

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated February 10, 2023 (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”). The Ministry determined that the Appellant was not eligible for income assistance, as per sections 1 and 16 of the *Employment and Assistance Regulation* (“EAR”), because she is a full-time student in a funded program of studies.

The Ministry had also determined an overpayment of income assistance in the amount of \$1,905.00 but the Appellant did not seek a reconsideration of the overpayment determination. As a result, the overpayment is not an issue in this appeal.

Part D – Relevant Legislation

EAR- sections 1 and 16
Canada Student Financial Assistance Regulations- section 2(1)

A full text of the above-described legislation appears at the end of Part F of this decision.

Part E – Summary of Facts

The Appellant is a member of a family unit in which she is the only person with an open income assistance file.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- the Ministry’s letter, dated December 6, 2022, to the Appellant in which the Ministry sought the following additional documentation from her to confirm her eligibility for income assistance;
 - StudentAid BC Notice of Assessment from 2021 to present;
 - enrollment letter from the Appellant’s school; and
 - withdrawal letter from the Appellant’s school, if applicable;
- the Appellant’s Notification of Assessment letter, dated October 3, 2022, from the provincial government;
- a letter of confirmation, dated December 12, 2022, from the Appellant’s school confirming her enrollment in a full-time program;
- the Appellant’s Notification of Assessment, setting out the Appellant’s eligibility for student loans under both the provincial government’s student loans program and the Canada Student Loans program;
- the Ministry’s letter, dated December 16, 2022, to the Appellant in which the Ministry advised the Appellant that she was not eligible for income assistance while attending school on a full-time basis;
- the Appellant’s Request for Reconsideration, dated January 25, 2023, which included a handwritten note from the Appellant setting out the following:
 - the Appellant is not able to work because she was taking care of her father;
 - the Appellant’s father is 81 years old and can’t cook, clean, or stay home alone;
 - the Appellant needs to give her father medication at specific times; and
 - the Appellant is taking online classes to watch him and could not go to school in person.

In the Notice of Appeal, the Appellant set out that she was taking care of her 81 year old father and can not leave him because she was responsible for his medications that he takes three times per day

The Appellant stated that she did not know that income assistance was not available to students and that if she had known, she would not have enrolled in her program. The Appellant advised that she was not trying to hide anything and, when asked, confirmed that she filled out her monthly reports regularly when she received income assistance.

The Appellant estimated that she had received income assistance for approximately three years. She also confirmed that she had completed monthly reports and saw the box on the monthly report form that asked whether she was a full-time student. On one occasion, she left the box blank. The Appellant advised that she had reached out to the Ministry for help but couldn’t get any.

At the hearing, the Ministry said that recipients of income assistance are advised on intake about their obligations to complete monthly reports and immediately advise the Ministry if there are any changes to their circumstances. The Ministry also advised that recipients were told that returning to school or moving out of the province would render them ineligible for income assistance. In addition, the Ministry said that the monthly report that recipients sign and return to them to confirm continued eligibility has a specific box that asks if the recipient is in a full-time study program.

The panel admits the information provided at the hearing of the appeal. This new evidence is not part of the appeal record. The panel considers this new evidence necessary for a full and fair disclosure of all matters related to the appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

The new evidence includes the following evidence from the Appellant:

- that she filled out monthly reports as required and that she remembered seeing a box asking about her full-time student status;
- that she would not have enrolled in her program of studies had she known that it would disqualify her from income assistance and that she was not trying to hide anything.

The new evidence from the Ministry includes the information about what recipients are told about their obligations at intake when first becoming eligible for income assistance.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Reconsideration Decision, which determined that the Appellant was not eligible for income assistance under sections 1 and 16 of the EAR because the Appellant is a full-time student was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Panel Decision

Section 16 of the EAR sets out the effect on income assistance of a family unit including a member who is a full-time student.

Specifically, section 16(1) sets out that a family unit is not eligible for income assistance if an applicant for income assistance or a recipient of income assistance in the family unit is or becomes a full-time student enrolled in either a funded program of studies or an unfunded program of studies without prior approval of the Ministry.

The terms “full-time student” and “funded program of studies” are both defined in the section 1 of the EAR.

The term “full-time student” is defined as having the same meaning as in the *Canada Student Financial Assistance Regulations* (“CSFAR”). In the CSFAR, a full-time student is one:

- who is enrolled in courses that constitute at least 60 per cent of a full course load recognized by school at which the person attends;
- whose primary occupation during the relevant time is taking the courses in which they are enrolled; and
- who meets the requirements of subsection 5(1) or 7(1) or section 33 of the CSFAR.

Sections 5(1), 7(1) and 33 of the CSFAR concern a student’s eligibility for financing under CSFAR. The Appellant meets the first two criteria, given the confirmation from her school that she is enrolled in a full-time program and the Appellant’s own evidence that, other than providing care for her father, her studies are her only occupation.

The term “funded program of studies” is also defined by reference to the CSFAR and means a program for which funding may be provided under the CSFAR. The information concerning the Appellant’s eligibility for student loans from the federal government appears to confirm the status of the Appellant’s program as a “funded program of studies.”

While the Appellant argues that she did not know that she would be disentitled to income assistance by enrolling in a full-time program and that she was not trying to hide anything, section 16 of the EAR does not speak to fault. Instead, it addresses only the issue of entitlement. Likewise, while the Appellant stated that she would not have enrolled in the program had she known that it would disentitle her to income assistance, section 16 speaks only to entitlement to income assistance based on existing facts and not hypothetical facts. In this case the evidence before the Ministry was that the Appellant is a full-time student enrolled

in a funded program of studies as those terms are defined in section 16 of the EAR. In view of that evidence, the panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible for income assistance after the date on which her studies began.

The Appellant is not successful in this appeal.

Relevant Legislation**Employment and Assistance Regulation****Definitions**

1 (1) In this regulation:

...

"**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;

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.

*Canada Student Financial Assistance Regulations***Interpretation**

2 (1) In the Act and these Regulations,

...

full-time student means a person

- (a) who, during a confirmed period within a period of studies, is enrolled in courses that constitute at least 60 per cent of a course load recognized by the designated educational institution as constituting a full course load,
- (b) whose primary occupation during that confirmed period is the pursuit of studies in those courses, and
- (c) who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be; (*étudiant à temps plein*)

2023-0065

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/March/21

Print Name

Elaine Jeffery

Signature of Member

Date (Year/Month/Day)

2023/March/21

Print Name

Perihan Sucu

Signature of Member

Date (Year/Month/Day)

2023/March/22