

APPEAL NUMBER
2020-00039

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated February 4, 2020 which held that the appellant was not eligible for income assistance because the appellant was enrolled as a full-time student in a funded program of studies.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), section 2;
Employment and Assistance Act Regulation (EAAR), sections 1, 16.
Canada Student Financial Assistance Regulations (Canada) (SOR/95-329), section 2(1).

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration consisted of the following:

1. The appellant was previously a sole recipient of income assistance;
2. The appellant was enrolled in an eight-month long trade program at a Career College (the "Program")
3. The Program was four days per week for five hours per day;
4. The appellant received funding for the Program under StudentAid BC (the "StudentAid BC loan") consisting of a Canada Student Loan and a British Columbia Student Loan;
5. The appellant received the maximum student loan amount available;
6. The amount of the student loan was only \$1,380.00 more than the cost of tuition and books for the Program; and
7. The minister did not provide prior approval for the appellant to enroll in the Program.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for income assistance because the appellant was enrolled as a full-time student in a funded program of studies was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The Relevant Legislation

The *Employment and Assistance Act* (the "EAA") and the *Employment and Assistance Regulation* (the "EAR") establishes the "conditions for eligibility" and the bases for a family unit to be "declared ineligible for income assistance."

The EAR makes a family unit ineligible for income assistance if an applicant or recipient of income assistance is enrolled as a full-time student in a funded program of studies. A full-time student is someone that is taking at least 60% or what the designated educational institution considers a full-time course load. The period of ineligibility is from the first day of the month following the month during which courses begin and ends the last day of the month in which exams are held.

EAA

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

EAR

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;

...

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.

CANADA STUDENT FINANCIAL ASSISTANCE REGULATIONS (CANADA)

Interpretation

2 (1) In the Act and these Regulations,

...

full-time student means a person

- (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute

(i) at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or

(ii) at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,

(b) whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and

(c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be; (*étudiant à temps plein*)

The Appellant's Position

The appellant's submission in the Notice of Appeal is that their ineligibility for income assistance has resulted in them not having money to pay for rent, transport and food. The appellant states that the student loan they received only covers the cost of tuition and books. The appellant states that university students are entitled to student loans that cover their tuition, books and living expenses and that the appellant should not be compared to university students. In support of their Notice of Appeal, the appellant provided the tribunal with articles from a major daily newspaper and CTV News describing the cost of housing in the city where the appellant lives and a copy of the StudentAid BC Student Guide 2019/2020.

On appeal the appellant reinforced that although they received the maximum funding limit for a student loan (\$10,880 for a 34 week program) that all of the student loan except for \$1,380.00 was paid to the Career College. Consequently, the student loan only provided \$40.58 per week to cover all the appellant's expenses.

The appellant stated that they had previously been enrolled at a university taking one or two courses per semester and they were able to receive income assistance at that time because they were able to meet the requirements of the employment plan. They switched to the Career College because they anticipated better and more immediate employment prospects than would be available if they completed their university studies.

The basis of the appeal was that the appellant did not agree that the Program was "really full time." The appellant said that it did not seem appropriate that the Career College could decide what constituted a full-time course load. The appellant stated that because the Program was less than 25 hours per week (at 20 hours per week) that it should be considered. The appellant re-enforced that the Program was a building trade program and that the Career College was a technical school and not a University. The appellant requested that the ministry exercise discretion because they believed there was inconsistency between the Career College and the university regarding what was considered a full-time course program.

The appellant stated that because they only had classes at the Career College for 25 hours a week that the appellant would still be able to meet the requirements of an employment plan and the appellant therefore expected they would be able to receive income assistance during the Program. The appellant confirmed that they did not speak with the ministry prior to enrolling in the Program or applying for student loans.

The appellant confirmed to the panel that participation in the Program was at the same rate as all the other students that enrolled at the same time and that the appellant expected to graduate at the end of the Program. The appellant was not taking a reduced course-load and expressly did not dispute that the Career College considered the Program to be a "full-time program".

The Ministry's Position

The ministry reinforced its position on reconsideration. In particular, the ministry stated:

1. The determination of what constituted a full-time program of studies is delegated to institutions both for the purpose of federal legislation (the Canada Student Financial Assistance Act and Regulations) and provincial legislation (EAA and EAR);
2. The Career College confirmed that the appellant was enrolled in a full-time program; and
3. The appellant would not have been eligible to receive the maximum funding limit under StudentAid BC unless the appellant was enrolled full-time in an eligible program of study.

The Panel's Decision

The panel notes that there was some inconsistency in the use of terms in the Reconsideration Decision and on the appeal regarding a "full time program" and a "full course load." The legislation states that a full-time student is someone enrolled in 60% or more of a course load designated by the educational institution as a "full course load." Throughout the appeal the ministry used a different term – "full time program". The material before the ministry at reconsideration indicated that the Career College considered the Program "a full time program even though it is scheduled for five 4 hour sessions per week" but there was no information before the ministry regarding what the Career College considered a full course load within that College or for that Program. We note that when the appellant first contacted the ministry on January 16, 2020 they stated that they were a part time student because they attended school only 20 hours per week.

However, the ministry did have information (not disputed by the appellant) that the appellant received the maximum funding limit under StudentAid BC and that the criteria for maximum funding is "You must be enrolled in at least 60% (40% for students with permanent disabilities) of a full-time course load."

The panel has determined that it was reasonable for the ministry to rely on the information that the appellant was the recipient of a StudentAid BC loan to determine that the appellant met the criteria of EAR section 16(1)(a) and that this made the appellant "not eligible for income assistance for the period" of the Program.

The panel reviewed the legislative structure of the EAA and EAR to determine whether the minister had the authority to exercise any discretion as requested by the appellant. The panel determined that the minister only has discretion to continue eligibility for income assistance by prior approval. The appellant did not have prior approval as required under EAR section 16(1.1) to allow for exercise of that discretion.

Conclusion

The panel finds the ministry decision of dated February 4, 2020 reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The panel confirms the ministry's reconsideration decision and the appellant is not successful on appeal.

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2019-00039

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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Mar/01

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Mar/03

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)