

Appeal Number 2022-0011

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 11, 2022, in which the ministry found the appellant is not eligible for income assistance ("IA") under sections 1 and 16 of the Employment and Assistance Regulation ("EAR") because the appellant's spouse ("the spouse") is currently enrolled as a full-time student in a funded program of studies, without prior approval from the ministry.

**Part D – Relevant Legislation**

Employment and Assistance Regulations sections 1 and 16

(Detailed legislation can be viewed in the Appendix)

**Part E – Summary of Facts**

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The appellant is in receipt of income assistance as part of a family unit that includes two parents and two children. The spouse is designated as a Person With Persistent Multiple Barriers (PPMB).

The information that was before the ministry at reconsideration included:

- An undated letter from the ministry to the appellant requesting student loan information, with regards to the spouse attending schooling, prior to October 8, 2021. The ministry had been notified by a data match with Student Aid BC that the spouse had applied for a student loan.
- An undated Student Aid BC Application form showing the spouse applied for student aid.
- A letter from a college dated December 7, 2021 confirming the spouse is currently enrolled in a program from September 7, 2021 to April 29, 2022. Included were the funding details that show a Total Award of \$10,277 with \$3,138 to be issued September 7, 2021 and \$5,139 to be issued January 2, 2022.
- A letter dated December 14, 2021 to the appellant indicating after a review of their file income assistance was being denied due to the spouse being in full-time attendance at school.
- Ministry Monthly Reporting forms (stubs) dated September 2, 2021 and October 3, 2021. Both stubs were signed by the appellant and the spouse, and declared that assistance was still required, not in attendance at school, and no other changes to report. All income was reported as zero, other than for the Child Tax Benefit.
- A Request for Reconsideration (RFR) signed by the appellant on December 24, 2021. As the reasons for requesting a reconsideration, the appellant wrote “they are attached in three pages”, which were:
  - A letter dated December 16, 2021 from the spouse’s physician indicating the spouse is a patient and not able to work, and that a disability form is in the process. The physician added the spouse was not able to work from October 1, 2021 to the end of December 2021 and they required assistance until approval of their disability form.
  - A three-page letter dated November 11, 2021 confirming the spouse had a consultation with a mental health specialist. The letter provided the history of the illness, a diagnosis of a mental health disorder and a treatment plan.

In the Reconsideration Decision (the RD), the Reconsideration Officer added that the ministry ran a Student Financial Assistance System Student Loan Inquiry on January 11, 2022, which reported the spouse was in a program with a course load of 60% and that the original assessment of \$10,277 was reassessed October 28, 2021. The award was increased to \$15,077 with scheduled disbursements as follows:

- \$3,138 produced August 31, 2021
- \$2,000 produced September 14, 2021
- \$7,139 produced December 23, 2021
- \$2,000 scheduled January 2022 (not yet produced)

- \$800 scheduled February 2022

The ministry indicated that although the spouse was in the process of applying for Persons With Disabilities (PWD) designation it had not been approved as of the date of the RD.

### **Additional Information**

On the Notice of Appeal form (NOA) dated January 17, 2022 the appellant wrote "I added all my documents." Attached was the entire Record of Ministry Decision.

The appellant's written submission was received on March 3, 2022 and included a letter dated November 26, 2021 from Student Aid BC which informs the spouse that permanent disability status has been approved and that they may be eligible for the Canada Student Grant for persons with Permanent Disabilities for all years of post-secondary studies. Also included with the written submission was the entire Record of Ministry Decision.

The ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

### **Admissibility of Additional Information**

The panel admits the appellant's NOA and letter from Student Aid BC under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's determination that the appellant is ineligible for IA under sections 1 and 16 of the EAR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant is not eligible for IA because the spouse is a full-time student in a funded program of studies, without prior approval from the ministry?

The appellant's position is that the family unit remains eligible for IA despite full-time school attendance as the spouse has a medical condition and is in the process of applying for disability designation.

The ministry's position is the spouse is enrolled in a full-time program of study and did not have the prior approval of the minister to attend therefore the family unit is not eligible for IA.

**Panel Decision**

The appellant provided several letters from the spouse's doctors to confirm that the spouse has a medical condition. The RD indicates the spouse is in the process of applying for PWD designation, however at the time of the decision it had not yet been approved. The RD writes that if the spouse had PWD designation, prior approval to attend school would not be required. The panel appreciates that it may be confusing to the appellant because the spouse received notification from the Ministry of Advanced Education (MAE) stating that the spouse's permanent disability status had been approved. However, having approved permanent disability status from MAE for purposes of additional student loan grants does not confirm the spouse has been designated as a PWD with the ministry. At the time of the RD, the family unit was in receipt of income assistance, therefore, sections 1 and 16 of the EAR are the relevant legislation pertaining to the eligibility of a full-time student in a funded program of studies.

Section 1 of the EAR defines a "funded program of studies" as a program of studies for which funding is provided to students under the *Canada Student Financial Assistance Act* (CSFAA). The evidence confirms the spouse applied for Student Financial Aid and received an initial assessment of Student Financial Assistance in August 2021 that indicates they were to receive \$10,277 over the course of their studies. The ministry noted in the RD that on January 11, 2022, the Reconsideration Officer ran a Student Financial Assistance System Student Loan Inquiry which indicated the spouse's request for funding had been reassessed on October 28, 2021 and the award was increased to \$15,077. Although there was no copy of the Student Loan data inquiry provided by the ministry to confirm this amount, the panel considers it reasonable that the spouse's award was increased after the Ministry of Advanced Education notified them that they may be eligible for additional funding through the Canada Student Grant for Persons with Permanent Disabilities.

Section 16(1) of the EAR sets out that a family unit is not eligible for IA for the period described if they are enrolled as a full-time student in a funded program of studies. The appellant does not dispute their spouse is in attendance as a full-time student or that the spouse received funding.

As a full-time student in a funded program of studies, the spouse would need to meet the

exceptions set out in subsections 1.1 or 1.2 of section 16 of the EAR for the family unit to continue to be eligible for IA.

Subsection 1.1 sets out that a family unit is eligible for income assistance if it includes a recipient who has obtained the prior approval of the Ministry before commencing a full-time funded program of studies. The Appeal Record contains copies of two monthly reporting forms dated September 2, 2021 and October 3, 2021 which indicate the spouse responded “No” to the question “Since your last declaration are you attending/enrolled in school/training?” There is no evidence that the spouse obtained the prior approval of the Ministry, nor did they report to the ministry they were attending school or that they had received student grant funds.

Subsection 1.2 provides that the minister may approve a person to enroll in a funded program of studies if they enrolled as a condition of an employment plan, which is not the spouse’s circumstance.

Therefore, the panel finds the Ministry reasonably determined that the family unit is not eligible for income assistance for the period set out in subsection 2 of section 16 of the EAR.

Subsection 2 of section 16 of the EAR sets out that the period of disentitlement begins on “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.” In the spouse’s circumstance, the period of study is September 7, 2021, to April 29, 2022. In the RD the ministry did not set the months of ineligibility as being October 2021 to April 30, 2022, only that the family unit is not eligible for assistance while the spouse is in attendance as full-time student in a funded program of studies. As the spouse is in attendance as a full-time student in a funded program of studies, the panel finds that determination to have been a reasonable application of section 16(2) of the EAR.

### **Conclusion**

The Panel finds that the ministry reasonably determined that the appellant is not eligible to continue to receive income assistance while the spouse is enrolled as a full-time student in a funded program of studies. The Panel confirms the ministry decision. The appellant is not successful on this appeal.

### **APPENDIX**

### **LEGISLATION**

#### **Income Assistance Regulations**

#### **Section 1 “definitions”**

"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;

"student financial assistance" means funding provided to students under

- (a) the British Columbia Student Assistance Program,
- (b) the *Canada Student Financial Assistance Act*, or
- (c) a similar program provided by another province or jurisdiction;

## Section 16

### 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 recipient of income assistance,
- (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 2 years.

APPEAL NUMBER 2022-0011

**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)

Section 24(2)(a)     or Section 24(2)(b)

**Part H – Signatures**

Print Name

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2022 March 15

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2022 March 15

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2022 March 15