

APPEAL NUMBER
2021-0105

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 17, 2021 which found that the appellant is not eligible for income assistance (IA), pursuant to Section 7 and 7.1 of the *Employment and Assistance Regulation* (EAR). In particular the ministry found that the appellant:

- Has a Temporary Resident Visa and not a Temporary Residency Permit which is required pursuant to section 7 of the EAR.
- Is a sole applicant with dependent children who has fled an abusive spouse however, her children are not Canadian citizens pursuant to section 7.1 of the EAR.
- Has not provided any evidence to confirm that she could not readily leave BC because that would be in contravention of a court order, agreement or other arrangement, or the ex-spouse has claimed custody, guardianship, or access rights to the children or that she or her child is being treated for a medical condition and leaving BC would cause imminent danger to her or the child's physical health.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation – EAR – section 7 and 7.1

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

1. Identification for the appellant and her two children which consisted of birth certificates, passports, and the appellant's driver's license.
2. Copies of the Canadian Visa dated December 27, 2020, for the appellant and her two children.
3. The appellant's Visitor Record from Immigration, Refugee and Citizenship Canada (IRCC).
4. Employment and Assistance or Employment and Assistance for Persons with Disabilities application direct deposit and a copy of the appellant's void cheque.
5. The appellant's bank statements from January 11, 2021 to April 11, 2021.
6. Bank Profile and Consent dated April 14, 2021 which shows 2 active accounts for the appellant and one closed account as of February 19, 2021.
7. Letter dated March 3, 2021, from IRCC addressed to the appellant's spouse confirming that the spouse is eligible to sponsor the appellant as a member of the family class.
8. Shelter Information for the appellant dated April 14, 2021.
9. Information/Documentation checklist dated April 13, 2021.
10. Application for Assistance which is undated and unsigned.
11. Request for Reconsideration (RFR) dated April 27, 2021, in which the appellant stated the following:
 - Has been living in Canada since June 2019.
 - An application for permanent residency was submitted in April 2020.
 - She fled her family home on March 30, 2021 due to verbal, psychological and financial abuse.
 - Currently the appellant is living in a safe house.
 - She is unable to work in Canada and therefore has no source of income.
 - She has pending rental housing but needs confirmation from the ministry before proceeding.
 - May need to return to her home country but the father of her children (which is her legal husband) will fight this.
 - She has no support from her husband.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated May 17, 2021, and appeals to the ministry to reconsider her situation as it is unique and reiterates the information provided in the RFR.

The panel considers the information in the NOA to be the appellant's argument.

Evidence at the Hearing

At the hearing, the appellant relied on the information in evidence and, in part, indicated the following:

- She came to Canada in good faith that her husband would support her and sponsor her as a resident.
- The requirements for IA are very specific and leaves no consideration for people who do not fit within those specific limitation.
- Since she is no longer with her husband, his sponsorship to Canada is void and she will be denied on this basis. She said that she has been told by her immigration lawyer that her application to remain in Canada will now be on the basis of "humanitarian and compassionate

grounds”.

- She does not have a formal custody agreement with her husband. Therefore, technically she can leave the country with her children, but the husband could claim kidnapping.
- She does not want to uproot her children as they have built a community in Canada.
- She does not want permanent IA but needs help until she has status in Canada.

At the hearing, the ministry relied on its reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for income assistance (IA), pursuant to Section 7 and 7.1 of the EAR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, the ministry found that the appellant:

- Has a Temporary Resident Visa and not a Temporary Residency Permit which is required pursuant to section 7 of the EAR.
- Is a sole applicant with dependent children who has fled an abusive spouse however, her children are not Canadian citizens pursuant to section 7.1 of the EAR.
- Has not provided any evidence to confirm that she could not readily leave BC because that would be in contravention of a court order, agreement or other arrangement, or the ex-spouse has claimed custody, guardianship, or access rights to the children or that she or her child is being treated for a medical condition and leaving BC would cause imminent danger to her or the child's physical health.

The applicable legislation is as follows:

Citizenship requirements

7 (1) For a family unit to be eligible for income 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.

Exemption from citizenship requirements

7.1 (1) Despite section 7 (1), a family unit that does not satisfy the requirement under that section is eligible for income 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

The Appellant's Position

The appellant argued that the strictive nature of the legislation does not take into consideration unique situations such as hers. She is in the process of obtaining status in Canada and does not want to be on IA for a lengthy period. She needs assistance now because she had to leave an abusive relationship and is appealing to the ministry on compassionate grounds for assistance.

The Ministry's Position

The ministry argued that the appellant does not meet the citizenship requirements or the citizenship exemption requirements and therefore she is not eligible for IA.

The Panel's Decision

Section 7 of the EAR

The legislation sets out that in order for a family unit to be eligible for IA one family member must be a Canadian citizen, authorized to take up permanent residence in Canada, a Convention refugee, have a temporary resident permit, in the process of having a refugee claim decided or subject to removal from Canada that cannot be executed. While the appellant said that she has been told by her immigration lawyer that her application to remain in Canada will now be based on humanitarian and compassionate grounds, this is not sufficient evidence to show that the appellant is "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)*".

The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility requirements for IA pursuant to section 7 of the EAR.

Section 7.1 of the EAR

The legislation sets out that if a family unit does not meet eligibility pursuant to section 7, it can be

exempt if it meets all of the requirements of section 7.1. In its reconsideration decision, the ministry noted specific criteria of section 7.1 that the appellant has not met. Among other requirements, to be exempt from the requirements of section 7 of the EAR, the applicant must (b) have one or more children that are Canadian citizen and (e) the applicant cannot leave BC with a dependent child due to a court order, custody claim, or the applicant or child is being treated for a medical condition and leaving BC would cause imminent danger to their health.

The evidence provided by the appellant does not demonstrate that any of these conditions apply to her. In evidence are the children's birth certificates demonstrating that they were born outside of Canada and no information was provided to indicate that the children are Canadian citizens. Furthermore, when asked at the hearing, the appellant stated that she has a verbal agreement with her husband but no formal arrangement regarding custody/guardianship of the children. Without the sufficient evidence, it cannot be determined that the legislative requirements have been met.

The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility requirements for IA pursuant to section 7.1 of the EAR.

Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for IA, pursuant to Section 7 and 7.1 of the EAR, as the appellant does not meet the citizenship requirements or the citizenship exemption requirements, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/04

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/04

PRINT NAME

Dawn Wattie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/04