

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 18, 2015 wherein the ministry denied the appellant’s request for a Medical Services Only (MSO) file because at the time the appellant turned 65 years of age he was a single recipient of hardship assistance and not disability assistance and therefore did not meet any of the criteria set out in section 61.1 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 6
EAPWDR – sections 61.1 and 69

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Letter from the ministry dated January 30th, 2015;
- Request for Reconsideration dated February 11th, 2015;
- Application by appellant for Premium Medical Assistance dated February 12th, 2015.

In 2002 the appellant received a PWD designation and subsequently as a result of a criminal code conviction a life-time ban was placed on his file from further receipt of assistance. The appellant then applied, as a sole applicant, for hardship. In December 2014 the appellant turned 65 years of age and his file was switched to MSO only. In January 2015 a file review determined the appellant was not entitled to MSO because he was in receipt of hardship assistance and not disability assistance when he turned 65. In February 2015 the appellant started to receive OAS/ CPP/ GIS. The appellant was advised that if he was unable to pay for his medical needs he would need to apply for Premium Medical Assistance (PMA) from BC Medical as well as Fair Pharmacare.

In the Request for Reconsideration the appellant submitted that he was diagnosed with a terminally ill disease and was expected to be deceased 2 ½ years ago. The appellant submitted that when he asked his doctor what would happen if he stopped taking his medication he was told that he would likely be dead in about 2 weeks, so with the option of no coverage and no medication the appellant seeks the ministry's guidance. The ministry had previously provided the appellant with application information for PMA and Fair Pharmacare.

The ministry requested to have an observer in attendance at the hearing. The appellant did not object and the observer was permitted to attend the hearing.

In his Notice of Appeal, dated 25 February 2015, the appellant writes that he disagrees with the ministry's reconsideration decision because "This "Hardship" category is Discriminatory as well as being "Unconstitutional" in my opinion – plus as previously said; in court this was applied after the fact, and premeditated deception on the part of both Crown and Ministry is quite obvious. If necessary this matter should be addressed in a proper Court of law to achieve both fairness and proper disposition rather than this ongoing selective mode of bureaucratic blackmail!"

At the hearing the appellant stated:

- That in 2008 he was not convicted of fraud under Criminal Code but he did make a deal with the Crown and plead guilty which resulted in the ministry declaring him ineligible to receive disability assistance so he went on hardship assistance;
- That he didn't like the term 'hardship' but he didn't care because he was too sick at the time to argue;
- That he suffered a serious heart attack and had to travel to Vancouver for treatment;
- That since being on hardship assistance the ministry has purchased medical equipment to assist him;
- That when he turned 65 years of age, over 1 year ago, the ministry informed him he would have to apply for OAS and CPP and an EAW assisted him in completing these application forms;
- That he was told his file (hardship) would be converted to Medical Services only file and he would always have medical coverage;
- That now, one year later, he is not eligible for any benefits;
- That he has a very serious heart condition and he does not have the funds to pay for his medications or the transportation costs for medical treatment.
- That he only has enough medication to cover the next 14 days;
- That his doctor told him that if he didn't take his medication(s) he would be dead in two weeks.
- That the term "hardship" is discriminatory, what does it mean?

In response to questions from the panel the appellant stated:

- He has been approved for PMA;

- He applied for Fair Pharmacare and was sent a letter advising him of his cost formula.

The panel finds the appellant's testimony is in support of the information and record that was before the ministry at the time of reconsideration and therefore is admissible under section 22(4) EAA.

At the hearing the ministry relied on the facts in the reconsideration. In addition, the ministry stated that an administrative error occurred in 2014 when the appellant's file was switched from Hardship to MSO.

In response to questions from the appellant the ministry stated:

- The ministry stated there are different codes applied to hardship files and when the appellant was assessed for hardship assistance he was assessed under a life threatening health need.

The panel finds the ministry's testimony is in support of the information and record that was before the ministry at the time of reconsideration and therefore is admissible under section 22(4) EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 18, 2015 wherein the ministry denied the appellant's request for an MSO file because at the time the appellant turned 65 years of age he was a single recipient of hardship assistance and not disability assistance and therefore did not meet any of the criteria set out in section 61.1 EAPWDR.

The legislation considered:

EAPWDA

Hardship Assistance

Section 6

- (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that
- (a) is eligible for it, and
 - (b) is not eligible for disability assistance.
- (2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

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.

Preliminary matter:

At the hearing the appellant argued that hardship is a broad term that is discriminatory and he considers it a leper's list and the ministry doesn't care if you're 19 or 69. The appellant stated that he wasn't convicted but he did plead guilty to a Criminal Code fraud charge(s) in 2008 in an agreement with the Crown. The Criminal Code conviction resulted in the ministry placing a lifetime sanction on his file that he was not eligible to receive disability assistance. He stated that, at that time, he didn't care because he was sick and, then, one year later he suffered a heart attack. He stated that he was in dire straits due to problems with another federal agency so

he applied for hardship assistance which was approved and this paid his travel expenses for medical treatment(s). The appellant stated he has always been bothered by the term hardship and needs assistance with the cost of his prescription medicine(s).

The ministry stated that this appeal relates to the appellant's eligibility for MSO and he does not meet the legislated criteria in section 61.1 EAPWDR.

Panel findings

Section 1(1) EAPWDA defines hardship assistance; section 6(1)(b) EAPWDA provides the ministry with the authority to provide hardship assistance and section 35 EAPWDR sets out the eligibility criteria and limitations for ministry to provide hardship assistance. The panel finds the term hardship assistance is defined within the EAPWDR legislation and the ministry has no discretion when applying the EAPWDA and/or EAPWDR.

Under section 24(2) of the *Employment and Assistance Act*, the panel's jurisdiction is limited to confirming or rescinding the outcome of a request for reconsideration of the ministry's decision. The panel's jurisdiction is limited to matters set out in section 19 EAA and therefore does not have jurisdiction to hear or make a determination on complaints of discrimination.

The panel will therefore consider the reasonableness of the ministry's decision not to provide the appellant with an MSO file only under the applicable MSO legislation at issue in this appeal.

The ministry argued that the appellant is not eligible for a MSO file because at the time he reached 65 years of age he was on hardship assistance and not disability assistance and as a result did not meet the criteria set out in section 61.1(b) EAPWDR. The ministry stated that an administrative error occurred when the appellant turned 65 years of age and his file was converted from Hardship Assistance to MSO; that he was not eligible for MSO at that time because he was not receiving disability assistance. The ministry stated that after the internal audit revealed the error, the ministry wrote to the appellant advising him he no longer was eligible to receive MSO and that if he needed further medical assistance he needed to apply for MPA and Fair Pharmacare.

The appellant argued that he has a life threatening health condition and cannot afford his medications and needs the ministry's assistance. The appellant argued that when the ministry told him he had to apply for CPP and OAS he was told that his file would be converted to MSO and his medications would be covered. The appellant argued that after he turned 65 years old he was called into the ministry's office; they explained that he needed to apply for his federal benefits – CPP, OAS and GIS. He argued that at that time he explained his concern for not being able to cover his medical needs and was told that his file would be converted to MSO. The appellant feels that it the ministry's decision is not reasonable to change his status now and the ministry is only looking to save money so someone will get their bonus.

Section 61.1 EAPWDR states "a person may be eligible for medical services only if (a) the person is under age 65 ... (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...ceased to be eligible for disability assistance because of (i) financial assistance...(ii) an award; (d) the person is a dependent child...(e) the person is a dependant

The evidence before the panel is that the appellant does have a PWD designation and that a lifetime sanction was placed on his file in 2008 stating that he is not eligible for either income assistance or disability assistance. The evidence is that when the appellant reached 65 years of age he was a single recipient of hardship assistance and once he received OAP and CPP he was no longer eligible to receive hardship assistance.

The panel finds that when the appellant turned 65 years old and his file was changed to MSO the ministry made an administrative error because the ministry did not have the legislative authority to do that and the error was discovered through an internal review. The panel finds the ministry has no discretion but to comply with

the EAPWDR; that when a person turns 65 years of age they must be receiving disability assistance to have their disability file converted to MSO as set out in section 61.1(b) EAPWDR. The panel finds the appellant was a single recipient of hardship assistance when he reached 65 years of age and therefore the ministry's decision to determine the appellant did not meet the eligibility criteria for MSO was reasonable.

The panel notes the ministry did provide the appellant with information to assist him, if necessary, with his medical expenses.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for MSO was reasonably supported by the legislation and the evidence. The panel therefore confirms the ministry's decision.