

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “Ministry”) dated Aug 23, 2016, which determined that the appellant was ineligible for disability assistance for 18 days during July 2016 after being absent from BC for more than 30 days without the prior approval of the Ministry under section 15 of the *Employment and Assistance for Persons with Disabilities Regulation*, and was therefore required to repay the Ministry the amount of \$203.31 for those 18 days in accordance with section 18 of the *Employment and Assistance for Persons with Disabilities Act*..

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 1, 3, 10, 11, 14.1, 18 and 19.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 1, 5, 15, 28, 29 and 30.

PART E – Summary of Facts

Information before the ministry at reconsideration included:

- In 2008, the Appellant was approved for income assistance, along with her spouse, On their application form, dated September 15, 2008, they both acknowledged their rights, responsibilities and reporting obligations, including that they must “report all changes in my circumstances that might affect my eligibility for assistance.”
- The Appellant and her spouse were both eligible for Income Assistance.
- A letter (HR3196) from the Ministry to the appellant, that was mailed out on March 31, 2016 requesting the following documents be submitted by May 2, 2016: 1) current rent receipt, 2) 90 day banks statements from any bank accounts, sole or joint, 3) bank profile/list of product from any banks used in the last 6 months 4) documents regarding any income or assets that the Appellant may have (Jan 1- Dec 31, 2015) and a notation that other documents may be requested at a later date.
- The Appellant’s submission of the following documents on April 20, 2016: RBC bank profile indicating a savings account of \$193.92 and a statement Jan 1/16 to April 14, 2016.
- On July 19, 2016, an Investigation Officer (IO) called the appellant’s home and was told she was out of the country and would be returning on August 4 or 5, 2016.
- Letter (HR3558) from the Ministry requesting that the Appellant and her spouse attend a phone appointment on August 8, 2016 at 9:30 and to submit the following documents prior to the appointment: 1) Identification: for both the Appellant and the Appellants spouse- BC Driver’s licence, SIN or confirmation by Federal Government document and Canadian citizenship card or Permanent Residence card 2) Rent receipt(s) and utility bills for July or August, a copy of the BC Housing agreement and utility bills- phone, hydro etc, 3) Records of all income the appellant’s spouse received in 2015 4) 6 month statements for all bank accounts, sole or joint 5) Bank profiles of the Appellant and her spouse 6) Statements for all investments, RRSP’s, pension funds and any other assets, 7) The Appellant’s Spouse’s 2015 Income Tax Notice of Assessment and tax slips, 8) The Appellant’s RBC bank statement April-July 2016, 9) The Appellant’s Passport, travel itinerary & airline ticket stubs, 10) Letter from BC Housing confirming the starting date of subsidy and monthly payments since starting to receive it 11) The Appellant’s Spouse’s ICBC insurance and registration 12) The Appellant’s spouse’s purchase document for their vehicle and loan documents 13) A request of records/documents from the Appellant’s spouse to help explain why his 2015 taxes indicate net business income of \$5488 and gross business income of \$19,980.
- On August 5, 2016 the Appellant contacted the Ministry and requested to attend the appointment in person.
- On August 8, 2016 the Appellant and her spouse attended the appointment at the office and indicated that the Appellant had been out of the country from June 13, 2016 to August 4, 2016 to visit her ailing father who eventually passed away.
- The Appellant informed the ministry that her sister had purchased the airline ticket and that the Appellant was in a rush to visit her father and was unaware nor had the time to advise the Ministry.
- The appellant provided the ministry with a copy of her Canadian and Iranian Passports, and a copy of her travel itinerary, which confirmed she was not in the country from June 13, 2016 to August 4, 2016.

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- The Ministry issued the August 2016 cheque less \$35.10 to reflect the 3 days she was not in BC.
 - On August 23, 2016, the Ministry contacted the Appellant's spouse to advise him the eligibility for September had been assessed and of the overpayment for the 18 days in July when the Appellant was absent from BC. The overpayment was for \$203.31 and the calculations were as follows: \$ 700.56 (support) divided by 31 (# of days in Jul) x 18 days out of the province= \$406.62 divided by 2 (unit size) =\$203.3.
 - On August 29, 2016 the Ministry received the appellant's request for reconsideration.
 - The Appellant had not received prior approval to receive assistance during her absence.

Summary of relevant evidence

The itinerary shows that the appellant was out of BC from June 13, 2016 to August 4, 2016.

In her Notice of Appeal and written submissions at reconsideration, the appellant does not contest the fact that she did not notify the ministry prior to her departure from BC. The appellant states that she was unaware that she had to notify the ministry before her absence from BC. She states that this was not indicated anywhere and therefore it was not something she had purposely ignored.

An application form for Income Assistance that was both initialed and signed by the Appellant and her spouse, acknowledging that they both understood their rights, responsibilities and reporting obligations.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision that the appellant was ineligible for disability assistance for 18 days during July 2016 after being absent from BC for more than 30 days without the prior approval of the Ministry under section 15 of the *EAPWDR*, and was therefore required to repay the Ministry the amount of \$203.31 for those 18 days in accordance with section 18 of the *EAPWDA* was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Relevant Legislation

EAPWDA

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

- (i) is in the form prescribed by the minister, and
- (ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

- (i) may affect the eligibility of the family unit, and
- (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

EAPWDR

Definitions

1 (1) In this regulation:

"**Act**" means the *Employment and Assistance for Persons with Disabilities Act*;

"**application for disability assistance (part 1) form**" means an application for disability assistance (part 1) form specified by the minister;

"**application for disability assistance (part 2) form**" means an application for disability assistance (part 2) form specified by the minister;

"**assistance**" means disability assistance, hardship assistance or a supplement;

"**earned income**" means

(a) any money or value received in exchange for work or the provision of a service,

(b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]

(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

(d) money or value received from providing room and board at a person's place of residence, or

(e) money or value received from renting rooms that are common to and part of a person's place of residence;

"**income assistance**" has the same meaning as in the *Employment and Assistance Act*;

"**minister**" , in relation to a power, duty or function that the minister has delegated under section 25 of the Act to another person, includes that other person;

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.

Panel Decision

The legislation is clear, Section 15 EAPWDR states that eligibility ceases if out of BC for more than 30 days

unless the minister has given prior authorization. The Appellant's travel itinerary indicate that she was out of the country for over 30 days and the Appellant did not have prior approval of the ministry.

While the appellant indicates that she was unaware of this obligation to report, she had agreed to reporting requirements in her application for disability assistance. Although the appellant indicates that this was last minute and that she needed to visit her father, unfortunately there are no exemptions in the legislation and the appellant does not meet the criteria as set out in the legislation in order to continue receiving her disability assistance past the 30 days. The appellant did not leave the province to receive medical therapy as prescribed by a medical practitioner, nor did she participate in formal education program or to avoid undue hardship. Section 18 of the EAPWDA states that if disability assistance is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayments is provided are liable to repay to the government the amount or value of the overpayment provided for that period. Based on this analysis, the panel finds that the ministry reasonably determined eligibility for assistance.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible to receive assistance for the 18 days in July that the appellant was absent from BC, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.