

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of May 26, 2015 in which the ministry denied the appellant's request for Medical Services Only (MSO) benefits because the reason the appellant ceased to be eligible for disability assistance did not meet the eligibility criteria for MSO set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 61.1.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 61.1

PART E – Summary of Facts

The appellant was a recipient of disability assistance (DA) from 1995 to April 2015.

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

- request for reconsideration received by the ministry on May 20, 2015 in which the appellant's mother stated that:
 - she had engaged in numerous conversations with the ministry on behalf of her daughter and on March 9, 2015 was told by a ministry worker that her daughter would receive MSO;
 - on the basis of this information the appellant signed a contract with the trustee of her father's estate to enter into a trust agreement (the Trust) for the benefit of the appellant which would provide the appellant with a regular monthly income from the Trust .

The ministry relied on the following facts in its reconsideration decision:

- On May 9, 2013 the appellant notified the ministry that her father had died and had left her an inheritance that included a house and approximately \$150,000 in cash, which would be placed in the Trust for the benefit of the appellant. She requested information about assets, trusts and their impact on the appellant's DA and told the ministry worker that she would declare the income and assets, but did not do so at that time.
- On June 10, 2014 the appellant's mother reviewed the ministry pamphlet on trusts and asked about the appellant's eligibility. No documents were submitted to the ministry.
- On March 9, 2015 the appellant and her mother requested transfer of the appellant's file to MSO because the appellant would begin to receive income from the Trust commencing April 1, 2015.
- On May 4, 2015 the appellant's mother submitted a Monthly Report requesting no further DA, and told the ministry worker that she and the appellant had negotiated a monthly payment from the Trust in the belief that the appellant's medical expenses of approximately \$500 per month would be paid by the ministry through its MSO provisions, and that the Trust provisions could not be re-negotiated for another 5 years.

In her Notice of Appeal dated June 1, 2015 the appellant reiterated her position that she entered into the Trust based on the ministry's information that her monthly medical expenses would be paid by the ministry through its MSO provisions.

The appellant's mother acted as her advocate at the hearing, and told the panel that every time she called the ministry she was given a different answer, which concerned her because she did not want to make an error in negotiating the Trust with the trustee. On March 9, 2015 a ministry worker told the appellant's mother that the appellant would receive MSO once she began receiving income from the Trust and was no longer eligible for DA. On May 4, 2015 a ministry worker told the appellant's mother that the appellant was not eligible for MSO because she did not meet the eligibility criteria set out in EAPWDR Section 61.1, and referred her to a ministry supervisor. The ministry supervisor called the appellant's mother a couple of days later and told her that he would do what he could to assist. In response to a question from the panel the appellant's mother reported that although payments from the Trust were supposed to commence April 1, 2015 they did not actually begin until May 1, 2015.

At the hearing the ministry representative relied on the reconsideration decision and added that when

the appellant's mother called the ministry on June 3, 2014 to ask about trusts a trust information booklet was mailed to the appellant. On May 4, 2015 the appellant was advised to submit her father's will, the Trust document, bank statements and a copy of the estate's disbursements to enable the ministry's Legislation, Litigation and Appeals Branch (LLAB) to review the validity of the Trust and to determine options available to the appellant. The appellant did not submit the documents.

PART F – Reasons for Panel Decision

The issue under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of May 26, 2015 in which the ministry denied the appellant's request for Medical Services Only (MSO) coverage because the reason the appellant ceased to be eligible for disability assistance did not meet the eligibility criteria for MSO set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 61.1.

The relevant legislation is as follows:

EAPWDA:

Disability assistance and supplements

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

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,
 - (iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan, or
 - (iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement,
- (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.

The appellant argues that she relied on information received from a ministry worker that she would be eligible for MSO once she began receiving monthly income from the Trust and was no longer eligible for DA. She argues further that on the basis of this assurance from the ministry she negotiated a monthly income from the Trust that was not sufficient to pay her monthly medical costs of approximately \$500.

The ministry argues that the reason MSO benefits to the appellant were denied because the reason she was no longer eligible for DA did not meet the eligibility criteria for receipt of MSO set out in EAPWDR Section 61.1.

Panel Decision

On May 1, 2015 the appellant asked the ministry to close her DA file because she was receiving monthly income from the Trust sufficient to live independently of assistance, and requested MSO benefits in order to pay her monthly medical expenses.

EAPWDR Section 61.1 states that a person may be eligible for MSO **only** (*emphasis added*) if she/he is under the age of 65 and is no longer eligible for DA because:

1. the recipient or recipient's spouse has earned employment income;
2. the recipient or a member of the family unit has received CPP lump sum benefits pursuant to BC Supreme Court decision No. S50808;
3. the recipient or a member of the family unit receives a CPP pension or other CPP payment;
4. the recipient or recipient's spouse is receiving money or value under a maintenance order or agreement;
5. the recipient or a member of the family unit received financial assistance under the *Child, Family and Community Service Act*; or
6. the recipient has been awarded compensation under the *Criminal Injury Compensation Act* or *benefits under the Crime Victim Assistance Act*.

The panel finds that the ministry reasonably determined that the appellant was not eligible for MSO because the reason she ceased to be eligible for DA was not one of those listed in EAPWDR Section 61.1.

Therefore, the panel finds that the ministry's decision to deny a MSO file to the appellant was a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision.