

SUPREME COURT OF YUKON

Citation: *Zink v The Director of Social Supports*,
2023 YKSC 35

Date: 20230623
S.C. No. 22-AP012
Registry: Whitehorse

BETWEEN:

BRIAN ZINK

APPELLANT

AND

THE DIRECTOR OF SOCIAL SUPPORTS AND
THE SOCIAL ASSISTANCE REVIEW COMMITTEE

RESPONDENTS

Before Chief Justice S.M. Duncan

Appearing on his own behalf

Brian Zink

Counsel for the Respondents

Kelly McGill

REASONS FOR DECISION

Overview

[1] Mr. Zink appeals the social assistance review committee's ("SARC") decision agreeing with the director under the *Social Assistance Act*, RSY 2002, c 205 (the "*Act*"), that Mr. Zink was ineligible for income support for November 2022 because the Department of Education deposited \$2,235 of funding in his bank account. Mr. Zink argued before the SARC that this funding should not have been deposited in his bank account and considered as income, because it was tuition for courses and payment for

a computer. The director concluded that the *Social Assistance Regulation*, OIC 2012/083 (the “*Regulation*”), to the *Act* require any training or education allowance to be included as income in determining an applicant’s eligibility for income support for that month. The SARC agreed with the decision of the director.

[2] Mr. Zink now appeals to this Court under s. 12(1) of the *Act*. He requests this Court substitute its decision for that of the SARC and find that the funds from the Department of Education were not income for the purposes of his eligibility to receive income support.

[3] For the following reasons, I find that the decision of the SARC to uphold the decision of the director is correct. Mr. Zink’s application is dismissed.

Background

[4] Mr. Zink was receiving income assistance in 2022 under the *Act*.

[5] The *Act* provides that eligibility for income assistance is to be re-determined each month and assistance is to be awarded for one month at a time (s. 7(2)).

[6] On or about September 12, 2022, a direct deposit of \$2,235 was made into Mr. Zink’s bank account by the Department of Education. The amount represented funding for an advanced remotely piloted aircraft system vehicle pilot certification, otherwise referred to as a drone certification course, a computer, and for a Yukonstruct “Be Your Own Boss” course.

[7] On or about October 21, 2022, Mr. Zink applied for income assistance for November 2022. He provided a monthly application form and a bank statement for September 1-30, 2022, as required. The bank statement showed the \$2,235 deposit

dated September 12, 2022. Mr. Zink explained to his social worker the purpose of these monies, as described above.

[8] Section 6(1) of the *Regulation* to the *Act* states that an applicant is eligible for income assistance only if their household financial resources are inadequate to pay for one or more of the items of basic maintenance (that is, food, shelter, and utilities) as set out in Schedule A of the *Regulation*, for that particular month.

[9] Section 7 of the *Regulation* provides that the monthly net income of an applicant's household is the amount by which the total of the incomes set out in s. 8, exceeds the applicant's total deduction as determined under s. 9.

[10] Section 8 of the *Regulation* sets out the items to be considered as total monthly income. They include an amount received "as a loan, grant, bursary, scholarship, training allowance or education allowance" (s. 8(1)(k)).

[11] The funding from the Department of Education directly deposited in Mr. Zink's bank account was calculated as part of his income by the director. This calculation resulted in a denial of income assistance to him for the month of November.

[12] On November 1, 2022, Mr. Zink received from the director \$2,050 for rent plus damage deposit for a room in Whitehorse. This was provided under Part 2 of the *Regulation*, discretionary aid. Section 33 states that discretionary aid may be provided to prevent or alleviate immediate risk to the health or safety of a person.

[13] In each of December 2022 and January 2023, Mr. Zink received \$1,555 as income assistance.

[14] Mr. Zink successfully obtained his certificate from the four-day drone course. He says he returned the funds provided for the Be your own Boss program.

The SARC review hearing

[15] Mr. Zink requested a review of the decision of the director at the SARC. He provided evidence at the SARC, including some negative personal interactions between him and the person from the Department of Education who had approved his funding. The SARC advised they had no jurisdiction to deal with those allegations.

[16] The SARC decision noted Mr. Zink's argument that he did not think it was fair that the funds were treated as income because they were provided to him directly. If the Department of Education had paid the tuition and other funds directly to the educational institution instead of to his bank account, he would have been eligible for income assistance in November. The manager of income support who appeared at the hearing confirmed if the tuition funds had been paid directly to the educational institution, they would not have been considered income. Mr. Zink acknowledged receiving the emergency assistance but told the SARC it was less than regular assistance and he was having difficulty meeting expenses after their determination of his ineligibility for income assistance in November.

[17] The role of the SARC in a review request is to review a decision of the director about the eligibility of a person to receive income assistance for that month, or the amount of that assistance, or both. The SARC does not have authority to make any determination about discretionary aid. The SARC holds an informal hearing and makes its own findings of facts after considering the information provided by the person requesting the review, the director's statement, and any further evidence presented. The SARC issues its decision either agreeing with the decision of the director or disagreeing with the decision in whole or in part. If the SARC disagrees, it must identify

the provisions of the *Regulation* on which the decision is based, describe its findings of fact relevant to the decision and explain how its interpretation of the *Regulation* and facts supports its decision.

[18] Here the SARC agreed with the decision of the director. It noted that its role did not allow it to review Mr. Zink's concerns about the Department of Education's approach to provide funds to clients by direct deposit rather than paying them directly to the educational institution. The SARC stated the *Regulation* were clear that these funds from the Department of Education had to be treated as income, resulting in his ineligibility for income assistance under the regular provision for November.

[19] The SARC suggested that Social Services consult with the Department of Education to "promote awareness of the relevant regulations which require direct deposits of funds for tuition and education to be treated as income which can affect applicants' eligibility for assistance".

Issues

[20] The following questions must be answered in this appeal:

- a. What is the standard of review?
- b. Did the SARC err in their agreement with the director's decision?
- c. If SARC erred, should this Court substitute its decision as requested for that of SARC?

Analysis

a. Standard of Review – Correctness or Reasonableness?

[21] The standard of review in this case is correctness. This is a less deferential standard of review than reasonableness and requires this Court to determine whether the decision of SARC was correct in law. The following explains why.

[22] This is a statutory appeal of a request for review of a decision of SARC. Subsection 12(1) of the *Act* provides that an appeal may be made to the Supreme Court on a question of law or fact within 30 days of the date of the SARC's decision. Section 12(2) sets out the powers of the Supreme Court on appeal:

The Supreme Court may:

- (a) confirm or rescind the decision of the committee;
- (b) substitute its decision for that of the committee, exercising in doing so all the powers of the committee; or
- (c) refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

The section does not specify a standard of review.

[23] The leading case on standards of review is *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The Supreme Court of Canada addresses statutory appeals in paras. 36 and 37 as follows:

... Where a legislature has provided that parties may appeal from an administrative decision to a court, either as of right or with leave, it has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis. This expressed intention necessarily rebuts the blanket presumption of reasonableness review, which is premised on giving effect to a legislature's decision to leave certain issues with a body other than a court. This intention should be given effect. ...

It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v Nikolaisen*, 2002 SCC 33, ... at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, ...

[24] The question for the Court here is whether the SARC properly agreed with the director that the funds from the Department of Education were income for the purpose of assessing Mr. Zink's income eligibility for November 2022. This is an administrative decision, it requires an examination of the *Act* and *Regulation* and a determination of whether the director and the SARC properly interpreted the applicable law. This is a question of law. There is no dispute on the facts. As a result, the standard of review is correctness.

b. Did the SARC err in agreeing with the director's decision?

[25] Mr. Zink's position at this appeal was similar to his submissions before the SARC. He added during the appeal that he had received assurances from the Department of Education worker and the social worker that the funding would not affect his eligibility for income assistance. This evidence was not before the SARC so I will not consider it.

[26] Mr. Zink also sought to elaborate on the negative personal interactions between him and the Department of Education worker who notified him of his funding approval. He stated that their interactions suggested she had chosen deliberately to deposit the funds into his bank account in an attempt to cut off his income assistance and render him hungry and homeless.

[27] There is no evidence of this kind of intended consequence or ulterior motivation from the Department of Education worker. In any event, such allegations are not relevant to my determination.

[28] The determination to be made by this Court is whether the SARC erred in finding that s. 8(1)(k) of the *Regulation* was interpreted correctly by the director, resulting in Mr. Zink's ineligibility for income assistance for the month of November 2022.

[29] I cannot find any error by the SARC in its analysis. As they stated, the *Regulation* is clear. The funds provided to Mr. Zink for his drone course, computer, and Be Your Own Boss course, were a grant or training or education allowance under s. 8(1)(k). Pursuant to s. 8(1), they were properly included in the calculation of monthly income. This is a non-discretionary test. The SARC was correct in its agreement with the director's decision.

[30] I also agree with the SARC's suggestion that the effect of these sections of the *Regulation* be communicated to the Department of Education so that they are aware of the impact of direct deposit of funds on a person's eligibility for income assistance.

[31] I note that the discretionary provisions in the *Regulation* (Part 2 – ss. 31-51) were accessed and applied in this case, in order to prevent Mr. Zink from becoming homeless or hungry during November 2022. This formed no part of the review request or,

consequently, this appeal. I merely note it for the record and to address Mr. Zink's assertions that he was left technically homeless and hungry for that month.

Conclusion

[32] The SARC did not err in its decision to agree with the director. The decision of the SARC is confirmed. There is no need to address issue c.

[33] There will be no costs of this appeal.

DUNCAN C.J.