

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated April 19, 2017 which held that, pursuant to s.15 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), the appellant was no longer eligible for disability assistance or hardship assistance because the appellant did not obtain prior authorization from the Ministry to remain out of country for longer than 30 days. The Ministry found that the appellant became ineligible for assistance from 30 days after the appellant left the country. The Ministry also found that the appellant did not leave the country to participate in a formal education program, to obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship.

PART D – Relevant Legislation

s.15 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)
s.22(4) and s.19.1 of the Employment and Assistance Act (“EAA”)
s.44 Administrative Tribunals Act (“ATA”)

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was:

- In July 2016 and August 2016 the Ministry sent letters to the appellant requesting a copy of the appellant's Statement of Contributions for Canada Pension Plan Disability.
- After receiving no response, the Ministry sent the appellant another letter advising the appellant that her November assistance cheque would be directed to the local office to ensure that she contacted the Ministry.
- The appellant's December assistance cheque was also directed to the local office.
- On December 29, 2016 the appellant contacted the Ministry to find out why she had not been issued her December assistance cheque. During that discussion the appellant informed the Ministry that she had travelled out of country on September 23, 2016 with her spouse and was currently still out of country. The Ministry advised the appellant at that time that she was not eligible for assistance commencing in November and that she would need to contact the Ministry when she returned to Canada to re-apply for assistance.
- On February 14, 2017 the appellant contacted the Ministry and advised that she had returned to Canada on February 10, 2017. The appellant requested eligibility for assistance to be re-established.
- On February 14, 2017 the appellant also requested reinstatement of eligibility for November, December, January. The Ministry denied that request. The appellant requested reconsideration of the Ministry decision.
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The appellant's written statement dated March 7, 2017 which states the reasons why she was out of country from September 23, 2016 until February 8, 2017:

- In August 2016 the appellant married her spouse (the "Spouse").
- In September 2016 the Spouse's ex-spouse announced that she was returning to another country with her and the Spouse's children.
- The Spouse felt he needed to go back to the other country to be with the children as he was the primary caregiver of the children.
- The appellant decided to join because she thought it would be a good opportunity for her to meet her Spouse's family and join him in the other country for a while.
- After five days of being in the other country, the appellant was physically assaulted by the Spouse's stepfather. The appellant pressed charges against the Spouse's stepfather.
- The assault charges went through a legal process that was not resolved until the middle of November, 2016.
- Concurrently with the assault legal process, the Spouse and his ex-spouse were also involved in a family law legal process. The last family court date was January 27, 2017.
- The Spouse's ex-spouse left the other country with the children and breached a court order in doing so. The ex-spouse and children were eventually located in Canada and the appellant and the Spouse made plans to return to see the children soon after the children were located in Canada.
- The appellant and the Spouse arrived back in Canada on February 10, 2017. The appellant attended at the Ministry office on February 14, 2017 to find out why her income assistance had stopped in October.
- The appellant states that the income assistance she does receive barely covers her own basic needs and costs and does not provide her with enough to provide or help her loved ones.
- The appellant states that she does not understand the rationale or the logic behind the "policy" of the Ministry to not allow people on disability to leave the country.
- The appellant asks for reconsideration of the back pay from November 16, 2016 and for reinstatement of her pension.

Prior to the hearing, but after reconsideration, the appellant provided reasons in her notice of appeal and a written submission.

The appellant's notice of appeal dated May 1, 2017 states:

"facts incorrect, employee inadequacies, missing information, clarification of penalties"

The appellant's written submission dated June 2, 2017 submission includes two letters:

- 1) A letter from the appellant's physician dated May 23, 2017 supporting the appellant's reinstatement of her persons with disability ("PWD") designation.
- 2) A letter from the appellant's counsellor dated May 19, 2017 supporting the appellant's reinstatement of her PWD designation.

The appellant's written submission dated June 2, 2017 includes a personal note, information, and questions from the appellant, summarized as follows:

- The appellant has felt confused and overwhelmed by the Ministry.
- The appellant has not received any income since October, 2016 even though she returned to Canada in February, 2017.
- The appellant currently resides in an 8 by 12 uninsulated shed in her friend's backyard with her Spouse. Prior to that she and her Spouse were living in a van and prior to that she and her Spouse were "couch surfing".
- The appellant concedes that she did not ask permission to be away from Canada for more than 30 days, but the appellant also states that she did not think she would be gone for longer than 30 days.
- The appellant states that she had to file assault charges when she was out of country and that her Spouse had to participate in a family legal process regarding parenting and custody of his children
- The appellant had no income while away other than what she earned gardening. The appellant states that the income she earned was enough to provide food but was not enough to provide shelter.
- The appellant travelled out of country to avoid the undue hardship of being separated from her Spouse. She states that the circumstances of her being away for more than 30 days were unforeseen.
- The appellant states that her disability has become more severe since dealing with the Ministry.
- The appellant questions the validity of the law that a person on PWD assistance should lose their income assistance after being out of country for more than 30 days.
- The appellant requests an answer as to the definition of the term "undue hardship".

At the hearing, the appellant called her Spouse as a witness. Her Spouse's evidence was:

- Last year he and the appellant had to leave BC to travel to another country to deal with a family law matter. They expected their trip to be only for one month.
- While there, the appellant was the victim of an assault.
- The court proceedings for the assault and the family law matter took longer than expected.
- A big part of the reason he and the appellant remained out of country for longer than expected is because they couldn't afford the plane tickets to leave.
- Having to stay out of country was a massive undue hardship on the appellant.

At the hearing, the appellant's evidence was:

- The appellant read aloud her written submission dated June 2, 2017 (summarized above)
- That this is the first time anyone has told her specifically what the appeal was about
- she attempted to deal with the Ministry's questions about Canada Pension Plan Disability back in August, 2016 and the Ministry's evidence that she didn't contact them is incorrect.
- she doesn't want to get paid for the November, December, and January months as she recognizes that she was out of country during those months.

The Ministry relied on their decision at reconsideration. The Ministry states that the appellant had a duty to report her travel out of country. The Ministry also clarified to the appellant that a Canada Pension Plan Disability pension is different from Income assistance.

The evidence provided after reconsideration was the written submission of the appellant dated June 2, 2017 (which included two medical letters), and the oral testimony of the appellant and her Spouse (the "Additional Evidence"). The Ministry did not object to the admission of any of the Additional Evidence.

The panel finds that the Additional Evidence is consistent with and therefore in support of the information before the ministry at reconsideration. The panel therefore admits this information as evidence pursuant to section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's reconsideration decision dated April 19, 2017 which held that, pursuant to s.15 of the EAPWDR, the appellant was no longer eligible for disability assistance or hardship assistance from 30 days after the date the appellant left the country because the appellant did not obtain prior authorization from the Ministry to remain out of country for longer than 30 days is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

EAPWDA

Effect of recipient being absent from BC for more than 30 days

s. 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.

EAA

s. 19.1 The following provisions of the Administrative Tribunals Act apply to the tribunal:

- (a) Part 1 [Interpretation and Application];
- (b) Part 2 [Appointments], except sections 7 (3) [remuneration and benefits after expiry of term] and 10 [remuneration and benefits for members];
- (c) Part 3 [Clustering];
- (d) section 30 [tribunal duties];
- (e) section 44 [tribunal without jurisdiction over constitutional questions];
- (f) section 46.3 [tribunal without jurisdiction to apply the Human Rights Code];
- (g) Part 8 [Immunities];
- (h) section 58 [standard of review with privative clause];
- (i) section 59.1 [surveys];
- (j) section 59.2 [reporting];
- (k) section 60 (1) (g) to (i) and (2) [power to make regulations];
- (l) section 61 [application of Freedom of Information and Protection of Privacy Act].

ATA

s. 44

- (1) The tribunal does not have jurisdiction over constitutional questions.
- (2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

The ministry argues:

The appellant left British Columbia on September 23, 2016 and did not obtain prior authorization from the Ministry to leave for longer than 30 days to participate in a formal education program, obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship. The appellant therefore became ineligible for income assistance commencing on 30 days after September 23, 2016. The Ministry also argues that the appellant did not leave the country for one of the legislated grounds set out in s.15 of the EAPWDR.

The appellant argues:

Her original intention was not to remain out of the country for longer than 30 days and the only reason that she ended up out of country for longer than 30 days was due to unforeseen circumstances. The appellant states that she is not really asking for a reimbursement of income assistance for the periods of November, December, and January because she recognizes that she was out of country during that time without the prior authorization of the Ministry.

The appellant argued various sections of the Canadian Charter of Rights and Freedoms. The panel notes that pursuant to s.19.1 of the EAA and s.44 of the ATA, the tribunal does not have jurisdiction over constitutional questions and therefore the panel cannot comment on these arguments by the appellant.

The panel clarifies that the issue of whether or not the appellant should be re-designated as a person with disability is not an issue that is before the panel in this hearing. There was significant evidence that was presented at the hearing that is not relevant to the decision before the panel, therefore that evidence will not make up part of the panel's decision.

The appellant agrees that she originally travelled out of country in order to take a trip and visit family. It is therefore clear that the appellant did not leave the country for one of the legislated criteria set out in s. 15 of the EAPWDA. Although the appellant ran into issues while she was out of country that prevented her from coming home, the appellant's witness also provided evidence that part of the reason he and the appellant didn't return home was because they could not afford a plane ticket home. The appellant required prior authorization from the Ministry to remain out of country for more than 30 days; in addition to that the appellant needed to be leaving the country for one of the legislated reasons set out in s. 15 of the EAPWDA. There is no evidence before the tribunal that the appellant obtained prior authorization or that the appellant left the country for one of the legislated reasons.

The panel finds the Ministry's determination that the appellant became ineligible for income assistance from 30 days after she left British Columbia on September 23, 2016 to be a reasonable application of the applicable enactment in the circumstances of the appellant. The panel therefore confirms the Ministry's decision.