

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation’s (the “ministry”) reconsideration decision of March 27, 2015, which found that the appellant ceased to be eligible for assistance on February 20, 2015 as she had not obtained the minister’s prior approval to be outside British Columbia for more than 30 days and had not demonstrated that she meets any of the legislated purposes for continuing assistance under section 15 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

EAPWDR, section 15

## PART E – Summary of Facts

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

- Notice of Deposit dated January 21, 2015 and attached assistance stub
- Medical Report from a physician dated February 18, 2015 stating that the appellant came to a medical clinic in another country with Acute Sinusitis on February 18, 2015 and is not fit to fly for 1 week due to congestion
- Doctor's Prescription dated February 18, 2015
- Email dated February 20, 2015 with the appellant's flight itinerary indicating that she was flying back to British Columbia on March 4, 2015
- Email from the appellant to the ministry dated February 24, 2014 advising that she asked her friend to fax in her stub because she was unable to do so from outside the country. The appellant advised that she had to change her flight because she was sick and would show the ministry the letter from the doctor when she returned to British Columbia. The appellant asked the ministry to process her stub and deposit her cheque into her account
- Email from the ministry to the appellant dated February 26, 2015 advising the appellant that as she was out of the province for more than 30 days without prior approval she is currently not eligible for assistance in March. The worker advised the appellant to come to the ministry office when she returned to the province
- The appellant's RFR dated March 24, 2015 indicating that the reason for her delay returning to British Columbia was because she got sick and was not able to fly. The RFR indicates that the appellant saw a doctor, took medication and her flight was changed to the first availability. The appellant questions how she could obtain prior approval from the ministry when she did not know she would be sick until she was out of the province.

### **Additional information provided**

The appellant provided a written submission through her advocate dated April 16, 2015 detailing the circumstances surrounding her time out of the province, her attempts to contact the ministry during her absence and written argument (the "Submissions").

The appellant also provided a letter dated April 20, 2015 stating that she did not want to expose her family's problems but felt she now had to in support of her appeal. The appellant included a photograph of her grandchild and a letter from her psychiatrist dated April 2, 2015 stating that the appellant is being seen for severe anxiety disorder, that she got sick while away on her trip and is struggling with several stressors in her life.

The ministry did not object to the new evidence and relied on the reconsideration decision.

As there was no evidence before the ministry at the time of reconsideration regarding the appellant's psychological condition of anxiety, the panel has not admitted that information into evidence. The panel has admitted the other information into evidence as it is in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act* as it relates to and corroborates her efforts to contact the ministry regarding her absence from the province.

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With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision which found that the appellant ceased to be eligible for assistance on February 20, 2015 as she had not obtained the minister's prior approval to be outside British Columbia for more than 30 days and had not demonstrated that she met any of the legislated purposes for continuing assistance under section 15 of the EAPWDR was reasonable.

The relevant legislation is as follows:

### **EAPWDR Section 15: Effect of recipient being absent from BC for more than 30 days**

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.

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The ministry's position is that the appellant contacted the ministry on January 6, 2015 and advised that she would be leaving the country on January 20 to see her daughter and that her return flight was open. The ministry advised that she would not be eligible for assistance if she was out of the province for more than 30 days. On February 25, 2015 the ministry received a copy of an email from the appellant to another person dated February 24, 2015 advising that she had to change her flight because she had gotten sick and that she would show the confirmation letter from the doctor when she got back. On March 5, 2015 the ministry received a copy of an email from a booking company to the appellant containing the appellant's flight information back to the province on March 4, 2015. The ministry determined that the appellant was eligible for full shelter and pro-rated the support from March 4-31, 2015.

The ministry's position is that the appellant left the province on January 20, 2015 so January 21, 2015 was her first day out of the province and February 19, 2015 was her 30<sup>th</sup> day out of the province. As the appellant was not back in the province until March 4, 2015, she was out of the province for more than 30 days as of February 20, 2015 and as she had not obtained prior approval to be out of the province for more than 30 days she ceased to be eligible for assistance as of February 20, 2015.

The ministry states that as the appellant saw a doctor in the other country on February 18, 2015 but did not attempt to contact the ministry until February 24, 2015 which is 5 days after the 30 day deadline of February 19, 2015 and six days after the appellant knew that she could not fly for a week, the ministry finds that the appellant did not seek or obtain the minister's prior approval as required.

The ministry's position is that the appellant did not provide information indicating that she required a continuance of assistance for the purpose of participating in a formal education program as required

in EAPWDR section 15(a).

The ministry's position is that the appellant did not require continued assistance for the purpose of permitting her to obtain medical therapy prescribed by a medical practitioner as required in EAPWDR section 15 (b).

The ministry's position is that the appellant has not provided information demonstrating that she requires a continuance of assistance for the purpose of avoiding undue hardship. In particular the ministry states that although the appellant's email of February 24, 2015 indicates that her mortgage payment will be due, the appellant received her full March 2015 shelter and has not provided any information to indicate that if she still has a problem.

The appellant's position is that she contacted the ministry on January 6, 2015 requesting special permission to go out of the country to care for her grandchild while the appellant's daughter and other grandchild travelled outside the country so that the grandchild could have lifesaving surgery. On January 28, 2015 the appellant faxed her income assistance stub to the ministry. While away the appellant fell ill with a serious sinus condition and the doctor advised that she was unsafe to fly for one week. On February 24, 2015 the appellant emailed the ministry explaining that she had fallen ill and had to delay her return to the province on doctor's orders. The appellant received an email from the ministry advising that she must attend the ministry office with her airline ticket upon her return to the province so that the ministry could review her file.

The appellant obtained the earliest possible return flight, which was on March 4, 2015 and attended the ministry office on March 5, 2015 providing the ministry with a copy of the doctor's note confirming her illness and her airline ticket information.

The appellant submits that the ministry's decision was not a reasonable application or interpretation of the EAPWDR in her case. The appellant's position is that the ministry should cover the entire month of March because of undue hardship due to an unexpected illness, that was responsible for her delayed return to the province.

#### Panel Decision

EAPWDR section 15 states that a recipient who is outside of British Columbia for more than a total of 30 days ceases to be eligible for disability assistance unless the ministry has given prior authorization for the continuance of disability assistance for the prescribed purposes, namely:

- (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 panel finds that the appellant was out of the country for more than 30 days, given that she left the country on January 20, 2015 and did not return until March 4, 2015. The panel also finds that the appellant did not obtain prior authorization to be out of the province for more than 30 days due to one of the prescribed circumstances set out in EAPWDR section 15. In particular, the appellant did not leave the country to participate in a formal education program or due to a need to obtain medical therapy prescribed by a medical practitioner. Accordingly, EAPWDR section 15 (a) and (b) are not

applicable to the appellant's circumstances.

Although the appellant did contact the ministry on February 24, 2015 to advise of her illness and her delay in returning to the province, the appellant has not provided any information indicating why she did not email the ministry on February 18 or 19, 2015 after she saw the doctor to advise that she could not return to the province within 30 days. In particular, although the appellant was ill with a sinus infection, there is no information indicating why that would have prevented the appellant from emailing the ministry sooner and seeking prior authorization to be out of the country beyond the 30 days due to her unexpected illness. In her email to the ministry dated February 24, 2015, the appellant stated that she would have a problem with her mortgage payment if her assistance was not deposited into her account but the ministry subsequently provided her full March 2015 shelter amount. In addition, the appellant has not provided any information indicating that she requires a continuance of disability assistance to avoid undue hardship as required by EAPWDR section 15(c). Accordingly, the panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstances.

The panel therefore confirms the ministry's decision.