

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development & Poverty Reduction (the “ministry”) dated August 29, 2017 that denied the appellant’s request for retroactive disability assistance because the ministry determined that the appellant did not meet the eligibility requirements to be absent from British Columbia for more than 30 days under section 15 of the Employment Assistance for Persons with Disabilities Regulation (EAWPDR). Specifically, the ministry determined that the appellant had not received prior permission for the continuance of disability assistance while outside the Province for more than a total of 30 days in a year. In addition, the minister was not satisfied that the appellant was absent in order to participate in a formal education program, or to obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship.

PART D – Relevant Legislation

EAWPDR section 15

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The documentary evidence before the ministry at reconsideration included the following:

A copy of the appellant's bank account statement from January 4, 2017 to July 26, 2017. Among other entries on the statement are cash withdrawals on January 4, 2017 and January 10, 2017.

Copies of the appellant's bills from BC Hydro for the months of December 2016 (December 6, 2016 – January 5, 2017) and January 2017 (January 6, 2017 – February 3, 2017). The hydro bill for December 2017 shows usage of 26 kW.h. The bill for January 2017 shows usage of 11 kW.h.

The appellant's *Request for Reconsideration* signed and dated by the appellant on August 18, 2017. The appellant lists the following reasons for requesting consideration:

1. I was in Vancouver in January (see BC Hydro bill and bank activities);
2. My parents were in critical condition, it was a family emergency;
3. I was not paid (see bank activities) from January – July 2017.

In the *Reconsideration Decision* the ministry states that the appellant receives disability assistance as a sole recipient. It states that the appellant's disability cheque for the month of January 2017 was mailed to him but was not cashed and that on February 1, 2017 the appellant's disability assistance cheque was cancelled as it remained in the office and no contact had been received from the appellant. On March 17, 2017 the appellant's file was closed as the appellant had not been in contact with the ministry or received disability assistance since December 2016. On July 12, 2017 the appellant contacted the ministry and requested disability assistance indicating that he had been out of the province visiting his sick parents.

The appellant's *Notice of Appeal* was signed and dated on September 1, 2017 and stated that "*I was in Vancouver. I have proved with proof. I was not receive(d) the cheque because my mails were re-directed, opened. Your decision is wrong & unfair to me.*"

The appellant's written submission was dated September 11, 2017. It states that he was in Vancouver in January and he did not receive his (January) cheque because his mail was redirected/opened/passed along. He attached a *Confirmation of Mail Forwarding or Hold Mail Service* statement from Canada Post that is undated and which indicates that the appellant's mail is to be forwarded or held until August 10, 2017.

The ministry's written submission was dated September 20, 2017 and confirmed that the ministry submission would be the *Reconsideration Decision*.

The panel noted that at the time of Reconsideration there was no information indicating that the appellant's mail had been held/forwarded at the time that his January disability payment was issued. Accordingly, the panel determined that the *Confirmation of Mail Forwarding or Hold Mail Service* statement from Canada Post could not be admitted as evidence as per section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that the appellant was not eligible for retroactive disability assistance because the ministry determined that the appellant did not meet the eligibility requirements to be absent from British Columbia for more than 30 days under section 15 of the Employment Assistance for Persons with Disabilities Regulation (EAWPDR), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant had not received prior permission for the continuance of disability assistance while outside the Province for more than a total of 30 days in a year and that the appellant was not absent in order to participate in a formal education program, or to obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship.

The relevant legislation is as follows:

From the EAWPDR:

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.

Appellant's Position

The appellant has requested retroactive disability assistance for the months of January through June 2017. In the appellant's *Request for Reconsideration*, he argues that he was (present) in Vancouver in January 2017 and he has submitted statements of his hydro bills for December 2016 and January 2017 as well as a copy of his bank account statement for the period January 2017 to July 2017 to substantiate this claim. He states that his parents were in critical condition and it was a family emergency (that he needed to attend to). Finally, he states that he was not paid (disability assistance) from January 2017 to July 2017. These arguments are repeated in his *Notice of Appeal*.

Ministry Position

In the *Reconsideration Decision*, the ministry states that the appellant does not dispute that he was out of the province from February 2017 through June 2017. Moreover, the ministry states that the appellant was not given prior approval to leave the province to participate in a formal education program, to obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship. The ministry states that the appellant does not dispute that he did not receive such approval. Consequently, the ministry determined that under section 15 of the EAPWDR, the appellant was not eligible for disability assistance for the months of February 2017 through June 2017.

In the *Reconsideration Decision*, the ministry states that the actual date of the appellant's departure from the province is unclear. The last contact of any type that the appellant had with the ministry (prior to leaving the province) was in November 2016 when his disability income check was mailed to his residence and cashed by the appellant. From that time on, the appellant did not provide any confirmation of his whereabouts. Consequently, the minister is unable to determine exactly when the

appellant's departure began, thereby determining what date marked the 31st day he was out of the province. The minister requests that the appellant submit additional information pertaining to his departure date such as airline tickets, an itinerary, a third party letter or a copy of his passport confirming his departure date. The ministry will determine the appellant's eligibility to receive disability assistance for the month of January 2017 once such information is submitted.

The appellant has submitted hydro bills and his bank statement to support his claim that he was in the province in January 2017. But as noted by the ministry, these documents do not clearly establish the actual date on which the appellant left the province. Accordingly, the panel concluded that the ministry has reasonably requested that the appellant provide additional documentation to establish his departure date and to thereby determine his eligibility for disability assistance for the month of January 2017.

Panel Decision

The panel notes that the ministry reported that the appellant does not dispute that he was out of the province from February 2017 through June 2017. Moreover, the ministry states that the appellant was not given prior approval to leave the province to participate in a formal education program, to obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship. The ministry states that the appellant does not dispute that he did not receive such approval. Moreover, the panel notes that the appellant has presented no evidence to refute these claims by the ministry. Accordingly, the panel concludes that the ministry reasonably determined that the appellant is not eligible for retroactive disability assistance for the months of February 2017 through June 2017 as per section 15 of the EAWPDR.

The panel notes that the appellant has submitted hydro bills and a bank statement to establish that he was in the province in January 2017. Nonetheless, the panel recognizes that this documentation does not establish the actual date of the appellant's departure from the province. Accordingly, the panel concludes that the ministry reasonably requested that the appellant provide documentation to establish his date of departure.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that the appellant was not eligible to receive retroactive disability assistance for the months of February 2017 through June 2017 was a reasonable application of the applicable enactment in the circumstances of the appellant. Moreover, the panel finds that the ministry's determination that additional documentation is required from the appellant to determine his eligibility to receive disability assistance for the month of January 2017 was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision. The appellant was not successful in his appeal.