



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 24, 2015, which found that the appellant was not eligible for disability assistance for the months of May and June 2015 and for a prorated portion of the month of April 2015 (after April 12), as he was out of the province for more than 30 days without prior authorization by the minister as required by section 15 of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”).

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) section 3  
EAPWDR, sections 4 and 15

## PART E – Summary of Facts

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

- Letter from the appellant to the ministry dated March 30, 2010 indicating that he was out of the province in another country because his baby was sick and that he would return on May 10 2010
- Copy of the appellant's electronic ticket dated July 2011 for travel to and from another country
- Copy of the appellant's passport and identification
- Appellant's travel itinerary dated August 20, 2013
- Letter from the ministry to the appellant dated September 5, 2013 indicating he was not eligible for disability assistance as he had been absent from BC for more than 30 days in a year
- Request for Reconsideration dated September 21, 2013 regarding the appellant's prior request for continued disability assistance while out of the country in 2013 for medical treatment
- Reconsideration Decision dated October 2, 2013
- Letter from the appellant's physician dated January 13, 2015 (the "physician's note") indicating that he has treated the appellant for chronic and diffuse pain as well as depression and insomnia, that the appellant had previously benefitted from natural treatment in another country, and is intending to pursue the same treatment again as medications and therapies here have been ineffective. The physician indicates that he endorses the appellant's plan to pursue the natural treatment in another country
- Invoice dated February 21, 2015 indicating the cost of the appellant's flight and his flight itinerary indicating a departure date of March 5, 2015 and return date of June 16, 2015
- Letter from the appellant to the ministry dated March 2, 2015 and date stamped "received" by the ministry on March 4, 2015, advising that he would be leaving the country on March 5, 2015 to pursue medical treatment and would return on July 16, 2015. In his letter the appellant indicates that he has borrowed money for the trip and the expenses will have to be repaid. The appellant requests that the ministry continue his disability benefits during his absence as he still has to pay rent while he is away
- Request for Reconsideration dated August 4, 2015 in which the appellant states that he is a patient who acquired doctor's approval to obtain intensive naturopathic treatment for 3 ½ months in another country. The appellant states that he has borrowed money to pay his three months rent and food expenses and requests reconsideration of his shelter and support for the months of April, May, and June 2015. The appellant states that he has receipts for the cost of treatment undertaken in another country. The appellant asks that the ministry refer to the note from his physician indicating that the treatment here was not effective and did not bring his pain under control.

In his Notice of Appeal dated August 30, 2015 the appellant states that he was not asked to complete section 4.1 and 4.2 forms at the time he dropped off his letter notifying the ministry of his absence from the province. The appellant also states that he did not receive the ministry's letter dated March 6, 2015.

At the hearing the appellant stated, through an interpreter, that he has pain all over his body due to many illnesses including hypertension and depression, that sometimes he is unable to walk, his hands are shaky and although he has to take many medications, they do not help him. He stated that his doctor thought that natural massage might help so he went to another country to receive that

treatment. He states that he gave the ministry all of his documents prior to his departure and never received a letter from the ministry advising that his request to continue his disability assistance was denied. He stated that the process is very frustrating as when he took the physician's note to the ministry on March 4, 2015, the ministry never explained that he would need to provide further documentation or complete any other forms. The appellant states that he has difficulties because of his language and he needs help, which the ministry does not provide. The appellant stated that after returning to the province, he re-applied for assistance but again that process was difficult and delayed because he needed to find someone who speaks his language to assist him.

The appellant stated that although he obtained the physician's note in January 2015, he was waiting for money from a relative to purchase his ticket. He purchased his ticket on February 21, 2015 and on March 4, 2015 he provided the ministry with his letter advising that he would be away, the physician's note and a copy of his ticket.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant disability assistance for May, June and part of April 2015 on the basis that he ceased to be eligible for disability assistance as he was out of the province more than a total of 30 days in the year without prior authorization by the minister as required by section 15 EAPWDR was reasonable.

The relevant legislation is as follows:

EAPWDA

### **Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

EAPWDR

(A) Process for assessment of eligibility for disability assistance

**4** the eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2. (B.C. Reg. 306/2005)

(B) Application for disability assistance - stage 1

**4.1** (1) The first stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (2). (B.C. Reg. 306/2005)

(2) The applicants for disability assistance in a family unit

(a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 6

(2) [citizenship requirements], and (B.C. Reg. 198/2012)

(ii) the information, authorizations, verifications and declarations specified by the minister, as required in the

application for disability assistance (part 1) form,

(b) subject to subsections (4), (5) and (6) must (B.C. Reg. 85/2012)

(i) complete searches for employment as directed by the minister for the 3 weeks immediately following the date of the application under paragraph (a), or

(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a)

and in either case provide information about and verification of the searches for employment, in the form specified by the minister. (B.C. Reg. 98/2009)

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act. (B.C. Reg. 306/2005)

(4) Subsection (2) (b) does not apply to a person who

(a) is prohibited by law from working in Canada,

(b) has reached 65 years of age,

(c) is a member of a family unit that includes a person with disabilities, (B.C. Reg. 46/2008)

(d) is not a person with disabilities, but has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or

(e) is fleeing an abusive spouse or relative.

(5) Subsection (2) (b) does not apply if any person in the family unit to which an application relates has an immediate need for food or shelter or needs urgent medical attention. (B.C. Reg. 6/2008)

(6) Subsection (2) (b) does not apply to a sole applicant who

(a) has a dependent child, or

(b) provides care to a supported child (B.C. Reg. 48/2010) (B.C. Reg. 145/2015)

if the child has not reached 3 years of age. (B.C. Reg. 99/2009)

(C) Application for disability assistance - stage 2

**4.2 (1)** In this section, "**applicant orientation program**" means a program established by the minister to ensure

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that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of

(a) rules about eligibility for disability assistance or supplements,

(b) the process of applying for disability assistance,

(c) required employment search activities, community based job search resources and ministry and community programs,

(d) mutual obligations of the minister, applicants and recipients,

(e) employment plans,

(f) the minister's authority to collect and verify information, and

(g) the availability of alternate resources, such as, federal programs and other Provincial programs. (B.C. Reg. 306/2005)

(2) The second stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (3). (B.C. Reg. 306/2005)

(3) On completion of the first stage process provided for in section 4.1, the applicants for disability assistance in the family unit must complete and submit to the minister an application for disability assistance (part 2) form and must include as part of the application

(a) proof of the identity of the persons in the family unit and of their eligibility under the Act,

(b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and (B.C. Reg. 85/2012)

(c) the information, authorizations, declarations and verifications specified by the minister as required in the application for disability assistance (part 2) form. (B.C. Reg. 306/2005)

(4) Subsection (3) does not affect the minister's powers under section 10 of the Act. (B.C. Reg. 306/2005)

(5) Subsection (3) (b) does not apply to a person who

(a) has reached 65 years of age,

(b) is not described in section 6 (2) [*citizenship requirements*] and is in a family unit that satisfies the requirement

under section 6 (1), or (B.C. Reg. 198/2012)

(c) has a physical or mental condition that, in the minister's opinion, precludes the person from completing an applicant orientation program. (B.C. Reg. 306/2005)

### Section 15 - Effect of recipient being absent from BC for more than 30 days

**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.

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The appellant's position is that he provided the ministry with the physician's note supporting his treatment in another country and he provided the ministry with documentation confirming his departure and return date. The appellant's position is that the treatment was necessary for his condition and that the ministry should continue his disability assistance for the period he was out of the province. The appellant states that the ministry never asked him to fill out any section 4.1 and 4.2 forms and that if he was supposed to do so the ministry should have advised him of that requirement.

In his letter to the ministry dated March 2, 2015, the appellant indicates that he had taken a loan for all expenses of his trip that have to be repaid upon his return. He also indicates that he has to pay rent in BC while he was out of the country. In the RFR the appellant states that he borrowed money to pay for his three months rent and food while he was out of the country. He also states that he has receipts for the cost of the treatment taken in the other country. The appellant's position is that he does not have sufficient funds to cover all of his expenses and repay his loan without his disability assistance.

The ministry's position is that pursuant to EAPWDR section 15 the appellant ceased to be eligible or disability assistance on the 31st day after he was out of the province as he had not obtained prior authorization for the continuation of disability assistance for the purpose of obtaining medical therapy by a medical practitioner. As the appellant left Canada on March 6, 2015 he ceased to be eligible for disability assistance on April 12, 2015, which is the 31<sup>st</sup> day. After April 12, 2015 the appellant's file was closed and he was ineligible for disability assistance as he remained out of the province beyond the 30 days. After the appellant returned to BC on June 16, 2015 he was required to re-apply for disability assistance which he did and his file was re-opened as of July 2, 2015 and he became eligible for disability assistance as of that date.

The ministry's position is that the appellant only provided the ministry with information regarding his trip the day before he left the province and the information regarding the medical therapy that he was

going to obtain in another country was not adequate to explain the need to go outside the province for medical therapy. The reconsideration decision stated that the ministry attempted to contact the appellant on March 5, 2015 before his departure but were unable to do so. The ministry did not have a copy of the letter to the appellant dated March 6, 2015 denying his request for continued disability assistance while out of the province.

The ministry's position is that there are not any other specific forms to complete when requesting authorization for disability benefits to be continued pursuant to EAPWDR section 15 and that the forms required pursuant to EAPWDR section 4.1 and 4.2 were required when the appellant re-applied for disability assistance. The ministry's position is that when a request is made pursuant to EAPWDR section 15, a recipient must provide documentation from a medical practitioner regarding the medical therapy being prescribed and the ministry will want information confirming that the prescribed therapy is not available in the province but that there are no prescribed forms required to be submitted with a recipient's request.

Panel Decision:

Section 15 of the EAPWDR states that a recipient of disability assistance who is outside the province for more than a total of 30 days in a year ceases to be eligible for disability assistance unless the minister has given prior authorization for the continuance of disability assistance for the purpose of permitting the recipient to participate in a formal education program, permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or avoiding undue hardship.

As the appellant was in another country for the purposes of obtaining medical therapy EAPWDR section 15 (a) does not apply as that relates to participation in a formal education program.

Although the appellant provided the physician's note, his flight itinerary, and letter explaining that he was going to be out of the country to obtain medical treatment and requested that his disability assistance be continued while he was out of the province, he did not obtain prior authorization from the minister. The appellant obtained the physician's note in January 2015 and booked his flight on February 21, 2015 but did not provide that documentation to the ministry until March 4, 2015 the day before his departure. The appellant's letter to the ministry dated March 2, 2015 requests that his disability benefits continue while he was away which indicates that he was aware that they may be discontinued as he would be out of the province for more than 30 days, and given the appellant's prior file materials relating to other section 15 requests it is clear that he was aware that he required the minister's prior authorization. The appellant explained that although he received the physician's note in January 2015 he did not provide that to the ministry as he was waiting for money from another person to book his flight. The appellant's flight itinerary indicates that the flight was purchased on February 21, 2015 but the appellant did not provide any reason for the delay in not providing the documentation to the ministry until the day before he left the country.

While there is no requirement that the appellant provide the documentation within a certain number of days prior to his departure, the legislation is clear that a recipient ceases to be eligible for disability assistance if out of the province for more than 30 days without prior authorization from the minister. As the appellant did not obtain prior authorization from the ministry to be out of the province for more than 30 days in order to obtain medical therapy prescribed by a medical practitioner as required in EAPWDR section 15 (b) the panel finds that the ministry's reconsideration decision was reasonable.



The panel notes that the ministry indicates that they sent the appellant a letter denying his request on March 6, 2015 but the letter was not in the appeal record and the appellant states that he never received the letter. The panel is unable to determine whether the letter was in fact sent to the appellant but even if the letter was not sent that does not change the panel's decision as the appellant had already left the country on March 5, 2015. In addition, as the appellant provided the documents to the ministry on March 4, 2015 and the ministry attempted to contact him on March 5, 2015 before he left the country to advise that his request was denied, the panel finds that the ministry dealt with the appellant's request in a prompt manner. The appellant's flight itinerary indicates that his flight did not leave until 10:15 pm in the evening so it is not clear why the ministry was not able to reach the appellant during the day on March 5, 2015 but regardless of this, the appellant did not obtain prior authorization as required by EAPWDR section 15. In addition, the appellant confirmed that he made no attempt to contact the ministry after submitting his documents to determine whether his request had been approved.

While the appellant notes that the ministry never informed him that he had to complete any section 4.1 and 4.2 forms the panel finds that the forms required to be completed pursuant to EAPWDR section 4.1 and 4.2 are required when the appellant had to re-apply for disability assistance, not to accompany his request that his disability assistance be continued while he was away from the province for more than 30 days.

The panel finds that the ministry's decision that the appellant was not eligible for disability assistance for May, June and part of April 2015 as he did not meet the legislated requirements of EAPWDR section 15 (b) was reasonable.

EAPWDR section 15(c) provides that the ministry may provide prior authorization for the continuance of disability assistance for the purpose of avoiding undue hardship when a recipient of disability assistance is going to be outside the province for more than a total of 30 days in a year. While the appellant states that he has borrowed money for his trip, rent and food that has to be repaid and that he does not have enough funds to meet his expenses, he did not obtain prior authorization by the minister for the continuance of his disability benefits as required by EAPWDR section 15(c). In addition, although the appellant states in the RFR that he has receipts for the cost of the medical treatment obtained in the other country, he did not provide copies of those, or any other documents indicating that he has financial hardship.

### **Conclusion**

The panel acknowledges that the appellant notified the ministry of his decision to leave the province to seek medical treatment and that he has incurred expenses to do so that must be repaid. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for disability assistance for May, June and part of April 2015 is a reasonable application of the legislation in the circumstances of the appellant, as the appellant did not obtain prior authorization for continuance of disability assistance for the purpose of permitting him to obtain medical therapy prescribed by a medical practitioner outside the province of BC or to avoid undue hardship as required by EAPWDR sections 15(b) or (c). The panel therefore confirms the ministry's decision.