

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated June 4, 2024, which found that the Appellant's spouse does not meet citizenship requirements for income assistance or supplements, pursuant to Section 7 and 7.1 of the Employment and Assistance Regulation.

Part D - Relevant Legislation

Employment and Assistance Act (the "Act"), section 1, 2, 4
Employment and Assistance Regulation (the "Regulation"), section 1, 7, 7.1

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below.

Part E – Summary of Facts**Procedural Matters**

The appeal was held as a written hearing on July 26, 2024.

Information available to the Ministry at Reconsideration

The evidence before the Minister at reconsideration included the following:

- For the application, the Appellant had included a copy of his passport and work permit.
- A check with Immigration, Refugees and Citizenship Canada (“IRCC”) reported that the appellant is a refugee claimant with a work permit valid until May 30, 2024. As he has refugee protection, he meets citizenship requirements for income assistance.
- For his spouse, the Appellant provided a copy of her passport. It reports she has citizenship with the People’s Republic of Bangladesh. The passport date of issue was October 12, 2021, and expires October 11, 2031.
- A third-party check with IRCC reported she has a temporary resident visa only (visitor visa).

The Appellant provided the following information for reconsideration;

- He has been living in BC since 2018 and his income got hit badly for a few months,
- He got married and his wife came in December 2023.
- His wife is pregnant and has a thyroid condition.
- Their rent is \$1732 for May, and it has become a nightmare to cope, and he is tired of borrowing money from relatives.
- He could not take his wife to a maternity doctor because of lack of money, and he is hoping for at least free treatment for his spouse on humanitarian grounds.

New Evidence Provided on Appeal**Documents Submitted**

The Appellant’s Notice of Appeal states that when the Appellant first applied for income assistance, he was a refugee claimant and is now a Convention refugee. He has applied for permanent resident status, along with his wife. His wife has also applied for a work permit, and he has received an acknowledgement letter.

The Appellant also submitted a one-page typewritten cover letter and three documents. The cover letter states the reasons behind the appeal. He states that when he applied for social assistance, he was a refugee claimant at that time, and his claim was accepted on May 27th, 2024.

He then applied for permanent residency for himself and his spouse during the first week of June 2024. He applied for a work permit for his spouse on 8th June. Since she is a permanent residency applicant and work permit applicant, the Appellant believes that she deserves to get social assistance.

The Appellant states that he has been living in BC for about six years, has never applied for social assistance, but the sudden decline of his earnings forced him to do it. His wife's delivery is due on 5th October 5th, 2024, and he cannot afford to take her to a maternity doctor. He has tried to get MSP but has been told that her MSP won't be activated before September.

The Appellant believes his wife really needs to get social assistance and MSP from a humanitarian perspective.

The Appellant states he has contacted the ministry of social assistance (as stated in the letter) to approve his spouse's application and had submitted all the new documents on June 13, 2024. But in the first week of July, he was told by the Ministry that he has to go through the appeal since it is pending. The IRCC is in backlog. So, it will take three to four months to get his wife's work permit approved and it will take a couple of months to get an acknowledgement letter of their permanent residency application.

The letter concludes by requesting the Panel go through his new documents and accept his wife's application. He states he is submitting his Notice of Decision letter, permanent residency application payment receipt, and his wife's work permit acknowledgement letter.

The documents included with the written submission were;

- A letter dated June 7, 2024 (three days after the Reconsideration Decision) from IRCC. The letter is addressed to the Appellant's spouse and is confirmation that her application has been received on June 8, 2024. The letter does not state what the application is for, however the Appellant confirmed in the cover letter it is for a work permit application.

- A Notice of Decision from Immigration and Refugee Board of Canada, dated May 28, 2024, confirming that the Appellant's claim has been accepted and he is a Convention Refugee.
- A receipt for \$1270.00 in the name of the Appellant, issued by the IRCC, dated June 7, 2024.

On the morning of the hearing the Tribunal office received an email from the Appellant thanking the office for the update sent to him. This was in response to him receiving the Ministry's written submission to the Tribunal. Staff had been unable to contact the Appellant despite repeated emails and telephone calls to ascertain whether the email was supposed to be a further written submission to the Panel.

The body of the email provided the Appellant's personal comments on the position taken by the Ministry, reiterated some of the comments provided within his written submission on the difficulty in carrying medical expenses for his spouse and concluded by saying "anyway thanks for your email".

The Panel considered whether to issue an adjournment to allow the Ministry a seven-business day period in which to respond to the email. The Appellant had previously advised the Tribunal of his desire to have the hearing held as soon as possible. The Ministry review had been expedited due to the spouse's medical condition.

The Appellant had been previously notified that any additional submissions or evidence had to be submitted by 18 July 2024. There were several other emails between the Appellant and the Tribunal office of administration, clarification of process and seeking confirmation of delivery of his submission.

On July 13, 2024, the Appellant had written in an email to staff that he had now submitted a pdf of information as "the last document from his side" and stated that "It would be great if I get a decision as soon as possible."

The Ministry's submission was a one paragraph letter that stated it had reviewed the written submission by the Appellant for his spouse. The Ministry notes that the information provided does not show that the spouse meets the citizenship requirements for income assistance, therefore, the Ministry relies on the Reconsideration Decision as the Ministry's submission to this matter.

Admissibility of new information

Section 22(4) of the *Employment and Assistance Act* (the Act) says that a Panel may consider evidence that is not part of the record that the Panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Ministry had not raised any objections to the Panel admitting the Appellant's new information or the appeal documents into evidence. The Ministry did not submit any other documents into evidence.

The Panel finds that the new written information is relevant because it provides new information on the immigration status of the Appellant and his spouse and admits the new information under section 22(4) of the *Employment and Assistance Act*.

With regards to the email received on the day of the hearing, the Panel noted the Ministry submitted no new information and was relying upon the Reconsideration Decision, while the Appellant's comments only related to the completion of his submission and desire for a speedy hearing. The Panel found the Appellant's email not to be intended as an additional written submission and was simply indicative of the Appellant's frustration with the process and an expression of venting to staff. The Panel therefore did not admit the email as a formal written submission and proceeded with the hearing.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision which held that the appellant's spouse does not meet citizenship requirements for income assistance or supplements, pursuant to Section 7 and 7.1 of the Regulation, was reasonable, or a reasonable application of the applicable legislation in the circumstances of the Appellant.

In particular, was the Ministry reasonable in determining that a third-party check with IRCC reported the spouse has a temporary resident visa only (visitor visa) and does NOT meet citizenship requirements for income assistance.

Appellant's Position

The Appellant states that he is now a Convention refugee, his claim being accepted on May 27th, 2024.

He has applied for permanent residency for himself and his spouse during the first week of June 2024 and has applied for a work permit for his spouse on 8th June. Since she is a permanent residency applicant and work permit applicant, the Appellant believes that she deserves to get social assistance.

The Appellant states that he has been living in BC for about six years and had to apply for social assistance due to the loss of his earnings. He got married and his wife came to Canada in December 2023. She is now pregnant, and delivery is due on the 5th of October, and he cannot afford to take her to a maternity doctor. His spouse also has a thyroid condition. He has tried to get MSP but has been told that her MSP won't be activated before September.

He states the IRCC is in backlog, and it will take three to four months to get his wife's work permit approved and also it will take a couple of months to get an acknowledgement letter of their permanent residency application.

The family rent is \$1732 for May, and it has become a nightmare to cope, and he is tired of borrowing money from relatives.

The Appellant believes his wife really needs to get social assistance and MSP from humanitarian perspective.

Ministry's Position

The Ministry's position is that it has determined that the Appellant is eligible for income assistance as he has refugee protection. However, the family is not eligible to receive income assistance for his spouse as she does not meet citizenship requirements for income assistance.

The Ministry acknowledges his submission about the drop in earned income, the family expenses, and the report of his spouse being pregnant. However, the Ministry states it has no ability to provide assistance on her behalf because she does not meet the citizenship test for income assistance or supplements under the legislation.

Panel Decision

The appropriate legislation is contained within the Employment Assistance Regulation.

Section 7 (1) of the Regulation sets out that in order for a family unit to be eligible for income assistance one family member must be a member of any one of a number of classes of person. These include a Canadian citizen, a Convention refugees and a person authorized to take up permanent residence in Canada. The Ministry found that the Appellant met this legislative requirement for citizenship.

If a member of the family satisfies the requirement under section (7)(1) of the Regulation, then section 7(2) provides that income assistance and supplements may be provided to or for the family on account of each person who is;

- (a) a Canadian citizen,
- (b) authorized to take up permanent residence in Canada,
- (c) determined 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 that cannot be executed,
- (g) a dependent child, or
- (h) a person who is in Canada under a temporary resident visa under the *Immigration and Refugee Protection Act (Canada)* that was issued through an emergency authorization process for humanitarian reasons related to armed conflict.

The Appellant has not argued any of the potential classes of eligibility under section 7(2) (a), (f) or (g), that is that his spouse is either a Canadian citizen, subject to a removal order or a dependent child. The Panel does note that the birth of a child is due in October of this year.

The Appellant has provided documentary evidence to support his claim for other classes and the Panel will comment on each. This includes the Ministry argument that the spouse is in Canada on a temporary resident visa only, with a current Bangladesh passport.

Although the spouse has applied for permanent residency and a work permit the Panel notes no evidence to show the spouse is;

- authorized under an enactment of Canada to take up permanent residence in Canada, as she has not yet received any such authorization, or,
- determined under the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)* to be a Convention refugee. The evidence shows the Appellant now has Convention refugee status, but the spouse does not, or,
- 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)*. The spouse is in Canada on a temporary resident (visitor visa) only under her Bangladesh passport, or
- 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)*,

under sections 7(2)(b), (c), (d), or (e).

The Appellant has also argued that his spouse should be approved under humanitarian grounds. Section 7(2)(h) does allow for a person who is in Canada on a temporary resident visa under the *Immigration and Refugee Protection Act (Canada)* that was issued through an emergency authorization process for humanitarian reasons related to armed conflict. The Panel notes the spouse's temporary visa is a visitor visa only and sees no evidence to suggest it was issued under the legislative requirements related to armed conflict.

On the evidence the Panel finds the Ministry was reasonable in its determination that the spouse does not meet the citizenship requirements for income assistance and is therefore not eligible for income assistance or supplements under section 7(1) or (2) of the Regulation.

Section 7.1 of the Regulation

Section 7.1 of the Regulation states that a sole applicant or recipient applying for income assistance is exempt from the requirements set out in section 7(1) of the Regulation, if they meet *all* of the exemption criteria set out in section 7.1 of the Regulation.

Among other requirements, to be exempt from the requirements of section 7 of the Regulation, the applicant *must* have one or more children that are Canadian citizens. Although the family are expecting the birth of a child the panel notes that the due date for the delivery is not until October of this year. They have applied as a couple with no dependent children.

Therefore, the Panel finds this eligibility section does not apply to the family unit and finds that the ministry reasonably determined that the family unit does not meet the eligibility requirements for income assistance pursuant to section 7.1 of the Regulation.

Conclusion

Having reviewed and considered all the admissible evidence and relevant legislation, the Panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant's spouse was not eligible for income assistance or supplements, was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the Appellant.

As a result, the Panel confirms the decision, and the Appellant is not successful on appeal.

Appendix A

Employment and Assistance Act **Employment and Assistance Regulation**

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),
- (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed, or
- (g) a person who is in Canada under a temporary resident visa under the *Immigration and Refugee Protection Act* (Canada) that was issued through an emergency authorization process for humanitarian reasons related to armed conflict.
- (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,
- (g) a dependent child, or
- (h) a person who is in Canada under a temporary resident visa under the *Immigration and Refugee Protection Act* (Canada) that was issued through an emergency authorization process for humanitarian reasons related to armed conflict.
- (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, 5 or 8 of Part 5 of this regulation on account of or for the use or benefit of that person.

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.

APPEAL NUMBER 2024-0258

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

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2024/0730

Print Name

Charles Schellinck

Signature of Member

Date (Year/Month/Day)

2024/07/30

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2024/07/31