

PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (the ministry) dated 24 November 2015 that denied the appellant's request for Medical Services Only (MSO) status. The ministry determined that the reason the appellant ceased to be eligible for disability assistance was not one of the circumstances listed in section 61.1(3) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and therefore she was not eligible to be identified as a main continued person under section 61.1 of the Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 61.01 and 61.1

PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration consisted of the following:

1. From the ministry's files, supported by the appellant's Service Canada statements and a statement of earnings and deductions from her employer:
 - The appellant is younger than age 65; she was a sole recipient of disability assistance since January 2015.
 - She was employed and accessed the 2015 annual earnings exemption.
 - 15 May 2015: her employment ended.
 - 02 June 2015: she received her first EI payment. Her EI benefit rate was set at \$323/week.
 - As the appellant's monthly EI income was in excess of her monthly disability assistance rate, the appellant was not eligible for August disability assistance.
 - 01 September: her file was updated to MSO.
 - 21 October 2015: the ministry discovered that an error had been made and that she was not eligible for MSO. She was advised of this decision on 22 October 2015.

2. The appellant's Request for Reconsideration, signed on 17 November 2015. Under Reasons for Request, the appellant writes that she relies on the very expensive medication to help with her manic thinking. She had been readmitted to hospital while her medications were sorted out and she would like to avoid another hospital visit. She added that it seems that she was taken off MSO because she was receiving EI. However she is not on EI at the moment as she got a full-time job, but then was let go. She still has eight weeks of EI available so she has reapplied. However, before EI kicks in again she has no income and has to pay for rent, food, her phone bill and miscellaneous items so she would really benefit from having help with medical services. She cancelled a dentist appointment for a filling because she was worried that she would have no coverage and it would cost about \$600. Her last EI payment was on October 6, 2015. She emphasizes she declared all her employment and EI income as required. The balance of her submission explains her argument (see Part F, Reasons for Panel Submission, below)

The appellant's Notice of Appeal is dated 27 November 2015. She writes that she needs help to cover the costs of her expensive medications. She submits that she was misquoted by the ministry in the reconsideration decision regarding her interpretation of the legislation (see Part F, Reasons for Panel Submission, below).

Submissions for the hearing

The appellant's submission, dated 23 December, goes to argument (see Part F, Reasons for Panel Submission, below).

In an email dated 06 January 2016, the ministry stated that's its submission is the reconsideration summary provided in the Record of Ministry Decision.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision denying the appellant's request for MSO status was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The ministry determined that the reason the appellant ceased to be eligible for disability assistance was not one of the circumstances listed in section 61.1(3) of the EAPWDR and therefore she was not eligible to be identified as a main continued person under section 61.1.

The applicable legislation is from the EAPWDR:

Definitions

61.01 In this Division:

"continuation date",

- (a) in relation to a person who is a main continued person under section 61.1 (1) [*access to medical services only*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for disability assistance, means that date, and
- (b) in relation to a dependent continued person under section 61.1 (2) of a main continued person, means the continuation date of the main continued person;

"continued person" means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2);

"maintenance", **"maintenance agreement"** and **"maintenance order"** have the same meanings as in section 16;

"nutrition-related supplement" means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement — short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

"qualifying federal benefit" means a supplement under Part II or an allowance under Part III of the *Old Age Security Act* (Canada).

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or
- (b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

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- (a) on a date the family unit includes a person aged 65 or older,
 - (b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,
 - (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
 - (d) as a result of a person in the family unit receiving employment income,
 - (e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan* (Canada),
 - (f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
 - (g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

- (a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and
- (b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the *Canada Pension Plan* (Canada).

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

Positions of the Parties

The position of the ministry, as set out in the reconsideration decision, is that eligibility for MSO is outlined in section 61.01 and 61.1 of the EAPWDR and the appellant does not fall into any of the eligible categories listed in section 61.1. The reason the appellant ceased being eligible for disability assistance was because of EI income in excess of her assistance rate. She cannot be considered as

a main continued person for the purposes of MSO because she does not meet the continuation criteria identified in section 61.1(3). The ministry has no ability to allow medical coverage to continue for an additional 12 months, as the appellant was not eligible for MSO after her EI kicked in. As she does not meet the criteria, the ministry submits that it is unable to approve a request for MSO.

The appellant's position, as explained in her Request for Reconsideration, is that she understood from reading the ministry's website that "MSO coverage continues for one year from the date I became ineligible for MSO [sic]."

In her submission on appeal, the appellant further argues that denial of MSO status is unfair because she had been working, and if she had been able to continue to work, eventually her income would have become high enough to disqualify her for disability assistance and she would then be eligible for MSO. However, before that could happen, her employer went bankrupt and at the urging of the ministry, she applied for EI. She needs assistance with medication coverage, doctor's appointments and for a dentist appointment to get fillings. She argues that she did not make any mistake to get into this situation, except to get laid off through no fault of her own.

Panel Decision

To become eligible for MSO status, a person must first cease to be eligible for disability assistance under any of the 7 listed circumstances specified in subsection (3) of section 61.1. The undisputed evidence is that the appellant ceased to be eligible for disability assistance because her EI income was in excess of her disability assistance rate. Ceasing to become eligible for disability assistance due to receipt of EI income is not one of the circumstances listed in subsection (3). In particular, EI income is not "employment income" as specified under paragraph (d). The panel finds that under the legislation the minister has no discretion to provide MSO coverage under any circumstances other than those set out in subsection (3).

Accordingly, the panel finds that the ministry's decision to deny the appellant's request for MSO status was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.