

APPEAL NUMBER
2021-00054

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 February 22, 2021 which held that the appellant is not eligible for income assistance as a single underage applicant because her aunt must apply for assistance on their behalf as a family unit of two.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) section 1
Employment and Assistance Regulation (EAR) sections 1, 5

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

- The appellant has applied for income assistance as an underage applicant with no dependents.
- She is under 18 years of age, arrived in Canada in 2018 on a student visa, is attending school fulltime, and residing with her aunt. Her parents live in another country.
- The appellant states that her parents are no longer able to financially support her. Her aunt also states that she is not able to support the appellant.
- On her income assistance application the appellant reports that she is unable to return to the other country and may go to jail because she is not in support of certain traditions. She reports she has refugee status.
- The appellant has submitted an *Acknowledgement of Claim and Notice to Return for Interview* from the Government of Canada, confirming they received a refugee claim application from her on December 29, 2020.
- In her request for reconsideration the appellant writes that
 - she is in a hard and critical situation due to not having any financial support, has financial pressures, which causes her to feel unsafe and unprotected.
 - She would not ask for financial assistance if she could work.
 - She is a young girl who seeks to be a refugee to Canada as her life is in danger in the other country, and she requests the ministry make an exception and help in this crisis situation.
 - The appellant's family in the other country cannot support her as they are struggling in a corrupted country.
 - Corruption, economical issue as well as the pandemic crisis puts the appellant's immediate family in a hard situation to provide for their own basic needs; they lost their own regular incomes and cannot support her financially.
 - Her aunt cannot financially support her; she is on Long Term Disability and sick leave, provides her with shelter but cannot support her financially.
 - The pandemic crisis makes life hard for everyone.
 - The appellant is a person with basic needs, requests assistance, and will not rely on the Ministry for a long time
 - As soon as she gets a work permit she will start working and be independent.
 - Life is getting harder and the pressures make it hard to concentrate on her education.

The panel accepts the appellant's March 22, 2021 appeal submission as argument. It is composed by the appellant's legal counsel who represents her with respect to her refugee claim and in the matter of the ministry's denial of social assistance.

In its appeal submission dated March 31, 2021 the ministry states the following: "After reviewing [the appellant's] written submission and supporting evidence, the ministry accepts that her aunt is not her "guardian" or "parent"; she is not her aunt's "dependent child"; and [the appellant] is the sole member of her family unit. Therefore, the ministry does not contest that she should not be denied income assistance because her aunt must apply for assistance on their behalf as a family unit of two."

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant income assistance was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when it determined that the appellant is not eligible for income assistance as a single underage applicant because her aunt must apply for assistance on their behalf as a family unit?

Panel Decision

Section 5(1)(a) sets out that an adult in the family unit must apply for income assistance unless the family unit does not include an adult. A "family unit" means an applicant or a recipient and their dependents. A "dependent child", with respect to a parent, means a child who resides in the parent's place of residence and relies on that parent for the necessities of life (EAA section 1). Section 1 of the EAR sets out that a guardian is considered a "parent" according to this regulation.

The ministry's position at reconsideration was that the appellant's aunt meets the definition of the appellant's "parent". The aunt is the appellant's legal guardian because she resides with her niece. Her niece relies on her for the necessities of life. The appellant confirms her aunt is her guardian. The appellant and her aunt meet the definition of a "family unit" with the appellant as her "dependent child". That is the reason why the aunt as the adult in the family unit must apply for income assistance. The under-aged appellant on her own was not eligible for assistance as a single applicant.

The appellant's legal counsel argues that the ministry analysis is faulty; there is no evidence to suggest that the aunt is the appellant's legal guardian as defined by legislation. The appellant's parents authorized her aunt to act as a custodian, not as a legal guardian. The aunt's role is assisting the appellant in her life as a minor student, responding to emergencies, and making decisions about educational and health matters. The aunt's custodian role does not include financial support. The scope of custodianship for immigration purposes is not one and the same as legal guardianship. The parents have not bestowed full parental rights to the aunt, and, specifically, there is no financial obligation on the aunt with respect to the appellant's financial needs in Canada. Consequently, the appellant's aunt is not a "parent" and the appellant's family unit does not include the aunt but consists of one person only - the appellant. Section 5(1)(a) applies because the appellant is on her own as an unaccompanied refugee claimant and the family unit therefore, does not include an adult in this instance.

The panel finds that the ministry based its denial at reconsideration on the assumption that the appellant's aunt is the appellant's guardian and the appellant is the aunt's "dependent child" who resides with her and relies on her for the necessities of life. The panel finds that even though the appellant resides with her aunt, there is not enough evidence that the appellant relies on her aunt for all the necessities of life including financial support. If an adult lives with an under-age person it does not automatically make the adult a legal guardian. Because of this lack of evidence, the panel finds the ministry was not reasonable when it determined that the aunt was the appellant's guardian or "parent" and as such a member of the appellant's "family unit".

Based on the above analysis the panel finds the ministry was not reasonable when it determined that the appellant is not eligible for income assistance as a single underage applicant whose aunt must apply for assistance on their behalf as a family unit of two.

Conclusion

The panel finds that the ministry's decision to deny the appellant income assistance as a single underage applicant was not reasonably supported by the evidence. The panel overturns the ministry's reconsideration decision and the appellant is successful on appeal.

Relevant Legislation

Employment and Assistance Act

Interpretation

1 (1) In this Act:

"child" means an unmarried person under 19 years of age;

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2) but excludes a child in circumstances prescribed under subsection (2.1);

"family unit" means an applicant or a recipient and his or her dependants;

Employment and Assistance Regulation

Definitions

1 (1) In this regulation:

"parent", in relation to a dependent child, includes the following ...

(a) a guardian of the person of the child, other than

(i) a director under the *Child, Family and Community Service Act*, or

(ii) an administrator or director under the *Adoption Act*;

(b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);

Applicant requirements

5 (1) For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless

(a) the family unit does not include an adult, or

...

(2) A child who is not residing with the child's parent is not eligible to receive assistance unless, after reasonable efforts by the minister to have the parent assume responsibility for the financial support of the child, the minister decides to grant income assistance to the child.

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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

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/04/12

PRINT NAME

Arshdeep Dhaliwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/13

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/13