

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 31, 2022 which denied the appellant's request for Income Assistance (IA) pursuant to the *Employment and Assistance Regulation* (EAR) section 7(1).

The ministry found that the appellant has not provided enough information to establish that he currently meets the citizenship requirements to be eligible for IA.

Part D – Relevant Legislation

Employment and Assistance Act (EAA) – sections 1, 2 and 4

Employment and Assistance Regulation (EAR) – sections 1, 7, and 7.1

Part E – Summary of Facts**Evidence at Reconsideration**

1. Email from the appellant to the Canadian Border Services Agency (CBSA) requesting confirmation of a 'stay on the removal order' pending federal court determination and if the appellant's work permit is valid. [dated December 20, 2021]
2. Email from the CSBA to the appellant dated January 7, 2022 stating that the CBSA does not deal with work permits and that the appellant should contact Immigration, Refugee and Citizenship Canada (IRCC).
3. Email from the appellant to the ministry outlining his arguments (as indicated in the RFR) and giving consent to the ministry to directly inquire with CBSA on his behalf.
4. Email from the appellant to IRCC dated December 20, 2021 requesting confirmation of 'stay order or removal order'.
5. Email from IRCC to the appellant dated December 20, 2021 outlining the types of inquiries it is currently responding to and the appellant's request is not listed.
6. Undated screenshot "Apply for replacement RPCD Coronavirus disease (COVID-19): Safety measures We aren't replacing RPCD's right now. Expired RPCD's should be considered valid until further notice. Get services if our refugee documents are expired, lost or were stolen".
7. Refugee Protection Claimant Document (RPCD) which was issued on June 21, 2017 and expired on June 21, 2019.
8. Work Permit which was issued on December 7, 2020 and will expire on July 31, 2022.
9. Request for Reconsideration (RFR), signed and dated January 31, 2022, which, in part, argued the following:
 - The ministry stated that it attempted to verify the appellant's status in Canada but was unable to obtain such information and the appellant must do so directly.
 - Pursuant to section 30 of EAA, the ministry has the legislative authority to enter into an agreement with CBSA to obtain the information it requires and by insisting that the appellant obtain such information the ministry has placed the burden of proof on an already vulnerable individual.
 - The ministry's decision inadequately examines section 7 (1) (f) and has requested a letter stating that the current status of any removal orders. The appellant called CBSA and received verbal confirmation that he has a stay on a removal order pending federal court case. However, the ministry will not accept this verbal confirmation.
 - The ministry is arbitrarily requiring more information than the legislation needs effectively setting a bar that the appellant cannot meet.
 - The ministry points out that the appellant's RPCD has expired. IRCC's website states that it is not replacing expired RPCD documents and expired RPCD documents should be considered valid until further notice. This valid RPCD evidence meets the requirements of EAR section 7(1)(f).
 - Since the ministry has the resources and the ability to enter into agreements with other government of Canada agencies, it would be appropriate and procedurally fair to place the burden of proof on the provincial public office rather than burdening already vulnerable groups seeking emergency means.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated February 21, 2022, which argued that that the citizenship requirement has been met.

Evidence Prior to the Hearing

Prior to the hearing both the appellant and the ministry presented submissions which the panel considered and discusses in its decision.

Part F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for IA because enough information was not provided to establish that he currently meets the citizenship requirements to be eligible for IA pursuant to EAR section 7(1), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Panel's Decision

The appellant, in this case, is not a citizen of Canada and this is not disputed by the appellant. The appellant is also a sole applicant and without dependent children who are Canadian citizens. Therefore section 7.1 of the EAR does not apply in this case. The appellant may be exempt from the citizenship requirement if he meets any of the criteria of section 7(1) of the EAR.

The evidence provided demonstrates that the appellant does not meet the criteria of section 7(1) (a) - (d). That is, (a) he is not a citizen, (b) he is not authorized to take up permanent residence in Canada, (c) he is not deemed to be a Convention refugee and (d) he does not have a temporary residence permit issued under the Immigration Refugee Protection Act (IRPA). The appellant has not disputed this and did not argue that he meets these subsections of section 7(1) or the EAR.

The ministry argued that the appellant has not provided enough information to demonstrate that the requirements of subsection (e) have been met. That is, the evidence does not demonstrate that the appellant is in the process of having a claim for refugee protection, or application for protection, determined or decided under the IRPA. The ministry argued that the RCPD that the appellant submitted expired on June 21, 2019 and no current information regard the appellant's status in Canada has been provided. The work permit provided by the appellant does not speak to his citizenship status in Canada. The appellant has argued that the expired RCPD is considered valid because IRCC is not replacing expired RCPDs due to Covid-19. He has provided a screen shot of this statement and verbally communicated this information to the ministry. The ministry argued that it cannot accept a verbal communication from the appellant as proof. The panel notes that the source and date of the screenshot are not stated. The panel also notes that the appellant's RCPD expired approximately 9-10 months before Covid-19 caused any disruptions in government services in Canada. The appellant has not provided evidence that demonstrates that his RCPD is part of the Covid-19 protocols adopted by IRCC. Without current information regarding the status of the RCPD it is unclear what the appellant's status is in Canada. The panel finds that the ministry was reasonable in its determination that the appellant has not met the requirements of section 7(1)(e) of the EAR.

The ministry argued that the appellant has not provided enough information to demonstrate that the requirements of subsection (f) have been met. That is, the evidence does not demonstrate that the appellant is subject to a removal order under the IRPA that cannot be executed. The appellant has provided a work permit and expired RCPD. The evidence does not include a removal order that has been stayed. The panel finds that the ministry was reasonable in its determination that the appellant has not met the requirements of section 7(1)(e) of the EAR.

Prior to the hearing the appellant submitted his arguments in an effort to demonstrate that the ministry has placed undue burden on him, and that ministry's decision seems arbitrary and in contravention of the legislation. The panel's jurisdiction is to determine if the ministry's decision was reasonable. In doing so, the panel considered the appellant's arguments and provided an analysis of the evidence and an opinion about his arguments.

In his submission prior to the hearing, the appellant has argued that the main dispute with the ministry is about proof of identity. To this, the appellant argued that he has provided a social insurance number, work permit and RPCD. He has also argued that if proof of identity is not provided the ministry can still provide IA pursuant to section 41 of the EAR. In its submission prior to the hearing the ministry argued that the reason for the appellant's denial is not based on proof of identity. It is based on the appellant not meeting the citizenship requirements and therefore section 41 of the EAR does not apply. The panel notes that in its reconsideration decision, the ministry made no mention that the appellant failed to provide a social insurance number or proof of identity or that this is the basis of the denial. The evidence demonstrates that the appellant's identity has been provided. The panel finds that section 41 of the EAR does not apply in this case.

The appellant noted that section 10 (4) (b) of the EAA allows the ministry to declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period if the applicant or recipient fails to comply with a direction of the ministry. The appellant argued that he informed the ministry that IA is his sole source of income and that he is at risk of eviction. The appellant argued that section 32 of the EAR provides provisions in such cases and the ministry failed to consider this. Section 32 of the EAR stipulates that section 10 (4) (b) of the Act does not apply if the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless. The panel finds that the evidence does not demonstrate that the appellant was facing eviction at the time of the reconsideration decision or that IA is his only source of income.

The appellant argued that he has exhausted all means to obtain the information the ministry requested. He verbally stated this to the ministry and provided copies of his emails to IRCC and CBSA. The appellant argued that he is unable to obtain the information the ministry has requested but the ministry has the legislative ability to obtain this information on his behalf and he has given written consent for the ministry to obtain this information. The appellant argued that pursuant to section 30 of the EAA, the ministry has the ability to enter into an agreement with the government of Canada or an agency of the government of Canada to obtain the information necessary to meet the criteria of section 7(1). He argued that by not doing so in this case, the ministry is placing an undue burden on the appellant who is a part of a vulnerable group. In its submission, the ministry argued that it does have an existing information sharing agreement with IRCC but not with CBSA. Therefore, any information needed from CBSA must be obtained by the appellant. In its submission, the ministry also outlined the steps the appellant must take in order to obtain the necessary information on the CBSA website. The panel notes that the evidence demonstrates that the ministry has a pre-existing agreement with IRCC but not with CBSA. The panel is of the opinion that the ministry reasonably required the appellant to provide documentation to meet the legislative requirements.

Conclusion

Having considered all of the evidence, the panel finds that the ministry's decision, which concluded that the appellant was not eligible for IA, pursuant to section 7(1) of the EAR, was reasonably supported by the evidence and is a reasonable application of the relevant enactment. The ministry decision is confirmed, and the appellant is not successful at appeal.

The legislation states:

Employment and Assistance Act

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.

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistant Regulations

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.

(2)If a family unit satisfies the requirement under subsection (1), income 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 income assistance under Schedule A, hardship assistance under Schedule D or supplements under Division 1, 2, 3 or 5 of Part 5 of this regulation on account of or for the use or benefit of that person.

[am. B.C. Regs. 253/2005, s. (a); 69/2008, s. 1 (a) and (b); 198/2012, Sch. 1, s. 2; 35/2020, App. 1, s. 2.]

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.

(2) If a family unit satisfies the requirement under subsection (1), income 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.

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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)

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

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date

2022/03/18

Print Name

Nancy Eidsvik

Signature of Member

Date

2022/03/18

Print Name

Katherine Wellburn

Signature of Member

Date

2022/03/18