2019 regarding employment training opportunities the Ministry had instructed the Appellant to "contact WorkBC and good luck". Subsequently the Appellant had signed an employment agreement with WorkBC, and had given signed authority for WorkBC to share information with the Ministry.

In response to a question regarding understanding of the meaning of Section 16 (1) (1.2) of the EAR the Appellant commented about not being a lawyer and believing that each requirement of the sub-sections stands alone.

In a response to a question from the Ministry about whether, prior to obtaining the student loan or signing the employment agreement with WorkBC, the Appellant ever contacted the ministry about options, the Appellant said yes, and the counselor from WorkBC had also contacted the Ministry but had been told nothing was available. It was then clarified that this was related to funding availability.

Further, the Appellant agreed that submittal of the monthly report is due by the 5th of each month and that details of the 3rd September 2019 enrolment at school were not communicated until 4th October, 2019. The rationale provided was that the Appellant did not receive the funds in September and did not believe this would affect his assistance or PPMB status as the StudentBC letter confirmed his coverage under the Ministry for living costs.

At the hearing the Ministry presented the reconsideration decision to be clear and concise, and based on the information received, and stated approval for enrolling in a funded program of studies is required in advance.

The Ministry commented that although under Section (1.1) Subsection (1) (a) the regulation 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, it is only valid under section (1.2), which states that the minister may approve a person to enroll in a funded program of studies if the person is (a) a sole recipient of income assistance who either has a dependent child, or who provides care to a supported child and is (b) required to enroll in the program of studies as a condition of an employment plan and (c) who has been receiving income assistance, in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist. The Ministry stated the Appellant does not meet the requirements of either (a) or (b) but does meet item (c).

The Ministry advised that the Appellant could have applied for PWD status and if granted would possibly have been in a position to receive income assistance for such a course of studies.

At the hearing responding to questioning the Ministry replied that it was unaware of any other exemption to the requirements of section 16 of the EAR available to the Appellant.

During questioning between the Appellant and the Ministry the appellant admitted to not having information available that shows the WorkBC counselor contacted the Ministry directly but believes this to be the case.

In response to a question as to why the persons at StudentAid BC would have included the comment about living costs being covered, the Ministry expressed comment about not being sure about the relationship for PPMB under section 16 (1) (1.2) so the specifics may have been misunderstood by the student loan staff.

The Ministry went on to state they are not aware of any agreement made between StudentAid BC and the Ministry, and while this kind of support is available to Persons with Disabilities, they were not aware of instances of such agreements for those on PPMB or Income Assistance.

When asked why the appellant was referred to WorkBC the Ministry responded that there is an agreement for WorkBC to find work/employment and education for clients.

The Appellant understands that the Ministry is able to read the Appellant's WorkBC file. The Ministry replied that they were not sure but did not believe that to be the case. There is some correspondence normally between the Ministry and WorkBC for example when a client is not performing the requirements of an employment agreement.

Under questioning the Ministry could not confirm that the Appellant as a PPMB receives a top-up payment, however the Appellant provided details of total amounts received of \$807.92. This figure is provided on the Ministry Monthly report form submitted by the Appellant.

The Appellant provided summary comments of a firm belief that both WorkBC and the Ministry were in communication with each other and that the Appellant was part of an approved employment plan. This allowed for income assistance to be provided under the EAR as the funding under the student aid loan did not include living expenses. The Appellant was also very unsatisfied with the way in which Ministry staff dealt with the Appellant directly and the file throughout their interaction from both a personal and professional basis.

The panel determined the additional oral and documentary evidence was admissible under s.22(4) of the EAA as it was in support of the records before the minister at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the Ministry's decision that the appellant was not eligible for income assistance due to being enrolled as a full-time student in a funded program of studies under section 16 of the (EAR) is reasonably supported by the evidence or is a reasonable application of the applicable legislation.

The following legislation applies to this appeal;

EAA

Employment-related programs

7. The minister may establish or fund employment-related programs for applicants, recipients or dependent youths who have difficulty finding or maintaining employment.

EAR

1. (1) In this regulation:

"employment-related program" means any of the following categories of programs that are established or funded under section 7 of the Act:

- (a) employment search;
- (b) training;
- (c) job placement;
- (d) self-employment;
- (e) volunteer;

"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;

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

"student financial assistance" means funding provided to students under

- (a) the British Columbia Student Assistance Program,
- (b) the Canada Student Financial Assistance Act, or
- (c) a similar program provided by another province or jurisdiction;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (q) education or training allowances, grants, loans, bursaries or scholarships;

"unfunded program of studies" means a program of studies for which a student enrolled in it is not eligible for funding provided to students under the Canada Student Financial Assistance Act.

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.]

Amount of income assistance

28. Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

Consequences of failing to meet employment-related obligations

29.

(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:

(h) applicants or recipients in a family unit that includes only applicants or recipients who are

(v) persons who have persistent multiple barriers to employment;

Supplements related to employment plan

56. (1) The minister may provide any of the following supplements to or for a family unit that is eligible for income assistance or hardship assistance to assist an applicant, a recipient or a dependent youth in the family unit to participate, in accordance with an employment plan, in an employment-related program:

(a) up to \$100 for each calendar month to assist with transportation and attendance costs associated with participating in the employment-related program;

(b) the costs of tuition, books and supplies required to participate in the employment-related program;

SCHEDULE B Net Income Calculation

1. When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Minister's discretion to exempt education related unearned income

8. (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit.

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student financial assistance;
- (c) student grants, bursaries and scholarships;
- (d) disbursements from a registered education savings plan.

(3) An exemption under subsection (2) may be authorized in respect of a student who is

- (a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,
- (b) an applicant or a recipient enrolled
 - (i) as a part-time student in an unfunded program of studies, or
 - (ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
- (c) a person in a category listed in section 29 (4) [consequences of failing to meet employment-related obligations] of this regulation enrolled as a part-time student in a funded program of studies.

(4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the Canada Student Financial Assistance Act;
- (c) disbursements from a registered education savings plan.

(5) An exemption under subsection (4) may be authorized in respect of a student who is

- (a) a recipient enrolled as a part-time student in a funded program of studies, or
 - (b) described in section 16 (1.1) [effect of family unit including full-time student] of this regulation.
- [am. B.C. Reg. 145/2015, Sch. 1.]

The Ministry has submitted evidence both from its own investigation and from documentary submittals from the Appellant, including the monthly submittal form and personal letters, to argue the Appellant is currently enrolled in a course of studies at a post-secondary educational institution and has received financial assistance from StudentAid BC. The Appellant does not dispute the enrollment and both parties agree this is a full-time course of ten months duration. The definitions in Section 1 (1) of the EAR refer to discussions on both Full-time and Part-time student.

The evidence shows that the Appellant received government funding, and therefore the Panel finds that the Appellant has met the definition under the EAR section 1 (1) as a "Full-time student".

In discussion at the hearing both parties discussed the costs associated with the Appellants application for student funding. Both are in agreement that an amount of \$7 083.00 has been received by the Appellant and that this amount was provided to cover direct education costs only. The Appellant has used the funds for tuition, tools and supplies. While the Appellant does not feel that the course of studies is fully funded, as no funds were received for living costs the Appellant does provide information in a

letter of 24 October 2019 that funding of \$16 383.00 was assessed for living expenses, but not provided by StudentAid BC as they understood the Appellants living costs were to be provided by the Ministry.

The definitions under the EAR at Section 1(1) provide clear explanation of what constitutes funded and unfunded programs of study. As the course the Appellant is currently enrolled in is 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 that the Appellant is enrolled in "a funded program of studies".

As a result of the preceding information the panel finds the funds (student financial assistance) received by the Appellant as student assistance through an education loan are classified under the EAR Section 1 (1) (q) as unearned income.

The Appellant also argues that under the EAR there appears to be extenuating circumstances where funded programs may be supported through PPMB, and provides examples of where contact with the ministry to obtain clear information by both the WorkBC counselor and the Appellant failed to elicit any information as to what funding and support was available with PPMB status.

The Panel notes that such potential funding is certainly discussed within Section 7 of the EAA and Section 1 (1) of the EAR under the regulation of employment-related program wherein each discusses potential funding.

The Appellant had written in the Notice of Appeal that not all options for education were presented to the Appellant under the PPMB designation. The Appellant testified at hearing of believing that there were options for supportive assistance from the Ministry while being in a funded training program that has not been communicated. The letter at reconsideration had also included an understanding from WorkBC that there were things that could be covered.

The Ministry had argued it was unsure as to the specifics of the statement by the student loan staff, and that while funding support is available to Persons with Disabilities, they were not aware of instances of such agreements for those on PPMB or Income Assistance.

The Appellant submits that both an employment plan and authorized training program were authorized, either with WorkBC or the Ministry through a file sharing protocol, but did not provide direct evidence to support this contention. The Ministry however has provided evidence that no Ministry approved employment plan was in place, that they do not share files directly between the agencies, that they only found out about the enrollment in the training plan in the October self-report after the Appellant had begun studies in September 2019 for which no prior authorization was granted by the Minister.

The Minister holds that while the Ministry uses WorkBC for assistance in client employment opportunities and had referred the appellant to WorkBC there was no employment plan in place and the Appellant was not required to enroll in a program of studies.

The Panel finds that there was no Minister approved employment plan in place for the Appellant and no specific requirement existed by the Minister to enroll in the program of studies.

Section 28 (b) of the EAR requires the net income of a claimant to be calculated under Schedule B. As the funds received as a loan have already been defined by the Panel as unearned income there are specific exemptions and deductions that may apply. Section 1 (d) of Schedule B requires all unearned income to be included but does allow for exemptions. Section 8 does discuss situations in which the

Minister can exercise discretion to exempt education related unearned income as the Appellant has claimed.

Section 8 (2) allows the Minister to authorize an exemption for student assistance for a student described in para (3). Section 8 (3) (b) allows discretion for part-time and full-time students for unfunded studies only and para (c) would allow a person with PPMB to be considered under section 29 (4) (h) (v), however only for a part-time student for funded studies. These situations do not apply to the appellant.

Section 8 (5) (a) refers to a part-time student in a funded program, and would allow for discretion to be applied, but these clauses do not provide for full-time students in funded programs.

As the Appellant is a full-time student enrolled in a funded program of studies the panel finds Minister discretion is not available under sections 8(2) – 8(5)(a).

Section 8 (5) (b) refers to a possible exemption under section 16 (1.1) of the EAR. The Appellant argued this exemption at hearing.

The Ministry holds that the Appellant does not qualify for the approval under section 16 (1.1) as the Appellant does not meet all three of the requirements of section 16 (1.2) in that the Appellant did not request nor receive approval from the Ministry to enroll in the program of study, does not have a dependent child or provide care to a supported child and likewise, and does not qualify for the Single Parent Employment Initiative.

These issues are not in dispute, or no evidence has been submitted to counter the Ministry's argument and the panel interprets the clauses of section 16 (1.2) must be read as concurrent and a recipient would be required to meet all three. The panel finds the Ministry's position is reasonably supported by the evidence.

Ultimately the Ministry argues in the reconsideration decision and reiterates in the hearing that under Section 16 of the EAR, the appellant is ineligible for income assistance as a result of being a full-time student in a funded program of studies.

The Panel notes that Section 56 (1) does provide an opportunity for a supplement that includes the cost of tuition, books and supplies for a family unit to participate in accordance with an employment plan, in an employment-related program. The section also allows for other costs associated with such a plan. This section does not differentiate between recipients of Income Assistance, PPMB or Persons with Disability status. The Appellant has not applied for these and are not at issue.

The panel has found the Appellant is indeed a Full-time student in a funded program of studies and no exemptions exist to section 16 (1) of the EAR that currently meet the conditions or situation of the Appellant.

For the reasons provided the panel finds the Ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the applicable legislation.

The appellant is not successful on appeal and the Panel confirms the Ministry's decision.

APPEAL NUMBER

PARTG-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)

PARTH-SIGNATURES

PRINT NAME

Donald M Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/20

PRINT NAME

Robert Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)