

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 9, 2023, which held that the appellant was not eligible for income assistance (IA) pursuant to Section 16 of the Employment and Assistance Regulation (EAR) because the appellant’s spouse is enrolled as a full-time student in a funded program of studies.

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR) – Section 16

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

- Email correspondence between the appellant's spouse (the spouse) and her college dated November 1, 2022. This thread consists of two separate communications from two individuals at the college. The second individual stated that the spouse is a full-time student at the college.
- Federal/Provincial Financial Need Assessment – Revised Notice of Assessment dated August 18, 2022. The assessment indicated that the spouse is eligible for a loan of \$17,340.00 for 34 weeks and the total of her approved loans to date is \$51,920.00.
- Email correspondence between the spouse and her college dated May 25 [year not indicated]. The email indicated which course the spouse does not need to take, the cost of tuition and that her program starts June 6, 2022.
- Request for Reconsideration (RFR) dated December 18, 2022, in which the appellant, in part, stated the following:
 - When applying for IA, they disclosed that the spouse was already enrolled in school.
 - They were told by the intake worker that a review must take place to determine eligibility and if eligible they will receive the IA benefit. Otherwise, they would be eligible for compassionate benefits.
 - They were eventually advised that they will receive regular IA benefits and their cheque was ready.
 - This decision was reversed by a compliance officer in October 2022.
 - They have complied with every request for supporting documents.
 - The spouse must complete 20 hours per week of school per her employment plan (EP).
 - She is partially funded by BC Student Aid for \$17, 340. 00. Her tuition is \$11, 445.00. This leaves \$5, 895.00 to live off of (\$737.00 per month).
 - Since the schooling is apart of her EP, they fall under EAR section 16 (1)(1.1)(b) and (c) and therefore are eligible for IA.

Evidence On Appeal

Notice of Appeal, dated January 19, 2022, was left blank.

Evidence At the Hearing

At the hearing, the appellant's representative (the spouse) reiterated previous statements made in the RFR and added, in part, the following:

- They did not want to apply for IA but had no choice. The spouse was injured at work. She used up her 15 weeks of sickness benefits from Employment Insurance. She had no worker's compensation from WorkSafe BC as she is waiting for a decision from the WorkSafe BC Review Board. She is also waiting for surgery for her injury.
- The spouse has always attended school while working to better herself.
- At the time she applied she was not sure if her status was part-time or full-time student. She does not attend classes on a schedule. She works at her own pace online and completes a minimum of 20 hours per week. She does not need to attend full-time because she had credits that transferred over to the current program.

- The spouse is on an EP with WorkSafe BC so does meet the legislated requirements for IA (EAR section 16 (1)(1.2).
- The spouse completed her studies on January 27, 2023.
- The intake worker made the error in approving IA benefits.
- They should not be penalized because they were truthful about her schooling, and it is the ministry that initially approved IA.

At the hearing, the ministry relied on its reconsideration decision, explained the difference between an EP with the ministry and WorkSafe BC. The ministry also added the following when asked:

- The benefits issued to the appellant for January and February 2023 were benefits payable while the case was under appeal and may or may not be repayable depending on the panel's decision.
- The appellant received regular benefits for October, November and December 2022 which were possibly part of an overpayment and may or may not be repayable.
- The determination that the appellant was eligible for IA appears to be an error made by the ministry's worker.

Part F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision that the appellant is not eligible for IA because his spouse is a full-time student in a funded program of studies.

The relevant legislation can be found in Appendix A

The Appellant's Position

The appellant argued that at the time they applied for IA, they disclosed that the spouse was in school and they were still found eligible. They cannot live off of the amount provided by student loans.

The Ministry's Position

The ministry argued that the spouse is enrolled in full-time studies as indicated by an email from her college. The ministry argued that this program is funded by Financial Aid, as the evidence indicates, and therefore it is satisfied that the spouse is in a funded program of studies. The ministry argued that pursuant to section 16 of the EAR, the appellant is not eligible for IA.

The Panel's Decision

Pursuant to section 16(1) of the EAR, a family unit is not eligible for IA for a period, as defined in section 16(2), if an applicant or a recipient is enrolled as a full-time student in a funded program of studies. The evidence on appeal demonstrates that the appellant's spouse was in a full-time funded program of studies at the time they applied and became eligible for IA. Specifically, the email dated November 1, 2022 from the spouse's school indicated that she is enrolled in full-time studies. The revised notification of assessment, dated August 18, 2022, indicated that the spouse was eligible to receive \$17,340.00 in provincial and federal loans for her education and living. There is no evidence at appeal or at the time of the hearing to contradict this evidence.

At the hearing the spouse argued that she is in an EP with WorkSafe BC and that is why she is in school at this time. Therefore, they are eligible for IA per section 16(1)(1.2) of the EAR. The panel finds that the EP mentioned in this section refers to an agreement between a recipient and the Ministry of Social Development and Poverty Reduction. A EP with WorkSafe BC is governed by the legislation and policies that are specific to WorkSafe BC and not section 16 of the EAR. Furthermore, this legislation requires that the recipient be in receipt of IA for the immediately preceding 3 calendar months which is not the case for the appellant. The ministry may make an exception to this 3 calendar month requirement if it is satisfied that there is an exceptional circumstance. In this case, the appellant did not argue that there is an exceptional circumstance to be considered and did not provide any evidence to an exceptional circumstance. The panel is of the opinion that the fact that IA benefits were approved and later revoked is not an exceptional circumstance.

Given the evidence, the panel finds that the ministry reasonably determined that the appellant is not eligible for IA pursuant to section 16 of the EAR. However, in this case, the appellant relied on the information that was given to him by the ministry intake worker. Based on that information, he accepted the IA benefits. As indicated by the ministry representative at the hearing, the error made lies solely with the ministry. Due this error, the appellant and his family

have endured undue stress and may endure undue financial hardship if the ministry determines that the benefits they received to date are repayable. Though the panel cannot make a determination regarding repayment of funds, the panel is of the opinion that the ministry actions directly resulted in the unfortunate circumstances of the appellant.

Conclusion

The panel finds that the ministry’s decision to deny the appellant income assistance due to his spouse being a full-time student in a funded program of studies was a reasonable application of the legislation and was reasonably supported by the evidence. The panel confirms the ministry decision and the appellant is not successful on appeal.

Appendix A

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.

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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: 2023/02/09

Print Name

Richard Franklin

Signature of Member

Date: 2023/02/09

Print Name

Glenn Prior

Signature of Member

Date: 2023/02/09