

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated June 4, 2020 (the “Reconsideration Decision”), which found that the Appellant’s spouse was not eligible for disability assistance because the spouse did not meet the citizenship requirements set out in section 6(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), which requires that for disability assistance to be provided to each person in the family unit who is:

- a Canadian citizen;
- authorized under an enactment of Canada to take up permanent residence in Canada;
- determined under the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)* to be a Convention refugee;
- in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act (Canada)* or on a minister’s permit issued under the *Immigration Act (Canada)*;
- in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act (Canada)*; or
- subject to a removal order under the *Immigration and Refugee Protection Act (Canada)* that cannot be executed.

**PART D – RELEVANT LEGISLATION**

Sections 1 and 1.1, *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”)  
Sections 6 and 6.1, EAPWDR

## PART E – SUMMARY OF FACTS

The Appellant has been a sole recipient of disability assistance since April 9, 1999. The Appellant contacted the Ministry on April 1, 2019 to add the Appellant's spouse to the Appellant's file.

The Appellant's spouse is currently in Canada under a work permit the ("Work Permit"), which gives the Appellant's spouse temporary residence status, pending "FC APR", which appears to mean "Family Class Application for Permanent Residence."

The information before the Ministry at the time of the Reconsideration Decision included:

- the Appellant's spouse's work permit (the "Work Permit"), which had an issue date of October 21, 2019, an expiry date of February 22, 2021, and had a notation at the bottom, which read "Temporary resident status maintained as per r183(6), pending FC APR";
- the Appellant's Request for Reconsideration, dated April 30, 2020 (the "RFR") which included a letter from an advocate for the Appellant that noted the following points:
  - the BCEA Policy & Procedure Manual (the "Manual") required proof of a Temporary Resident Permit (IMM1442); and
  - the Manual contained a notation that the IMM1442 form required special attention:

**“\*\*Special attention is required to read IMM1442 form. IRCC uses the same form- IMM 1442 for different purposes, including claim for refugee protection, Temporary resident Permit (Minister's Permit), Study Permit, Visitor Visa, Work Permit, etc. Income assistance or disability assistance is provided to applicants whose IMM1442 is issued as a Refugee Protection Claimant, or temporary Resident Permit class, which is clearly labelled in the header on the form. The status of clients with the IMM1442 should be verified with FASB – Verification of Immigration Status [see Contacts].”**

In the Notice of Appeal, the Appellant stated that that Appellant's spouse met the criteria under section 6(2)(d) of the EAPWDR because the work permit contained the notation that the "temporary resident status (is) maintained.

The Appellant also made a submission prior to the hearing (the "Submission") which included the following documents:

- the Work Permit; and
- a letter from the BC Ombudsperson (the "Ombudsperson"), dated December 13, 2019 (the "Letter"), in which the ombudsperson noted that the Appellant's spouse was on a visitor's visa and would not be eligible until that status changed and would "need to have a valid work permit or permanent residency status" before being able to collect benefits under the Appellant's file.

At the hearing, the Appellant gave the following evidence:

The appellant stated that the Work Permit was valid and that the Appellant had been advised that the spouse needed a valid work permit in order to be added to the file. The Appellant added that the Ministry did not live up to its word by not adding the spouse to the file once the Work Permit was obtained. Although the Letter makes clear that the Ombudsperson gave this advice to the Appellant, it was not clear that anyone from the Ministry advised the Appellant that this was the case. The Appellant's argument was, however, that if there was any disagreement between the Ombudsperson and the Ministry on the eligibility requirements, that further investigation ought to be required.

Both the Appellant and the Appellant's advocate pointed to the notation on the Work Permit which indicated that the Appellant's spouse's temporary residence status was "maintained" in arguing that the Appellant's spouse met the requirements of section 6(2) of the EAPWDR.

The Appellant confirmed that the Appellant's spouse did not have a temporary resident permit in addition to the Work Permit and that the Work Permit was the only immigration-related permit that the Appellant's spouse currently had. The Appellant also advised that the spouse had an outstanding application for permanent residence. The Appellant advised that this application is in the process of being finalized but was not submitted to the Ministry for what the Appellant described as privacy reasons.

The Ministry relied on the Reconsideration Decision and argued that there are many different types of permits that afford an individual temporary residence status in Canada, including a work permit. However, the Ministry noted that section 6(2) of the EAPWDR does not merely require temporary residence status in Canada but a temporary resident permit, if none of the other requirements in section 6(2) of the EAPWDR are met.

The panel admits the Submission and the oral evidence of the Appellant at the hearing of the appeal under section 22(4) as evidence that is not part of the record but reasonably required for a full and fair disclosure of all matters related to the appeal.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry reasonably determined that the Appellant's spouse did not meet the citizenship requirements set out in section 6(2) of the EAPWDR, which requires that for disability assistance to be provided to each person in the family unit who is:

- a Canadian citizen;
- authorized under an enactment of Canada to take up permanent residence in Canada;
- determined under the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)* to be a Convention refugee;
- in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act (Canada)* or on a minister's permit issued under the *Immigration Act (Canada)*;
- in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act (Canada)*; or
- subject to a removal order under the *Immigration and Refugee Protection Act (Canada)* that cannot be executed.

### *Applicable Legislation*

Section 1 of the EAPWDA defines "applicant" as follows:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

Section 1.1 of the EAPWDA defines "spouse" as follows:

### **Meaning of "spouse"**

**1.1** (1) Two persons are spouses of each other for the purposes of this Act if

- (a) they are married to each other,
- (b) they declare to the minister that they are in a marriage-like relationship, or
- (c) they have resided together for at least the previous 12 consecutive months and the minister is satisfied that the relationship demonstrates
  - (i) financial dependence or interdependence, and
  - (ii) social and familial interdependence

consistent with a marriage-like relationship.

(2) The Lieutenant Governor in Council may prescribe circumstances in which two persons are not spouses of each other for the purposes of this Act.

Section 6 of the EAPWDR sets out the citizenship requirements for eligibility for disability assistance

### **Citizenship requirements**

**6** (1) For a family unit to be eligible for disability assistance at least one applicant or recipient in the family unit must be

- (a) a Canadian citizen,
- (b) authorized under an enactment of Canada to take up permanent residence in Canada,
- (c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee,
- (d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada),
- (e) in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada), or
- (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed.

(2) If a family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is

- (a) a Canadian citizen,
- (b) authorized under an enactment of Canada to take up permanent residence in Canada,
- (c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee,
- (d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada),
- (e) in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada),
- (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed, or
- (g) a dependent child.

(3) If a family unit includes a person who is not described in subsection (2),

- (a) the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for assistance, except as otherwise provided in this regulation, and

(b) the family unit is not eligible for any disability assistance under Schedule A, hardship assistance under Schedule D or supplements under Part 5 of this regulation on account of or for the use or benefit of that person.

[am. B.C. Regs. 253/2005, s. (b); 69/2008, s. 2 (a) and (b);  
35/2020, App. 2, s. 1.]

Section 6.1 of the EAPWDR provides for certain exemptions from the citizenship requirements in section 6(1):

**Exemption from citizenship requirements**

**6.1** (1) Despite section 6 (1), a family unit that does not satisfy the requirement under that section is eligible for disability assistance if the minister is satisfied that all of the following apply:

- (a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;
- (b) the applicant or recipient has one or more dependent children who are Canadian citizens;
- (c) the applicant or recipient has separated from an abusive spouse;
- (d) the applicant or recipient has applied for status as a permanent resident under the *Immigration and Refugee Protection Act* (Canada);
- (e) the applicant or recipient cannot readily leave British Columbia with the dependent children because
  - (i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,
  - (ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or
  - (iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

(2) If the family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of

- (a) the sole applicant or sole recipient in that family unit, and

(b) each person in the family unit who is a dependent child.

[en. B.C. Reg. 198/2012, Sch. 2, s. 3.]

*Panel Decision*

The Appellant's spouse's eligibility is governed by either section 6(2) or 6.1 of the EAPWDR.

Under section 6(2) of the EAPWDR, the Appellant's spouse would be eligible for disability assistance if the family unit met the requirements under section 6(1) and 6(2) of the EAPWDR were met. Namely, at least one person in the Appellant's family unit would have to meet all of the criteria in section 6(1) of the EAPWDR, which the Ministry does not appear to have disputed, and the Appellant's spouse would have to be:

- (a) a Canadian citizen,
- (b) authorized under an enactment of Canada to take up permanent residence in Canada,
- (c) determined under the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)* to be a Convention refugee,
- (d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act (Canada)* or on a minister's permit issued under the *Immigration Act (Canada)*,
- (e) in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act (Canada)*,
- (f) subject to a removal order under the *Immigration and Refugee Protection Act (Canada)* that cannot be executed, or
- (g) a dependent child.

The Appellant's spouse is not a Canadian citizen, meaning subsection (a) is inapplicable.

The Appellant's evidence is that the Appellant's spouse currently has an outstanding application for permanent residence but that the application has not yet been finalized. In the result, subsection (b) is also not applicable.

There is no evidence that that Appellant's spouse has been determined to be a refugee or in the process of having a refugee application determined, making subsections (c) and (e) also inapplicable to the Appellant's spouse.

There was also no information to suggest that the Appellant's spouse was subject to any removal order, let alone one that cannot be executed, rendering subsection (f) inapplicable.

Finally, the Appellant's spouse is not a dependant child, making subsection (g) inapplicable, leaving subsection (d) as the only possible basis for entitlement to disability assistance under section 6(2) of the EAPWDR.

Subsection (d) makes clear that a temporary resident *permit* is required in order to establish eligibility for disability assistance under section 6(2) of the EAPWDR. Temporary residence status, which appears to be attached to a number of types of permits that share the same form number, IMM1442 (including the Work Permit), is not sufficient to establish an entitlement to disability assistance, despite the information unfortunately conveyed to the Appellant by the Ombudsperson to the contrary. Presumably for that reason, a reminder appears in the Manual and urges Ministry staff to be cautious when reviewing the IMM1442 form with a reminder that only those persons with an IMM1442 form that is for a temporary

resident permit or is a refugee protection class form are eligible for disability assistance under the legislation.

In the result, the panel finds that the Ministry was reasonable in its finding that the Appellant's spouse does not qualify for disability assistance under section 6(2) of the EAPWDR.

Section 6.1 lists a number of exemptions from the citizenship requirements under sections 6(1) and 6(2) of the EAPWDR. In order to be eligible for disability assistance under 6.1, however, all of the following criteria must be met:

- (a) the applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;
- (b) the applicant or recipient has one or more dependent children who are Canadian citizens;
- (c) the applicant or recipient has separated from an abusive spouse;
- (d) the applicant or recipient has applied for status as a permanent resident under the Immigration and Refugee Protection Act (Canada);
- (e) the applicant or recipient cannot readily leave British Columbia with the dependent children because
  - (i) a court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,
  - (ii) another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or
  - (iii) the applicant or recipient, or a dependent child of the applicant or recipient, is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

The evidence before the Ministry at the time of the Reconsideration Decision and before the panel in the hearing of the appeal indicates that the Appellant's spouse meets the criteria of subsection (d) of section 6.1 of the EAPWDR but does not meet the criteria required under subsections (a), (c), or (e) of section 6.1 of the EAPWDR. In the result, the panel finds that the Ministry reasonably determined that the Appellant's spouse does not qualify for disability assistance under section 6.1 of the EAPWDR.

The Appellant is not successful in this appeal.



APPEAL NUMBER  
2020-00171

**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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 July 21

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 July 21

PRINT NAME

Janet Ward

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 July 22