



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated January 27, 2016, which denied the Appellant's request for medical services only (MSO) benefits because the Appellant ceased to be eligible for disability assistance and did not meet the eligibility criteria for MSO set out in the Employment and Assistance for Persons with Disability Regulation (EAPWDR) section 61.1(3).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5

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

## PART E – Summary of Facts

Information before the minister at reconsideration included:

- A Current Employment Insurance Claim printout in the Appellant's name, dated October 13, 2015, stating that her benefit rate is \$524.00 per month starting September 27, 2015.
- An undated, unaddressed note from the Appellant requesting receipt of information from the ministry concerning her EI payment.
- The Appellant's Request for Reconsideration signed December 22, 2015, with attachment outlining her argument.
- A Progress Report from a physiotherapist dated December 10, 2015, recommending the Appellant have access to a funded gym exercise program.

The Appellant submitted the following documents to the Panel:

1. A history of her medical condition and treatment, with copies of sections of the Canadian Charter of Rights and Freedoms and the EAPWDA.
2. A letter from a physician dated February 26, 2016, with a history of the Appellant's medical condition.
3. A Progress Report from a physiotherapist dated February 14, 2016, with a recommendation that she have access to a funded gym exercise program.

The Ministry had no objection to the admission of the above listed documents. Document 1 was admitted by the Panel as argument. Documents 2 and 3 were admitted by the Panel as evidence under s. 22(4) of the Employment and Assistance Act (EAA) as they corroborate the information about the appellant's medical conditions and are therefore submissions in support of the information and records before the minister when the decision under appeal was made.

The Appellant stated that she had a severe brain virus in 2007 which required lengthy physiotherapy. In 2010 she moved to another province, then returned to B.C. in September, 2015 and reapplied for disability assistance because her file had become inactive. She stated that she received Employment Insurance (EI) benefits for the months of October and November, and found employment in December. When she applied to the Ministry for medical services only (MSO) benefits, she was told she was not eligible because she was in receipt of EI benefits. In response to questions from the Panel the Appellant stated that she returned to work in November for 4 weeks, then permanently in December, received EI from the end of September, 2015 to the end of November and she was in receipt of EI immediately before she found employment.

The Ministry responded that s.61.1 EAPWDR provides for MSO if an applicant qualifies under one of the listed categories in section 61.1(3); however the Appellant does not qualify because she ceased to be eligible for disability assistance as a result of receiving EI, which is not a listed category. The Ministry stated that the Appellant applied for disability assistance on September 21, 2015, and her file was reopened. When she started to receive EI benefits in November, she was no longer eligible for disability assistance because she received EI at a rate that was higher than her disability assistance rate. The Appellant is designated as a Person with Disabilities (PWD). The Ministry stated that there is no provision for discretion in the legislation.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which denied the Appellant's request for medical services only (MSO) benefits because the Appellant ceased to be eligible for disability assistance and did not meet the eligibility criteria for MSO set out in the Employment and Assistance for Persons with Disability Regulation (EAPWDR) section 61.1(3).

Legislation

*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*

### **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

(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.

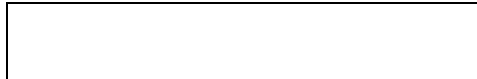
The Appellant's position is that she needs continuing therapy that has been recommended by her physician and physiotherapist, she cannot afford it and her employer does not provide coverage. She argued that it is unreasonable for the Ministry to deny her MSO coverage given that she meets all of the criteria for PWD designation.

The Ministry's position is that the Appellant was denied MSO coverage because the reason she was no longer eligible for disability assistance did not meet the criteria set out in s. 61.1 of the EAPWDR.

The Appellant was advised by the Panel that matters related to the Canadian Charter of Rights and Freedoms do not fall under its jurisdiction. Section 19.1 of the Employment and Assistance Act states that s. 46.3 of the Administrative Tribunals Act applies to this tribunal:

**46.3** (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection



applies to a tribunal.

The Panel notes that the Appellant was no longer eligible for disability assistance because her EI payments exceeded her disability assistance rate. Section 61.1 of the EAPWDR does not provide for access to MSO coverage for a person who ceases to be eligible for disability assistance as a result of qualifying for Employment Insurance benefits. Further, as noted by the Ministry, there is no discretion in the legislation to provide MSO solely on the basis of the appellant's continuing PWD designation. The Panel finds that the Ministry reasonably determined the Appellant was not eligible for MSO coverage because the reason she ceased to be eligible for disability assistance was not one of those listed in s. 61.1(3) of the EAPWDR.

The Panel therefore confirms the Ministry reconsideration decision as a reasonable application of the legislation in the circumstances of the appellant.