

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 24, 2017 which found the appellant ineligible for disability assistance pursuant to Section 15 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry determined that the appellant had been outside of British Columbia for more than a total of 30 days in a year without prior authorization from the ministry for continuance of disability assistance for the purposes of permitting the appellant to obtain medical therapy prescribed by a medical practitioner.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Photocopy of one page of the appellant's passport;
- 2) Letter dated March 30, 2010 to the ministry in which the appellant wrote that he is currently in another country because his baby is sick. He asked that his file not be closed and that he will be back on May 10, 2010. He wrote that he is still living in the same place;
- 3) Letter dated October 2, 2013 to the appellant in which the ministry wrote that the appellant is ineligible for assistance because he was out of the province for more than 30 days;
- 4) Letter dated January 13, 2015 in which a physician wrote that he has treated the appellant for chronic and diffuse pain as well as for depression and insomnia. The appellant previously benefited from natural treatments in another country and he is intending to pursue the same treatment again as medications and therapies in British Columbia (BC) have been ineffective. The physician endorsed the appellant's plan to pursue treatment in another country;
- 5) Invoice dated February 21, 2015 indicating a roundtrip airfare to another country for a total amount of \$1,398;
- 6) Itinerary dated February 21, 2015 indicating a flight to another country on March 5, 2015, with a return trip on June 16, 2015;
- 7) Letter dated March 2, 2015 to the ministry in which the appellant wrote that he is going to another country on March 5, 2015 for medical reasons and will be back on July 16, 2015. He requested that the ministry not discontinue his disability benefits as he has to pay rent in BC;
- 8) Letter dated August 24, 2015 to the appellant in which the ministry wrote that the appellant was eligible for April 2015 disability assistance but not eligible for May and June 2015 disability assistance as his file was closed;
- 9) Letter dated April 12, 2017 in which a physician wrote that the appellant has undergone surgery for lung cancer with a very difficult recovery, complicated by pain, dyspnea and fatigue. He has required multiple periods of hospitalization. He had previously benefited from natural treatments in another country and he is intending to pursue the same treatment again as medications and therapies in BC have been ineffective. The physician endorsed the appellant's plan to pursue treatment in another country;
- 10) Letter dated April 17, 2017 to the ministry in which the appellant wrote that he will be leaving to another country shortly to undergo some treatment for the course of 2 months, which has been recommended by his doctor. The recommendation letter is attached. He requested that the ministry continue with his monthly assistance to support his living expenses;
- 11) Letter dated May 17, 2017 to the ministry in which the appellant wrote that he is providing notice that he is leaving on May 20, 2017 to another country for his treatment and returning on July 30, 2017. He requested that the ministry direct deposit his disability cheque into his bank account;
- 12) Itinerary indicating a roundtrip flight to another country on May 20, 2017, with a return date of July 30, 2017; and,
- 13) Request for Reconsideration dated August 8, 2017.

In his Request for Reconsideration, the appellant wrote that:

- He submitted a letter to the ministry dated April 17, 2017, along with his doctor's letter, that he was leaving to another country for treatment.
- He did not receive any response/ authorization from the ministry prior to his departure on May 20, 2017.
- He checked with the ministry as he did not receive a response to his letter and he was told that the reply would be mailed.
- He has not yet received any correspondence from the ministry regarding the letter he submitted on April 18, 2017.
- He requests that the ministry issue him with June, July, and August payments and have his file

re-opened.

- He has to repay his loans.

Additional information

In his Notice of Appeal dated August 30, 2017, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that:

- The information provided by the ministry in the package dated August 24, 2017 has incorrect information.
- He requires his July 2017 assistance to repay loans.

At the hearing, the appellant provided the following additional documents:

- 1) Letter dated April 12, 2017 from the GP with an original date stamp indicating receipt by the ministry on April 18, 2017;
- 2) Application Direct Deposit Request dated May 17, 2017;
- 3) Information/Documentation Checklist dated August 15, 2017
- 4) Prescription dated August 16, 2017 with a note from the pharmacist;
- 5) Confirmation of Application for Medical Benefits dated August 24, 2017; and,
- 6) Copy of the ministry cheque dated August 30, 2017 for \$759.07.

At the hearing, the appellant stated that:

- When he submitted the letter dated April 17, 2017 to the ministry on April 18, 2017, he told the ministry he needed two months of medical care at that time. He told the ministry that he needed money for rent and food.
- He had no reply from the ministry for the whole month. He went into the ministry office and asked at the front desk and was told that he would receive a reply in writing.
- He did not receive a reply in writing so he wrote another letter to the ministry dated May 17, 2017 and showed the ministry his air tickets. He delivered this letter to the ministry by hand and had it stamped.
- He also gave the ministry the Application Direct Deposit Request dated May 17, 2017 and he wonders why this document was not included in the appeal record.
- He notes that the copy of the April 12, 2017 letter from the GP that has been included in the appeal record has been altered. The stamp that indicates the ministry received the letter on April 18 has been changed to "April 20."
- On July 30, 2017 he returned to BC and went into the ministry office on July 31, 2017. The ministry told him that his file had been closed and there was no money for him. When he asked for his benefits, the ministry said he needed to start an application online. He objected because he needs to get help from his friend to deal with an online application on the computer. It is difficult to find a friend who is available because they are all working.
- He applied again for assistance on August 1, 2017 online and it took until August 2, 2017 for the application to be uploaded.
- He asked the ministry to at least open the medical file so he can get his medications but the medical file was also closed.
- He tried to get his prescription filled but the pharmacist said the medication was not covered and provided a note.
- He applied for medical benefits, as shown in the Application dated August 24, 2017. He found out on August 31, 2017 that he would be covered for medication.
- The ministry said that for the first month out of BC he can get benefits. He appealed the original decision because he was denied from the time he left BC. The ministry gave him benefits for 20 days in June, as shown in the copy of the ministry cheque dated August 30, 2017.

- He told the ministry before he left BC and the ministry should have deposited the 20 days into his bank account before he left.
- The ministry is requiring information as part of his application for assistance, as set out in the Information/Documentation Checklist dated August 15, 2017. According to this document, the ministry wants him to provide bank statements for the last 60 days but the ministry later asked for the statements for 90 days.
- The ministry referred to the previous history of him leaving BC and the fraud charges, which is trying to show that this is not the first time this has happened and that he is a bad person. The ministry is saying that he has to pay back assistance that he has received. The fraud case is still before the court.
- He let the ministry know one month before he left BC and the ministry should have given him instruction or information about what was needed, and this was not done.
- The ministry knew that he was going for treatment and he only asked for rent and food money and he did not ask for the ministry to pay for his air ticket.
- Part of his lung has been removed because he has lung cancer. He is a non-smoker but he got sick. He goes to the ministry office to get help and they do not care that he is sick. The ministry seemed to take it that he was leaving BC for fun. The ministry could be more humanitarian.
- The ministry did not want to give him the money that he is entitled to. He realizes that there is law the ministry has to follow but they could have given him some choices or options.
- His bus pass has been discontinued and he has to buy tickets.
- His life is very fragile and he may die at any time. The ministry could be more compassionate with him. The ministry does not really understand his situation. Every time he is at the ministry office, they yell at him and are rude to him. He is more comfortable going before the judge in the court case than with going into the ministry office. He is always afraid when he goes into the ministry office.
- He did not know that the ministry wanted proof of his treatment in the other country or he would have had something signed or he would have had photographs taken. He receives an ancient treatment done in a small hut and he is treated by massage with special oils.
- He did not specify the date that he would be traveling in his letter dated April 17, 2017 because he had not yet purchased his air tickets.
- He has voicemail on his home telephone. He did not get a phone message from the ministry and his caller ID did not show a call from the ministry. He believes no call was made.
- He had experienced back pain and pain in both legs and he was unable to walk. He went for physiotherapy in the other country and now he is able to walk nicely.
- He does not have anyone that can come with him to the ministry office to help him with language translation.
- He does not know what the doctor writes in his letters, he just takes the letter to the ministry. He did not know that the information from the doctor was not satisfactory to the ministry. If he knew it was not satisfactory, he would ask the doctor to provide more detail about the treatment because his doctor knows about the treatment in the other country.
- He left BC on May 20, 2017.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that:

- She does not know why the handwritten change was made in the date stamp on the April 12, 2017 letter.
- On April 25, 2017, the ministry attempted to contact the appellant to get more information. The ministry file notes indicate that a call was made to the appellant and there was no answer.
- The ministry usually sends the applicant a letter if more information is required but, if a

telephone message is left, then the ministry may not send a letter.

- The appellant is able to request an interpreter at the ministry office to help with communication.
- Unless the applicant makes the ministry aware that there is some urgency to a request, it will be processed on a 'first come, first served' basis, or in the order of receipt. Sometimes there is a back log and it can take 2 weeks to a month for a request to be processed. The hope is that the usual processing time is a week or two, but it depends on the volume of requests. There was nothing in the appellant's April 17, 2017 letter to indicate an upcoming travel date or any urgency to his request and, therefore, the ministry would not be aware of a time period. The use of the word "shortly" in the appellant's letter does not necessarily mean there is urgency to the request.
- Where the request is time-sensitive and is not being dealt with in a timely manner, it is also open to the applicant to request to speak with a supervisor to communicate the urgency.

Admissibility of additional information

The ministry did not object to the admissibility of any of the additional documents submitted by the appellant. The panel admitted the additional documents and the appellant's oral testimony as being further detail of the circumstances of his departure from BC and his request for authorization, which tended to substantiate and, therefore, is in support of information and records before the ministry at reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found the appellant ineligible for disability assistance pursuant to Section 15 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

The following section of the EAPWDR applies to this appeal:

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.

Absence from BC

Section 15 of the EAPWDR states that a recipient of assistance who is outside of BC for more than a total of 30 days in a year ceases to be eligible for disability assistance unless the minister has given prior authorization for continuation of assistance for various purposes, including permitting the recipient to obtain medical therapy prescribed by a medical practitioner. In the reconsideration decision, the ministry determined that the appellant was absent from BC from May 20, 2017 until his return on July 30, 2017, or a total of more than 30 days. An itinerary document indicates a roundtrip flight by the appellant to another country on May 20, 2017, with a return date of July 30, 2017. The panel notes that the appellant did not dispute the accuracy of the ministry's determination as to his travel dates and the time that he was outside of BC. At reconsideration, the ministry determined that the appellant was eligible for the first 30 days that he was outside BC, or until June 20, 2017, but that he was ineligible for assistance on the 31st day, or as of June 21, 2017.

While the appellant acknowledged in his Request for Reconsideration that he did not receive any authorization from the ministry prior to his departure from BC on May 20, 2017, he argued that he had made a request for the ministry's authorization one month in advance of his departure and the ministry did not properly respond to his request. The appellant submitted his letter to the ministry dated April 17, 2017 along with his doctor's letter dated April 12, 2017 on or about April 18, 2017. The appellant pointed out that the April 12, 2017 letter from his doctor was received by the ministry on April 18, 2017, and not "April 20, 2017" as in the copy that had been changed by hand, and the ministry did not dispute that the letter from the appellant's doctor was received by the ministry. The appellant stated at the hearing that he went into the ministry office to ask when he would receive a response to his request and the ministry said that the reply would be mailed to him. The ministry stated at the hearing that the ministry file notes indicate that more information was required from the appellant and a telephone call was made to him with no answer. The appellant stated that he did not receive either a telephone call or a letter from the ministry.

In his letter dated April 17, 2017, the appellant wrote that he will be leaving to another country "shortly" to undergo treatment that has been recommended by his doctor and the appellant does not specify either his departure date from BC or the dates for his treatment in another country. At the hearing, the ministry stated that while the hope is that most requests can be processed by the ministry within a week or two, unless the applicant makes the ministry aware that there is some urgency to a request, it will be processed on a 'first come, first served' basis, or in the order of receipt. The ministry stated that sometimes there is more volume in the requests received and it can take 2 weeks to a month for a request to be processed. The appellant did not dispute that he provided the

dates of his travel to the ministry on May 19, 2017, or the day before his scheduled departure, and not before that time.

On May 19, 2017 the appellant submitted his letter to the ministry dated May 17, 2017 and a copy of his itinerary showing that he would be leaving BC on the following day. The appellant stated that he left BC on May 20, 2017 without the authorization from the ministry as he felt he had waited long enough for a reply and he needed to leave to pursue his treatment. The ministry pointed out, and the panel finds as fact, that the appellant's departure date was not communicated to the ministry until the day before his departure from BC on May 20, 2017 and that the appellant left BC without securing authorization from the ministry. The appellant acknowledged that he had been through this process several times in the past and is aware of the need to seek authorization before leaving BC and, therefore, left BC on May 20, 2017 at the peril of being thereby unable to receive "prior" authorization from the ministry. Although the appellant believed he had already waited long enough for a reply, the panel finds that the onus remains on the appellant to ensure that all the required information is provided in support of his request and to obtain the authorization prior to leaving BC, and the ministry reasonably concluded that prior authorization was not provided to the appellant for continuance of disability assistance.

Conclusion

The panel finds that the ministry's reconsideration decision, which found the appellant ineligible for disability assistance as of June 20, 2017, pursuant to Section 15 of the EAPWDR, was reasonably supported by the evidence and the panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.