

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("ministry") reconsideration decision dated December 23, 2020 in which the ministry determined that the appellant is not eligible for Income Assistance.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act (EAA)*– Section 2  
*Employment and Assistance Regulation (EAR)* – Sections 1 and 16

## PART E – SUMMARY OF FACTS

The appellant is a recipient of income assistance in a family unit consisting of the appellant and a dependent child under 3 years old.

On August 26, 2020 the appellant advised the ministry that they planned to attend university in September 2020. The ministry requested additional information. The appellant provided the following:

- University attendance dates of September 8th to April 8<sup>th</sup>;
- The type of degree program the appellant intended to pursue;
- The appellant's receipt of a tuition waiver from another ministry;
- Notice of the appellant's application for bursaries and grants to cover education tool costs;
- The appellant's plan to return to their previous job for 1-2 shifts per week;
- Notice of the appellant's application for child care subsidy;
- A question relating to the appellant's pre-deductions earning allowance;
- The appellant's rationale for pursuing this educational course;
- A letter of acceptance; and
- The appellant's timetable.

On August 27, 2020 the ministry reviewed the appellant's file and determined that the appellant was eligible to continue receiving income assistance while they are a full-time student enrolled in a funded program of studies.

On October 26, 2020 the ministry notified the appellant that they were reviewing the appellant's file.

At some point between November 13, 2020 and November 25, 2020, the appellant was advised that they were not eligible to receive income assistance while they are a full-time student enrolled in a funded program of studies.

On November 25, 2020 the appellant submitted a request for extension of time to make a Request for Reconsideration. The appellant indicated that they were waiting for additional information from another ministry and needed this information to complete the forms accurately. The appellant requested a reconsideration supplement to pay December rent.

On December 14, 2020 the appellant submitted the following to the minister:

*I am in need of financial help. I was told by a worker at the [omitted] location that I would be able to receive income assistance while attending university. I made the decision to attend university so that I may pursue a career as a [omitted]. As a single [parent], I want to build a life for myself and my [child] and no longer need to rely on financial assistance. With the high cost of rent in [omitted], I am struggling enough already. I fear that I may not be able to afford to live here so that I can attend school without financial help. For this reason I am requesting reconsideration so that I can continue to build a future for my [child] and I.*

On December 23, 2020 the ministry issued its reconsideration decision.

With the consent of both parties under section 22(b) of the EAA, this appeal was determined by way of a written hearing. Additional information before the panel on appeal consisted of the following:

### **Notice of Appeal**

In the Notice of Appeal dated December 25, 2020, the appellant stated that they disagree with the reconsideration decision. The appellant argued that they are a single parent in need of financial help to build a future for their self and their child so they no longer need to rely on assistance.

### **Appeal Submissions**

The appellant did not make appeal submissions.

The ministry relied on the reconsideration decision.

### **Admissibility**

The panel finds that the information provided in the appellant's Notice of Appeal consisted of argument and does not contain any new information requiring an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant is not eligible for Income Assistance because they are a full-time student is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

### Legislation

The following section of the *EAA* applies to this appeal:

#### **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.

The following sections of the *EAR* applies to this appeal:

#### **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.

### **Analysis**

Initially, in August 2020, the ministry determined that the appellant was eligible for continued income assistance as a full-time student enrolled in a funded program of study. Then, in November 2020, the ministry determined that the appellant was not eligible for continued income assistance as a full-time student enrolled in a funded program of study. In the reconsideration decision, the ministry similarly determined that the appellant has been found ineligible for income assistance because of their status as a full-time student attending a funded program of studies.

On appeal, the panel must, in accordance with section 24 of the EAA, determine whether the decision under appeal is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The panel notes that section 80 of the EAR requires that the ministry provide a written determination on reconsideration, which amounts to a legislative requirement to provide written reasons. In the absence of such reasons, the panel is unable to properly exercise its function under section 24 of the EAA.

The panel is cognizant of the administrative law jurisprudence regarding inadequacy of written reasons where such reasons are required and takes direction from the Supreme Court of Canada (SCC), in particular, in this regard. The SCC, referring to its own *Dunsmuir* (2008 SCC 9) decision, further clarified the task of reviewing bodies in directing them to look at the qualities that make a decision reasonable, referring to both the process of articulating the reasons and outcomes. The SCC adds to this jurisprudence in *Canada (Attorney General) v. Igloo Vikski Inc.* (2016 SCC 38), in which it states “[w]hile the adequacy of a tribunal’s reasons is not on its own a discrete basis for judicial review, the reasons should ‘adequately explain the bases of [the] decision’” (para. 18).

The ministry’s entire decision is as follows:

*The ministry notes you have a child under the age of 3 and therefore you do not have employment obligations and would be able to attend part-time studies and it would not affect your eligibility for income assistance.*

*However, you are enrolled as a full-time student in a funded program of studies with the [educational institution] for the 2020-2021 Winter session.*

*Therefore, as you are attending school as a full-time student in a funded program of studies, you are not eligible for income assistance as per section 16 of the EA regulation.*

*I trust this information will be useful in your understanding of the ministry’s decision.*

The appellant’s position is that they are a single parent who sought permission from the ministry prior to undertaking their educational path. The appellant specifically advised the ministry of their plan and sought permission from the ministry to undertake that path. The appellant checked with the ministry to ensure that their eligibility for income assistance would not be impacted by this educational pursuit and was transparent in providing the ministry with their timetable and funding information. The appellant was provided with a determination by the ministry that they were eligible to continue to receive income assistance as full-time student attending a funded program of studies. The appellant relied on this determination to pay for their tuition, purchase the needed

educational tools and books required, and move with their child to another (and according to the appellant's evidence, more expensive) city to engage in the approved program of study. A few months later, the review decision and reconsideration decisions contained the opposite determination.

The panel finds that the ministry has not provided sufficient rationale or analyses for its conclusions, nor has it provided a written account of its consideration and weighing of the evidence before it. The ministry's approach to simply listing conclusions, without reference to the applicable legislative requirements also does not adequately explain the bases of the ministry's decision. The panel finds this failure to provide reasons unreasonable, particularly in the context of an appellant who has previously received the opposite determination from the ministry.

While the ministry is always obliged to provide reasons on reconsideration, the panel finds the discharge of this obligation to be even more important for ministry clients in receipt of a changing decision where there is no apparent change of circumstances. In the event that the ministry has found there to be a change of circumstances, this finding should be clearly and transparently set out in the reconsideration decision accompanied by the appropriate analysis. In the current appeal, the reconsideration decision contains no such finding or analysis. The panel finds that the reconsideration officer has failed to provide an adequate explanation for its determination regarding the appellant's eligibility for income assistance, rendering the decision unreasonable.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, determining that the appellant was not eligible for income assistance, was not a reasonable application of the legislation in the circumstances of the appellant and was not reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.

APPEAL NUMBER  
2020-00288

**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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

29 January 2021

PRINT NAME

Wes Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

1 February 2021

PRINT NAME

Jan Broocke

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2 February 2021