

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") reconsideration decision dated December 9, 2013 which held that the Appellant was not eligible for disability assistance for the month of December and until such time as she returns to British Columbia ("BC") and completes her reapplication as she was absent from BC for more than 30 days pursuant to section 15 of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR").

The Ministry held that they were not able to give the Appellant prior authorization for the continuance of disability assistance or hardship assistance while she was absent from BC for more than 30 days as there was insufficient evidence to support the trip was intended for the purpose of obtaining medical therapy that was prescribed by a medical practitioner and there were no circumstances that would support that the failure to provide prior authorization for the continuance of disability assistance was for the purpose of avoiding undue hardship as provided for in section 15(b)(c) of the EAPWDR.

### PART D – Relevant Legislation

Section 15(b)(c) of the EAPWDR

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

1. The Ministry Request for Reconsideration form dated October 30, 2013 completed and signed by the Appellant (the "Reconsideration Form")

In the Reason for Request for Reconsideration, Section 3, the Appellant's Advocate forwarded to the Ministry a comprehensive list of documents attached as Appendix "A" which detailed the Appellant's written submission and supporting documents attached as Exhibits "A" through "I."

Appendix "A" was a summary of the attached exhibits and comprised of letters, faxes and an email that were written on behalf of the Appellant by her Advocate. The supporting documents also included a letter written by the family of the Appellant, as well as a Tribunal Decision that had been appealed in 2009.

The Appellant acknowledged that she was leaving the country in October 2013 and recruited the assistance of a legal advocate as she was informed by the Ministry that she would not be eligible for disability assistance while she was out of the country.

The Appellant advised the following:

- i) That she will face undue hardship if her disability assistance is denied and stated that it will inevitably result in the Appellant being evicted from her home as a result of her inability to pay her rent and disallow her from meeting her basic needs upon her return;
- ii) that she would also be obtaining medical treatment while out of the country, including seeing a dentist for a root canal referred by her Canadian dentist; an endocrinologist for complications to her illness; as well as a dermatologist to review the state of her rosacea;
- iii) that she would also be accessing yoga and massage therapy;
- iv) that her illness was exacerbated by living away from her parents and she was going to obtain medical treatments she would not otherwise be able to afford in BC;
- v) that this was a "once-in-a-lifetime trip" and that she sought prior approval well in advance and took the initiative to understand her legal rights and responsibilities;
- vi) that being denied disability benefits was causing her a significant amount of stress and worry while she is away. The stress was also affecting her illness direct (aggravated pain and fatigue);
- vii) that she has no other source of income; and
- viii) that any question arising from the meaning "hardship" should be resolved in the Appellant's favor pursuant to the Interpretation Act.

For the hearing, the appellant provided the following additional written submission and documentary

## evidence:

Written Submission dated January 16, 2014 by the Appellant to the Ministry:  
The Appellant laid out the issue under appeal and provided the following additional information:

- i) The Appellant emphasized the stress the denial of her benefits caused while she was away and that she had been on anti-depressants for months and that this is undue hardship;
- ii) that the Appellant was threatened with eviction;
- iii) that the Appellant was able to avoid eviction, but that she was late in making her rent payment and now a notice of such will remain on file; and
- iv) that the Appellant is now in debt.

The Panel would like to acknowledge that three (3) documents were faxed by the Appellant to the Employment and Assistance Appeal Tribunal that were illegible.

The Panel finds that the additional evidence provided by the Appellant clarified her current situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant continuance of disability assistance while she was absent from BC for more than 30 days is a reasonable application of the law in the circumstances of the Appellant.

Section 15 of the EAPWDR states the effect of a recipient being absent from BC for more than 30 days in a calendar year while section 15(a)(b)(c) outlines the limited circumstances the Ministry is able to give prior authorization for the continuance of disability assistance. Section 15(a)(b)(c) states the following:

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.

In determining the Appellant did not qualify for continued disability benefits while she was out of the country, the Ministry concluded the following:

You are not eligible for disability assistance for December. As of December 1<sup>st</sup> you had been out of the country more than 30 days, did not receive prior approval, and the ministry is not satisfied that the medical therapy you plan to access was prescribed by a medical practitioner in BC. The ministry is not prepared to provide disability assistance for December to accommodate an extended vacation as you should have planned for the expense to avoid undue hardship and not relied on provincial assistance to maintain your support and shelter while out of the country for such an extended period. The ministry is not satisfied that the trip was required to avoid undue hardship and that continued assistance was required to meet that need.

The Ministry was not satisfied the medical therapy the Appellant was going to obtain was prescribed by a medical practitioner in BC as stipulated in section 15(b) of the EAPWDR. The Ministry stated the Appellant could have planned for the expense and was not satisfied the purpose of the trip was to avoid undue hardship pursuant to section 15(c) of the EAPWDR.

The Appellant argued that she met the requirements in section 15 (b)(c) of the EAPWDR and submitted that she would be seeking medical therapy while away from BC and had been referred by a dentist for a root canal. The Appellant also submitted that she intended on seeing an endocrinologist, dermatologist and planned on attending yoga classes and massage sessions.

The Appellant additionally submitted failure to give authorization to leave BC for longer than 30 days would lead to undue hardship as she is scheduled to be away for three months and she will be unable to pay her rent during this time. The Appellant stated that her inability to pay her rent will inevitably lead to her eviction from her home and/or force her to borrow money to ensure her monthly living expenses in BC are covered in her absence.

Section 15 of the EAPWDR provides that 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..." If a recipient leaves BC

for longer than 30 days they are in direct contravention of the legislation and are no longer eligible once 30 days has lapsed.

The Appellant relied on section 15 (b)(c) which gives the Ministry discretionary powers to otherwise give prior authorization to recipients who are required to leave BC for longer than the legislated 30 days in a calendar year if the purpose of her absence is for attending medical therapy or for the purpose of avoiding undue hardship.

#### **Purpose of Obtaining Medical Therapy**

The EAPWDR clearly allows a recipient of disability assistance to leave the province for longer than 30 days if the Ministry gives prior authorization for the continuance of disability assistance for the purpose of obtaining medical therapy *if* prescribed by a medical practitioner.

The Ministry concluded that the Appellant did not provide sufficient proof that the medical therapy was prescribed by a medical practitioner pursuant to section 15(b) of the EAPWDR and could not be relied on as a basis for leaving the province for longer than the legislated time.

The Appellant argued that her dentist recommended she have a root canal as it was less costly than having a root canal in BC. The Appellant also indicated that she had also planned on seeing an endocrinologist, dermatologist, as well as attend yoga sessions and massage therapy.

The Appellant, however, did not provide evidence, by way of documented referral, that any of the appointments were prescribed by a medical practitioner. While the Appellant stated the root canal was recommended by a dentist, it appears that the purpose of the recommendation was based on a financial reason rather than medical one.

While the Appellant submitted she had planned on making an appointment with a dentist, endocrinologist, dermatologist, and massage therapist, she also stated the primary purpose for her departure was to visit her family not to obtain medical therapies as required by section 15(b).

The legislation is clear and states that a recipient may be approved to leave the province for longer than the legislated 30 days if the purpose is to obtain medical therapy prescribed by a medical practitioner.

The Panel finds that the Appellant neither provided confirmation that her intended appointments were prescribed by a medical practitioner nor that the appointments were the reasons she was leaving BC for longer than the prescribed allowable time.

#### **Purpose of Avoiding Undue Hardship**

The EAPWDR similarly allows a recipient of disability assistance to leave the province for longer than 30 days in a calendar year providing the Ministry gives prior authorization for the continuance of disability assistance for the purpose of avoiding undue hardship.

Section 15(c) appears to be a catch all that is intended by the legislatures to broaden the Ministry's discretion for non-specific categories that are not listed in section 15 exemptions of the EAPWDR when the failure to give approval for extended absences would result in undue hardship for the recipient.

The Ministry concluded that section 15(c) did not apply in the circumstances of the Appellant as the Appellant was aware of her upcoming trip and that the Appellant could have properly planned for her absence and avoided the possibility of facing undue hardship on her return.

The Appellant submitted that while she is away visiting her parents she will need to continue to pay her rent and other household expenses. Not approving her for the three month departure and continuance of disability benefits will require her to either borrow money or face eviction. The Appellant submitted that borrowing money is not an option and eviction will necessarily ensue which amounts to undue hardship although it was later submitted that the Appellant was not evicted upon her return but was required to borrow money to pay her rent and is now in debt. The Appellant argued that the debt amounts to undue hardship.

Section 15(c) of the EAPWDR is one of three exceptions listed that would otherwise allow the Ministry to exempt a recipient from section 15 of the EAPWDR. Those exemptions again are education, medical therapy and undue hardship. The idea behind the exemption is to provide flexibility to allow recipients the opportunity to leave BC if it is in pursuit of education, medical therapy or if there are circumstances beyond these two categories that would cause undue hardship "section c" - a third non-specific category, would remedy any unforeseen situations.

In determining whether or not denying the Appellant extended leave from BC would cause undue hardship the purpose of the Appellant's absence has to be considered.

The Appellant was clear that the purpose of her trip was to reunite with her parents whom she had not seen in approximately six years. The Appellant's parents bought her a round trip ticket for a three month stay outside of BC. The Appellant had ample time to prepare for her trip prior to leaving BC and was aware of the Ministry's refusal to grant her authorization for extended travel as early as September 2013.

When Appellant realized she would not receive the preapproval she was presented with options. The Appellant had the option to a) reduce her time out of country and return back to BC within the legislated time frame to avoid being denied disability assistance; b) not go on the trip and return the ticket to her parents for either refund or voucher; or c) leave the country for 3 months and be denied disability benefits until the Appellant is reassessed on her return.

The Appellant elected to leave the province for three months to visit her family knowing that the Ministry denied her disability assistance while she was absent from BC.

The Panel finds the Appellant was informed by the Ministry that leaving the province for three months would result in the discontinuance of her disability benefits and she choose to leave the province and visit her parents notwithstanding the real risk of eviction. Section 15(c) was not designed to encourage extended trips out of province for more than 30 days to visit family. While the Appellant did run the risk of eviction by doing so, it stands that she cannot now rely on undue hardship as a basis for her appeal.

The Appellant once again had options available to her that would have allowed her to visit her parents but return within the stipulated period to avoid any potential hardship and she elected to

APPEAL #

leave for three months.

The panel therefore finds the Ministry's determination that concluded the Appellant was denied assistance due to being out of the province for more than 30 days was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.