

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated April 7, 2014 in which the ministry found that the appellant was ineligible for assistance after April 30, 2014 because she spent more than 30 days out of British Columbia with no prior authorization provided by the ministry for the continuance of income assistance, pursuant to Section 17 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment And Assistance Regulation (EAR) Section 17

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A letter written by the appellant dated March 27, 2014 reading that the appellant had to go out of the country to visit her elderly father who was in poor health. She writes that a relative paid for her airplane ticket and that her grandson is lending her a small amount of money for food but she needs to pay him back. She continues that she rents from her son in law, and although he will not evict her, she feels that he should still receive rent while she is away.

At the hearing the appellant told the panel that on March 19, 2014 she visited the ministry office to inform the ministry that she would be out of the country from March 31 to May 8, 2014 to visit her ailing father. She said that her father was very ill and he asked her to come to see him. She said that the ministry explained the 30-day rule to her but she had already booked her ticket and if she shortened her trip to less than 30 days the airfare would have been more expensive.

At the hearing the ministry told the panel that when the appellant came into the ministry office on March 19 it was explained to her that if she were to be out of the province for more than 30 days in the year she would cease to be eligible for assistance, as authorization was not provided. In the reconsideration decision, the ministry explained that March 31, 2014 is day 1 and the appellant became ineligible for income assistance on the 31st day that is April 30, 2014. Therefore, the appellant was found ineligible for income assistance for the month of May 2014. The ministry said that she was informed of her right to a reconsideration decision and referred to an advocate. The ministry explained to the panel that the legislation gives three circumstances that a recipient would, with prior approval from the ministry, continue to be eligible for assistance while out of the province. These circumstances are 1) to permit the recipient to participate in a formal education program, 2) to permit the recipient to obtain medical therapy prescribed by a medical practitioner, 3) to avoid undue hardship. The ministry continued that the first two would not apply but that the third option was considered however the ministry determined that the appellant would not be under undue hardship if she was found ineligible for assistance after April. The ministry said that the appellant has the support of her family including her grandson lending her money for food and her son-in-law allowing her to maintain her home if she wasn't able to pay rent for the month and therefore the appellant wouldn't suffer a hardship.

Asked to define hardship, the ministry stated that the term is not formally defined in the legislation and that there is discretion applied to its application. The ministry continued that undue hardship would include situations where a person's health or safety is in jeopardy or that a child is at risk of being removed from the home. Hardship would also include circumstances where a person would become homeless if they didn't receive assistance because there are no other resources available.

The panel finds as fact:

- The appellant was out of the province visiting her father from March 31, to May 8, 2014.
- The ministry explained to the appellant the details of the eligibility rules regarding being out of the province for more than 30 days and that she did not have authorization for continuance of her income assistance.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that the appellant does not qualify for assistance after April 30, 2014 because she spent more than 30 days out of the province in 2014 with no prior authorization for the continuance of income assistance.

The relevant legislation states;

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

17 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 income assistance or hardship assistance unless the minister has given prior authorization for the continuance of income 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.

The ministry's position is that the appellant was absent from the province for more than 30 days and she is therefore ineligible for further assistance as written in the EAR section 17. The ministry determined that she did not meet the criteria for any of the exemptions listed in section 17 and the ministry had, therefore, not provided authorization to the appellant for the continuance of income assistance.

The appellant's position is that the ministry made an unreasonable decision when they found her ineligible for further assistance. She maintains that she had to visit her father out of the province because he was very ill and while she was away she needed to pay her rent in BC and even though she was out of the province, she needed to buy food.

The panel accepts that both parties agree the appellant was out of the province for more than 30 days. According to the EAR section 17 a person ceases to be eligible for assistance if they are out of the province for more than 30-days unless they have received prior approval from the ministry for the continuance of income assistance for specific purposes, namely: to participate in a formal education program, obtain medical therapy, or to avoid undue hardship. As the appellant's stated reason for being out of province was to visit her father the ministry found that the appellant was not eligible for the continuance of income assistance for the purpose of attending a formal education program or receiving medical therapy.

The panel considered the ministry's finding that finding the appellant ineligible for further assistance would not result in undue hardship. The appellant told the panel that she wanted to pay her son-in-law rent while she was away and that she needed to buy food for herself while she was out of the province. The appellant added that her son-in-law was not considering evicting her if she could not pay the rent and that her grandson offered to lend her a small amount of money for her to buy food while she was away. The panel considered how the ministry defines hardship and how it was applied in the appellant's circumstances. The panel considered the ministry's argument that the appellant has the support of family including her son-in-law's flexibility with her rent, her grandson's offer to lend her money, and her family member's offer to purchase her airplane ticket. The panel finds that the ministry was reasonable to determine that the appellant's health, safety, and housing status would not be in jeopardy as a result of its decision. The panel finds that the ministry was reasonable to

determine that the appellant would not be subject to undue hardship if she were found ineligible for further assistance.

The appellant admitted that the ministry had advised her prior to her departure that she would not be eligible for income assistance if she left the province for more than 30 days, as authorization had not been provided. The panel finds that the ministry reasonably concluded that the appellant is not eligible for income assistance after April 30, 2014 as she was outside of the province for more than a total of 30 days and she had not been given prior authorization by the ministry.

The panel finds that the reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant and the therefore the panel confirms the decision.