

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of October 21st, 2013 wherein the ministry denied the appellant's request for a Medical Services Only (MSO) file because the appellant does not meet the criteria set out in section 61.1 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry relied on the fact that the appellant's file was closed when he applied for MSO and the file was closed for a reason not set out under section 61.1(a) EAPWDR.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), section 1,5
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 61, 62

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Neurological Report dated November 24th, 2011;
- Medical report from a medical specialist dated November 24th, 2011 explaining the above report;
- Letter dated June 1st, 2012 from Work Safe BC to appellant regarding a work related injury claim;
- Work Safe BC decision dated May 30th, 2012 regarding the appellant's work related injury;
- Report dated October 21st, 2011 from medical assessment services company;
- 12 page Work Safe BC report dated October 24th, 2011 regarding the appellant's injury;
- Appellant's application (3 pages) for Income Assistance (Part 1) and Application (6 pages) for Disability Assistance (Part 2) dated September 9th, 2013;
- Letter dated September 27th, 2013 from a medical practitioner supporting the appellant's need for medical services benefits.
- Appellant's letter dated October 3rd, 2013 to ministry explaining the appellant's medical condition; his financial situation and his need for medical benefits.
- Request for Reconsideration dated October 4th, 2013

The appellant does not have a Persons With Disabilities (PWD) designation. His spouse has the PWD designation but she has not been in receipt of disability assistance for several years and her file was closed in 2009 before the appellant became part of her family unit. The appellant's Canada Pension (CPP) disability pension was not in pay when the ministry closed his spouse's file and there is no information provided to confirm that her disability assistance file was closed due to employment income. There is also no information provided to confirm that the appellant's family unit is receiving Medical Services Plan (MSP) premium assistance. In 2010 the appellant was waiting for the long term disability (LTD) pension through his private insurance to be approved so the ministry assisted the family unit with hardship assistance and then assessed the family unit for disability assistance based on the income that he would receive from the LTD pension. The appellant was not in receipt of CPP disability pension benefits at this time. The ministry determined the family unit (appellant) had income in excess of the disability assistance rates and therefore the family unit was not eligible to receive disability assistance and the appellant was not eligible for MSO.

The ministry relied on the facts in the reconsideration.

At the hearing the appellant testified that he had suffered a work related injury (2009) and was on Workers' Compensation when, later in that same year, he was involved in a motor vehicle accident and suffered further injuries. He stated that as a result of the injuries received in the car accident Workers' Compensation discontinued his benefits and he had to go on LTD through his private insurance company. The appellant stated that during the time when his Workers' Compensation benefits were cut off and when he received LTD from his insurance company, he went back to the ministry and applied for assistance again and the family unit received hardship assistance pending the outcome of his LTD application. He stated the court declared him disabled and the insurance company paid him a LTD benefit that was in excess of the disability assistance rate the family would have been entitled to receive so the family was declared ineligible for disability assistance and the file remained closed. The appellant stated that he had also applied for a disability pension from Canada Pension but was advised he had to wait approximately one year before his application would be considered. He stated that when his CPP was approved the pension was backdated; he had to repay the insurance company for some benefits and now he receives a disability pension through CPP which is topped up by his private insurance company to an amount equal to what the insurance company was paying previously. The appellant stated that the amount of disability pension he receives today still exceeds the amount of disability assistance that the family unit would be eligible to receive. The appellant told the panel that he feels that had he waited until his CPP application to be approved and he had not sought a LTD pension from his insurance company that he would be eligible for disability benefits today. The appellant told the panel he is not seeking income assistance but he needs assistance with the cost of drug prescriptions and the medical equipment for

his family.

The panel finds the appellant's testimony is relevant to the issue under appeal and that his testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry denied the appellant's request for Medical Services Only (MSO) under section 61.1 EAPWDR because the appellant's family unit did not cease to be eligible for disability assistance for any of the reasons set out in section 61.1 EAPWDR.

The legislation considered:

EAPWDA

Interpretation

Section 1(1) In this Act:

applicant - means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

business day means a day other than Saturday or a holiday;

child means an unmarried person under 19 years of age;

dependant - in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child; (B.C. Reg. 131/2012) (B.C. Reg. 193/2006)

disability assistance - means an amount for shelter and support provided under section 5 *[disability assistance and supplements]*;

person with disabilities - means a person designated under section 2 *[persons with disabilities]*;

recipient - means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

Disability assistance and supplements

Section 5

Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR

Eligibility for medical services only

Section 61.1

For the purposes of this Division, a person may be eligible for medical services only if

(a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

- (i) employment income earned by the person or the person's spouse,
- (ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
- (iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan,

- (b) the person's family unit ceased to be eligible for disability assistance on the day the person became 65 years of age,
- (c) the person is a person with disabilities and the person's family unit ceased to be eligible for disability assistance because of
- (i) financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, or
 - (ii) an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse,
- (d) the person is a dependant of a person referred to in paragraph (a) or (c), or
- (e) the person is a dependant of a person referred to in paragraph (b), if the dependant was a dependant of the person referred to in paragraph (b) on the day that person became 65 years of age and remains a dependant of that person.

General health supplements

Section 62

(1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

The ministry argued that the appellant is not eligible for an MSO file because he does not meet the criteria set out in section 61.1 EAPWDR. The ministry argued the disability file for the appellant's spouse was closed in 2009 before he was a part of the family unit. The ministry stated that although the appellant does not have the PWD designation he (the family unit) could potentially qualify for an MSO file because his spouse is PWD. The ministry stated that when the appellant applied for assistance after his accident, the ministry assessed him (family unit) for disability assistance based his spouse's PWD designation and the net income the family unit. The ministry argued he (the family unit) was not eligible for disability assistance because of excess income (LTD pension); that the appellant's CPP disability pension was not in pay at this time; and, therefore the ministry file remained closed. The ministry argued that the appellant's income (LTD and CPP) is not employment income, it is considered unearned income because the LTD pension was approved first therefore the CPP pension is not exempt and must be considered in the calculation of the appellant's net income when determining eligibility.

The appellant argued that he wished he had not received the LTD pension as this has stopped him (the family unit) from receiving the medical benefits the family desperately needs. The appellant argued he is not seeking disability assistance (money) but does need the benefits to pay for family prescriptions and medical equipment. The appellant argued the family did receive assistance in 2009 before the Unemployment Insurance benefits were approved. He stated that he went to work, suffered a work related injury and was then involved in a car accident and the injuries and subsequent surgery(s) prevents him from working. He argued that had he known then (when he first applied for LTD through his insurance company) what he knows today that he would have waited for the CPP disability pension to be approved because he believes he would qualify for an MSO file.

Section 61.1 EAPWDR states that a person may be eligible for medical services only if the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

- (i) employment income earned by the person or the person's spouse,

- (ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
- (iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan,

Section 5 EAPWDA states that subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

The evidence before the panel is that the appellant does not have a PWD designation; that he was not a member of his spouse's family unit when her disability assistance file with the ministry was closed in 2009; and that her file was not closed due to employment income. The evidence is that when the appellant applied for MSO in 2013 the ministry assessed him (the family unit) for disability assistance because his spouse was PWD; that the ministry determined that the appellant was not eligible for disability assistance because the family unit's income was in excess of the amount of disability assistance that the family unit would be eligible to receive.

The panel finds that the appellant only met part of the legislated criteria set out in section 61.1 EAPWDR; that he is a member of a PWD family unit who is under 65 but he (the family) did not meet the criteria that his family unit ceased to be eligible for disability assistance as a result of employment income or CPP.

The panel finds the ministry's decision that the appellant is not eligible for a MSO file because he did not meet the legislated criteria set out in section 61.1 EAPWDR was reasonable.

Therefore, the panel finds that based on the evidence the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.