

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 13, 2017, in which the ministry denied the appellant's request for retroactive disability assistance. The appellant was outside of the province for more than 30 days due to family emergency. Section 15 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) eligibility requirements for a leave of more than a total of 30 days in a year is it is done with prior authorization and it is pertaining to formal education program, medical therapy, or avoiding undue hardship, and thus the appellant was ineligible for retroactive disability assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 15

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with s 22(3)(b) of the Employment and Assistance Act.

The appellant has been designated as a recipient of disability assistance under the EAPWDA.

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

May 25, 2016 – Appellant submitted a confirmation letter stating departure from Canada was on February 7, 2009. The departure was to visit aligning parents with the intention of staying for a few weeks. After 10 days after departure, the appellant's mother passed away, therefore the appellant remained out of country to attend the funeral. The appellant wrote that his diabetes worsened and he suffered an infection in both legs while being out of the country. The letter further explained the loss of vision was while working in a trailer yard in Quesnel in 2004. The appellant stated more than 20 years ago he was injured in Iran in unexpected street fight with the regime army which resulted in here gunshot wounds to his legs. The appellant summarized that the injury to his legs, combined with the diabetes and aging has left him barely able to stand on his feet. The appellant concluded by explaining there were multiple attempts made to make contact the Canadian officials by phone but the challenge of wait times and monetary outlay made the option non-feasible. Eventually, the appellant travelled to Ankara Turkey where he stated he was able to reach the Canadian Embassy and arrived in Vancouver, BC on April 27, 2016.

The appellant does not dispute being outside of the province form more than 30 days between March 10, 2009 and the date the appellant was for eligible for disability assistance, May 26, 2016. The appellant acknowledges there was no prior approval that was sought from the ministry.

May 26, 2016 – Appellant file was re-opened upon return to Canada. The appellant returned to BC, and was eligible for disability assistance as of May 26, 2016.

February 1, 2017 – Appellant requested retroactive disability assistance for the duration the appellant was out of country and understood he was eligible due to the initial injury of the disability took place in BC. Retroactivity was denied and the Appellant requested a reconsideration of this decision.

Notice of Appeal

The appellant's Notice of Appeal was received by the Tribunal on 13 March 2017. For reasons, the appellant adds an attachment outlining reasons, "did try my best to contact the related organizations offices in Canada to let them know to where I'm about and how I'm suffering for not receiving any life support, but any time I tried phoning to the related organizations in Canada, there was a message waiting time for one hour or some times more." Furthermore, the Appellant was not aware that there was a restriction for being out of the Province for more than 30 days.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant retroactive disability assistance for being out of the Province for the period March 10, 2009 to May 26, 2016. Specifically, the issue is whether the ministry's determination, which denied the appellant retroactive disability assistance, is reasonably supported by the evidence or is a reasonable application of the section 15 of EAPWDR in the circumstances of the appellant.

Relevant Legislation:

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.

Position of parties:

Appellant:

The appellant's position, as explained in his Request for Reconsideration and Notice of Appeal, is that appellant had ailing parents and was unaware that regulations required to reside in BC to receive benefits. The Appellant did not submit any other material than that which had been submitted to the ministry at the time of reconsideration.

Ministry:

The position of the ministry, as set out in the reconsideration decision, is that the appellant is ineligible for retroactive assistance since the appellant was out of the province for 8 years (March 10, 2009 to May 26, 2016), and that the Legislation specifically says that benefits would be cancelled if the person were out of the province for more than 30 days in a year. The ministry further states that no prior approval had been requested for the departure from the province for reasons allowed under the legislation, that is formal education program, medical therapy, or undue hardship. Further, assisting an aging family member in a foreign country is not within the parameters of the legislation, specifically section 15 of EAPWDR regardless of whether or not they were previously injured while working in BC. The appellant ceased to be eligible for assistance on March 10, 2009.

Panel Decision:

The legislation, specifically Section 15 of the EAPWDR, requires recipients of disability assistance to seek prior authorization if they are to be absent from BC for more than 30 days in a year or recipient ceases to be eligible for disability assistance unless the prior consent is authorized for the purposes of formal education program, obtain medical therapy prescribed by a medical practitioner, or avoiding undue hardship. Once individual ceases to be eligible for assistance, they need to reapply for assistance if the need persists.

The appellant made numerous attempts while in Iran to contact the Ministry's office but was unsuccessful and eventually trying to contact the ministry became monetarily infeasible. Furthermore, the Appellant was not aware that there was a restriction for being out of the Province for more than 30 days.

The ministry finds that the appellant was outside of the province for more than 30 days and there was no given prior approval to leave the province and the appellant does not dispute this. The position of the ministry, as set out in the reconsideration decision, is that the appellant is ineligible for retroactive assistance since the appellant was out of the province for 8 years (March 10, 2009 to May 26, 2016), and that the Legislation specifically says that benefits would be cancelled if the person were out of the province for more than 30 days in a year.

The panel finds that the ministry's determination that there is no evidence that indicate the travel of more than 30 days outside of the province was for formal education program, to receive medical therapy, or avoid undue hardship and no prior consent was authorized is reasonable based on the evidence. The legislation does not allow for a person to receive retroactive disability assistance for time spent in a foreign country while aiding aging family members.

The panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for retroactive disability assistance for failure to comply with Section 15 of the EAPWDR was a reasonable application of the legislation in the circumstances, and therefore confirms the ministry's reconsideration decision.