

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision dated December 5, 2012 which held that the appellant is not eligible for disability assistance pursuant to section 15 of the Employment and Assistance for Persons with Disabilities Regulation because she has been out of the province for more than a total of 30 days in a year without prior authorization from the minister.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 15.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration comprised:

- Copies of the appellant's receipts for rent in the amount of \$217 for the months of July, August, September and October 2012.
- A copy of an invoice from a hydro company for the appellant dated September 7, 2012.
- The Request for Reconsideration dated November 2, 2012 which included a 1 page letter from the appellant and her mother.
- A copy of a prescription note for the appellant's mother dated October 29, 2012.

The letter from the appellant and her mother indicates that the appellant had been displaced from her former residence due to a fire and as of July 1, 2012, the appellant rented another apartment which is the location referred to in this appeal. The appellant states that she understood that the information she had submitted regarding her step-father's condition and the needs of her mother would be sufficient. The appellant submits that her mother's doctor requested that her mother receive assistance from her as she has the understanding and wisdom of what a lengthy illness has done and will do to the mind and body. The appellant's support is necessary to help her Mom stay strong and positive as well as with the daily running of the household which for someone of 76 years of age can be a task in itself. The appellant's other siblings have responsibilities which do not allow them to spend the necessary time with their mother who needs all her children to be close together.

The prescription from the appellant's mother's doctor indicates that for medical reasons, the mother requires the assistance of her daughter for an indefinite period of time.

The Notice of Appeal dated December 17, 2012 included a note from the appellant that provided the following reasons for appeal:

1. The appellant contacted the ministry for permission before she even considered leaving home to care for her elderly parents.
2. The appellant understood from the ministry worker that she had received verbal permission to stay with her parents for as long as she was needed there, otherwise she would have never stayed away longer than 30 days as she would never knowingly jeopardize her disability benefits.
3. Her intent was always to return home to her local residence.
4. The appellant left her home believing that she had one to come back to.

At the hearing the appellant testified that when she called the ministry sometime during the week before her anticipated date of departure, to follow up with her request to go to another province and still receive PWD benefits; she was told by the ministry worker "go ahead, you should be alright." After not receiving disability benefits for September, on September 6, 2012, the appellant called the ministry and learned that she was no longer eligible for disability assistance. The appellant indicates that she had not been notified of the decision made on July 24, 2012 to deny her request and of the request of the same date to get doctor's confirmation for her step-father's medical condition and that she would not have left for the other province had she been notified that her request was denied. The appellant confirmed that the ministry did have contact numbers for her and that although her date of return was unknown, it was not indefinite as she had planned to attend university locally in January. The appellant also indicated that her family is low income and face multiple health challenges and do not have the resources to support her.

At the hearing the appellant presented a letter dated January 17, 2013 from her family physician which briefly described the appellant's situation and reported the effects of stress on her.

The ministry objected to the admissibility of the above letter finding that it did not support the information that was contained in the appeal record.

The panel finds that the appellant's testimony is further description of the appellant's family situation and is thus admissible under section 22(4) of the Employment and Assistance Act as being in support of the information and records before the minister at reconsideration. However, the panel did not find that the letter from the appellant's family physician was admissible under section 22(4) of the Employment and Assistance Act as being in support of the information and records before the minister at reconsideration because it does not speak to the primary issue of the minister's prior authorization for the appellant to be absent from the province for more than 30 days but rather to the consequences from the appellant not having ministry funding and also having a mix up with her paper work for school.

The advocate's submission is accepted as argument.

No additional evidence was provided by the ministry on appeal.

### **Findings of Fact**

On July 1, 2012, the appellant moved in to her local residence.

On July 5, 2012, the appellant submitted a note to the ministry stating that she was leaving the province on July 28, 2012 with no return date.

On July 24, 2012, the appellant was requested to submit confirmation from her step- father's family doctor to confirm her necessity of being out of province to assist him.

On July 24, 2012, it was determined that the minister would not give the appellant prior approval to leave the province for more than 30 days.

On July 28, 2012, the appellant left the province.

On September 6, 2012, the appellant was advised that she was no longer eligible for ongoing assistance while tending to a family member out of province.

On December 10, 2012, the appellant returned home.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant disability assistance because the appellant has been out of the province for more than a total of 30 days in a year without prior authorization from the minister.

### Relevant Legislation

Section 15 of the EAPWDR provides as follows:

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.

Based on the appeal record, the ministry maintains that the appellant states that she is assisting family and that her mother's doctor has provided a note indicating that she needs the appellant's help indefinitely. The minister's opinion is that the discretion to authorize the appellant to be out of province for more than 30 days is intended for temporary situations and that it is not the intent of the legislation to continue to support the appellant indefinitely. Furthermore, it is the minister's opinion that the appellant will not face undue hardship if not provided disability assistance as she is currently staying with family in another province and can seek assistance while there.

The ministry also testified that it would be hard to monitor ongoing eligibility while a recipient is out of province and that there was not enough information to make a decision on how the appellant would face undue hardship when the appellant going to help a relative for an indefinite period of time.

The appellant's position is that she is eligible for PWD benefits for the months of September, October, November and December, 2012, as she made timely contact with the ministry well before her possible departure date, followed up on her request by providing a written note, and when she did not get a reply from the ministry, called the ministry the week before the proposed departure date, thereby going through all the necessary steps in order to attempt to secure her disability assistance.

The appellant argues that she was not notified that her request was denied on July 24 and that her understanding was that it had been approved or she would not have left the province on July 28, 2012. The appellant denies that she was requested on July 24, 2012 to get a doctor's confirmation about her step-father's necessity for her assistance.

In determining the reasonableness of the ministry's decision, the panel notes that while the appellant denies that she was requested on July 24, 2012 to get a doctor's confirmation about her step-father's necessity for her assistance, she does indicate in her letter dated November 2, 2012 that it was her understanding that the information she submitted regarding her step-father's condition and the needs of her mother would be sufficient. The panel finds that while the appellant did take the necessary steps to secure her disability assistance; the panel also finds that there is no evidence to support the appellant's understanding from the ministry worker who indicated "go ahead, you should be alright" that she had received authorization from the minister to be out of province for more than 30 days. The panel finds that although the appellant had an unknown date of return; she testified that she had intended to return in time to attend school in January, even though her mother's doctor had since reported that her mother required her assistance for medical reasons for an indefinite period of time. Additionally, the panel finds that while the evidence confirms that the appellant was notified that her request was denied by the minister on September 6, 2012, the evidence also confirms that the appellant paid her rent while away until the end of October and choose not to return home until December, 10, 2012, thereby not establishing that she faced undue hardship. Therefore, the panel finds that the ministry reasonably determined that the appellant ceased to be eligible for disability assistance after leaving the province for more than 30 days without prior authorization from the minister pursuant to section 15(c) of the EAPWDR.

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