

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 24, 2012 which held that the appellant was not eligible for continued assistance while he was out of province for more than 30 days participating in a formal education program pursuant to section 15 of the Employment and Assistance for Persons with Disabilities Regulation. The appellant is designated as a Person With Disability (PWD) designation and has been accepted into an out of country university for a 4 year program.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 17  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 15

## PART E – Summary of Facts

The evidence before the ministry at reconsideration comprised:

- an overseas student confirmation of enrolment which indicates that the appellant's bachelor of pharmacy course starts on February 20, 2012 and ends on December 31, 2015,
- a letter dated December 14, 2011 from the appellant requesting continued funding,
- a support letter dated January 26, 2012,
- a letter dated February 25, 2012 from the appellant providing reasons for reconsideration,
- a copy of Student Aid BC Policy Manual, Chapter 7, Section 3, under BC Employment and Assistance Recipients,
- a 3- page transcript of academic record dated May 31, 2011 for the appellant from                      and
- a letter dated April 2, 2012 indicating that the appellant's father has Power of Attorney and will act on behalf of the appellant.

In the letter dated December 14, 2011 the appellant requests to have continued funding during his future studies. The appellant indicates that because he does not meet the minimum academic requirements to apply for this program in BC, he is going to another country. He states that he will be away on a yearly basis from mid-February until mid November for a total of 4 years. The remaining 4 months of each year, he will reside in BC to access health services and requires that his accommodation remain the same.

In a letter of support dated January 26, 2012 the appellant's medical practitioners (MP) report that he has been their client since October 2009 and they have observed the appellant manage his illness and work towards his long term goals. The MP's indicate that when first diagnosed, the appellant struggled considerably as reflected in his first years of his program at                      . With time they have observed the appellant better manage with medications and support and in the last two years of his education, he has excelled. The MP add that the appellant is an intelligent young man and has much potential if given appropriate resources to grow and flourish.

In the letter dated February 25, 2012 the appellant reports that his monthly disability assistance consists of a support payment for \$531 which he intends to use for non-school related living expenses such as food and a \$375 shelter allowance which he will use to maintain his permanent Canadian residence. The appellant adds that it is essential to have a place to stay during his academic breaks and also needs an address to receive important mail and to maintain his BC permanent residency status for all provincial and federal government services. The appellant provides the following reasons to clarify his unique, compelling, personal circumstances:

1. He has been approved for a BC student loan that will cover only his tuition costs but not his living expenses.
2. He has already taken all the required courses needed to apply for the                      pharmacy program however he does not meet the minimum weighted "credit grade average" required to gain entry to the program.
3. He has failed 2 of the required courses and had to repeat them and all his attempts have been included in the calculation of the admissions average which due to enrolment limitations is average higher than his of 64.9% is normally required for admission.
4. The number of qualified applicants to the program normally exceeds the number of available positions therefore; students are advised to apply to more than one university.
5. He is not able to retake any of the pharmacy program prerequisites to upgrade his grade average because of                      policy therefore; his admissions average is permanent.
6. The appellant indicates that his grades were low at the time he took the prerequisite pharmacy courses

solely due to his illness.

7. The appellant indicates that he would love to stay in his home country to achieve his pharmacy educational goals however, the minimum academic requirements at the 8 other Canadian pharmacy schools not including 2 French only schools are more demanding and rigorous than UBC's pharmacy program.
8. The appellant's choice of this other country was because high school grades are only used for admission and there is a program credential transferable to BC.
9. The appellant argues that denial of having his benefits will not only be a deterrent to his career goals but also go against most all other government of BC conventions which allow participation in a formal education program and to avoid undue hardship.

The copy of Student Aid BC Policy Manual, Chapter 7, Section 3, under BC Employment and Assistance recipients which was effective as of August 1, 2011 specifies that its purpose is to assist PWD receiving Student Aid BC assistance and pursuing a full-time program of study. The funding is designed to assist with basic educational costs, subject to certain limitations as established under this inter-ministry (interface) policy.

On appeal, the appellant submitted a letter dated May 17, 2012 which provides supplemental rationale for consideration as follows:

1. The appellant asserts that he is "barred" from entering and cannot "ever" meet the pharmacy admission requirements.
2. The appellant indicates that there is an agreement in place between the Ministry of Advanced Education and the Ministry of Social Development that a PWD student will be provided with maintenance for shelter, food and other needs while receiving funding for tuition and books/supplies.
3. The appellant states that he would love to stay in Canada to achieve his pharmacy education goals however it is not possible as he does not meet the academic requirements for pharmacy schools in Canada.
4. This other country was chosen by the appellant because a program credential was transferable as well as international student health care, quality mental health services, good rule of law and safety, established legal disability rights and disability support on campus were all accessible.
5. The appellant believes his request has merit on compassionate grounds because as a pharmacist he can help others like so many others have helped him.
6. The appellant argues that the added financial stress of not having his benefits will be a deterrent for him in pursuit of his career and that the denial of these benefits goes against the "spirit" of the ministry's mandate to "assist persons with disabilities to achieve their economic and social potential to the fullest extent possible".

The ministry provided a response dated May 28, 2012 to the appellant's submission which reiterated the issue on appeal as well as the applicable legislation. The ministry noted that this appeal "is not a request for prior approval" as the minister had denied the appellant's request for prior authorization in a letter dated January 18, 2012. A Reconsideration Decision rendered on February 13, 2012 found the decision was not reconsiderable under section 17 of the EAPWDA. Further noted is that an appeal of this decision at Tribunal was not pursued by the appellant, thereby accepting the decision as final. The ministry adds that the minister does not have the legislated authority to give authorization after the fact. It is added that because of the appellant's attempts to further his education and become financially independent, the minister considered the appellant's request to continue disability assistance once he had already been out of the province for more than 30 days. The ministry considered the following 2 key issues in making their decision.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant was not eligible for continued assistance while he was out of province for more than 30 days participating in a formal education program pursuant to section 15 of the Employment and Assistance for Persons with Disabilities Regulation. The appellant is designated as a Person With Disability designation and has been accepted into an out of country university for a 4 year program.

### Applicable Legislation

#### EAPWDR

##### Effect of recipient being absent from BC for more than 30 days

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

#### EAPWDA

##### No appeal from decision based on same circumstances

17 If a person reapplies for disability assistance, hardship assistance or a supplement after

- (a) the eligibility of the person's family unit for the disability assistance, hardship assistance or supplement has been determined under this Act,
- (b) a right of appeal under section 16 (3) has been exercised in respect of the determination referred to in paragraph (a), and
- (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

1. It is the minister's opinion that it is not the role of the ministry to continue paying the shelter costs for accommodation out of the province for the majority of the time over the next 4 years. It is also not the role of the ministry to continue paying support allowances for a person who is not residing in BC for 8 months a year for the next 4 years. Approval to leave the province for more than 30 days is given for temporary, short-term cases.
2. The minister suggests that there are numerous other educational and occupational options in BC, many of which will enable the appellant to reach his goal of helping others and becoming financially independent.

The appellant's advocate submitted a letter on June 14, 2012 in response to the ministry. The advocate indicates that the ministry was incorrect to suggest that the appellant did not pursue an appeal of the decision to deny his request for prior approval to leave the province for educational pursuits at Tribunal, thereby accepting the decision as final. The advocate submits that she and the appellant had pursued both the initial reconsideration which was denied on February 13, 2012 and following, a tribunal appeal. The advocate states that she was working closely with the district manager at the ministry office about this issue and after having sent documents to the Tribunal, on March 3, 2012 the district manager informed her that the appellant is currently not being denied any support therefore, there is nothing to appeal making the tribunal request null and void.

The panel finds that the letter from the appellant, as well as the response from the ministry are further description of the circumstances surrounding the appellant's appeal and are thus admissible under s. 22(4) of the Employment and Assistance Act as being in support of the information and records before the minister at reconsideration. The advocate's submission is accepted as argument.

#### Findings of Fact:

The appellant's file was opened in November 2007 and he has Persons with Disabilities designation.

The appellant is currently receiving "benefits under appeal".

On November 11, 2011, the ministry received confirmation of the appellant's enrolment at an out of country university from February 20, 2012 to December 31 2015.

On December 14, 2011, the appellant requested prior approval for continued disability assistance while he attends school out of the country.

On January 18, 2012, the appellant was informed that his request for continued disability assistance while attending school out of country for 4 years was denied. A request for reconsideration of this decision was then made by the appellant.

On February 13, 2012, it was determined that a reconsideration could not be completed as no benefits had been denied, discontinued or reduced at that time.

On February 23, 2012, the ministry was informed by the appellant's advocate that he had left Canada on February 20, 2012.

On April 11, 2012, the appellant submitted a request for reconsideration of the decision to deny the appellant disability assistance for having been out of province for more than 30 days.

The ministry's position is that the employment and assistance program is a taxpayer funded program intended for supporting people in need who live in BC. Although discretion has been included in acknowledgement that there may be unique or compelling circumstances requiring an individual to be out of province for more than 30 days to obtain medical treatment or participate in a formal education program not available in BC; it is the minister's opinion that the allowance for discretion is not necessarily intended for long term (over the span of several years) medical treatments or educational programs. The ministry argues that the appellant has many other educational options available in BC. As the appellant's advocate has confirmed that the appellant left the country on February 20, 2012, therefore as of March 25, 2012, the appellant has been out of the province for more than 30 days and is no longer eligible for disability assistance.

The appellant's position is that he would love to stay in Canada to achieve his pharmacy education goals however it is not possible as he does not meet the academic requirements for pharmacy schools in Canada. He believes his request has merit on compassionate grounds because as a pharmacist he can help others like so many others have helped him. The appellant argues that he requires monthly disability assistance to use for non-school related living expenses such as food and the shelter allowance to maintain his permanent Canadian residence. The appellant states that it is essential to have a place to stay during his academic breaks and he also needs an address to receive important mail and to maintain his BC permanent residency status for all provincial and federal government services. The added financial stress of not having his benefits will be a deterrent for him in pursuit of his career and that the denial of these benefits goes against the "spirit" of the ministry's mandate to "assist persons with disabilities to achieve their economic and social potential to the fullest extent possible" and to avoid undue hardship.

The panel finds the evidence is that the appellant has left the province on February 20, 2012, without prior authorization from the minister for continuance of disability assistance, to pursue a 4 year formal education program in another country and as of March 25, 2012 has been out of province for more than 30 days and intends to live outside of the province for 8 out of 12 months annually while studying. The panel also considered the appellant's argument that the added financial stress of not receiving disability assistance will be a deterrent for him in pursuit of his career, should the appellant continue his formal education of choice outside of Canada. The panel acknowledges that that the employment and assistance program is a taxpayer funded program intended for supporting people in need who permanently reside in the province. Additionally, the panel finds that the ministry has discretion to authorize continued disability assistance for more than 30 days under section 15 EAPWDR.

With consideration for the above, the panel finds the ministry reasonably exercised their discretion when they did not accept that the appellant's circumstances were unique or compelling to continue paying the shelter costs for his accommodation in BC given that the appellant will be residing at another accommodation outside of the province for 8 months of the year over the next 4 years, as well as that the appellant has many other educational options available in BC. Therefore, the panel finds that the ministry has reasonably determined that the appellant was not eligible for continued disability assistance while he was out of province for more than 30 days participating in a formal education program pursuant to section 15(a) of the Employment and Assistance for Persons with Disabilities Regulation.

The panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.