

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 8, 2018, which found that the appellant did not meet the statutory requirements of Section 61.1 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for consideration as a “continued person” and, therefore, is not eligible to access “Medical Services Only” (MSO) supplements.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, Section 1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 61.01 and 61.1

PART E – SUMMARY OF FACTS

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

- 1) Print out indicating CPP lump sum payment for March 1 to March 31, 2017 in the amount of \$1,968.56;
- 2) Print out of Data match for CPP monthly income from March 1, 2017 to April 30, 2017 in the amount of \$1,968.56;
- 3) Letter dated April 13, 2017 in which the appellant's respirologist advising that, due to his health conditions, the appellant is to remain off work for the indefinite future;
- 4) Letter dated April 21, 2017 to the appellant in which the ministry advised that the appellant is approved for Persons With Disabilities (PWD) designation, effective May 1, 2017. The ministry wrote that the appellant "will need to contact your local ministry office to complete requirements if you are not already in receipt of income assistance. Please be aware that disability assistance is also dependent on financial and other eligibility criteria being met";
- 5) Letter dated August 21, 2017 from Service Canada confirming the disability benefits paid to the appellant for July 2017 was the amount of \$984.28;
- 6) Notice of Rent Increase to the total amount of \$1,176 per month, commencing February 1, 2018, directed to the appellant and dated October 22, 2017;
- 7) Void cheque form from a financial institution for the appellant dated January 24, 2018;
- 8) Claimant's Explanation of Benefits from an insurer dated February 15, 2018 indicating long term disability benefits for the period January 21 to February 20, 2018 is \$1,500, less adjustments including CPP benefits, for a net benefit of \$458.36; and,
- 9) Request for Reconsideration dated February 22, 2018.

In his Request for Reconsideration, the appellant wrote that:

- He requests a reconsideration of the ministry decision for the purpose of receiving income assistance and funding of medical equipment (scooter).
- He has a severe lung disease and is waiting for a lung transplant.
- He has no financial ability to buy a scooter. He is not able to walk ½ block because of his severe lung disease.
- He has multiple medical appointments every week and he requires a scooter to attend appointments.
- He attached his income and expense documents, including CPPD and long term disability, as well as rent, hydro, and food (\$300) per month.

Additional information

In his Notice of Appeal dated March 16, 2018, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that:

- He has a life threatening illness and progressive disease and worries about where he can ask for help.
- He has a lack of resources, especially since his disability is not enough to cover all his expenses to survive.

Prior to the hearing, the appellant provided additional documents as follows::

- 1) Letter dated January 8, 2018 advising that the appellant successfully registered with HandyDART;
- 2) List of medications dated March 7, 2018;
- 3) Part of a report dated March 13, 2018 in which a physician outlined the appellant's medical conditions;
- 4) Letter dated March 15, 2018 from Service Canada confirming the disability benefits paid to the appellant for February 2018 was the amount of \$999.04;
- 5) First page of a letter dated March 16, 2018 in which the Ministry of Health confirmed that the appellant receives assistance from Fair PharmaCare to help with the cost of prescription drugs;
- 6) Letter dated March 20, 2018 to the appellant in which the insurer confirmed that his long term disability benefits each month are \$1,500 with an offset for CPP of \$998.06, for a total net amount of \$501.94; and,
- 7) Handwritten letter dated March 31, 2018 in which the appellant wrote that some of his medication is not covered and his HandyDART expense is \$25 per month.

At the hearing, the appellant stated that:

- From the beginning, he has requested a scooter.
- He had been denied income assistance because he did not provide the reporting stubs. He called the ministry around March 2017 because he was receiving other income and did not want to have an overpayment. The ministry asked if he wanted to close the file and, since he was receiving EI [Employment Insurance] and CPP benefits, he agreed. He knew he was receiving too much money.
- He was receiving EI benefits when he was approved for PWD designation.
- His long term disability income is not very much. With the deduction for the CPPD benefits, there is not enough left to cover his expenses.
- He has to take medications every month and they are very expensive. He does not know where to get extra funds in order to cope.
- He will find out next week to see if PharmaCare will be covering the cost of all his medications.

- He has many appointments at the hospital and he would like to get a scooter because he has a hard time walking. He has to carry two oxygen containers with his walker. Next month, he will have rehabilitation appointments 3 times per week.
- Every time he moves, he needs to stop to catch his breath. He will walk half a block with his walker and then take a break. It is a challenge for him every time he moves.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry stated that the appellant can apply for assistance again. If his income is in excess of the rates, his file would then be transferred over to MSO if he is eligible at that time.

Admissibility of additional information

The ministry objected to the admissibility of the additional documents provided by the appellant as they were not before the ministry at reconsideration. The panel admitted the documents as the appellant argued at reconsideration that he has no financial ability to buy a scooter and those documents that relate to his income and expenses corroborate this, and the information about his medical conditions was also in support of information and records before the ministry at reconsideration, since it tended to substantiate that information, pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant did not meet the statutory requirements of Section 61.1 of the EAPWDR for consideration as a "continued person," and, therefore, is not eligible to access MSO supplements, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The definition of "continued person" is set out in Section 61.01 of the EAPWDR as follows:

Division 4 — Health Supplements

Definitions

61.01 In this Division:

. . .

"continued person" means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2); . . .

The requirements for being considered a continued person are set out in Section 61.1(1) of the EAPWDR as follows:

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or
- (b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

- (a) on a date the family unit includes a person aged 65 or older,

- (b) as a result of a person in the family unit receiving an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act,
- (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (d) as a result of a person in the family unit receiving employment income,
- (e) as a result of a person in the family unit receiving a pension or other payment under the Canada Pension Plan (Canada),
- (f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
- (g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act.

The definition of “disability assistance” is set out in Section 1 of the EAPWDA as follows:

Interpretation

1 (1) In this Act:

"disability assistance" means an amount for shelter and support provided under section 5 [disability assistance and supplements]. . . .

Panel Decision

In the reconsideration decision, the ministry wrote that Section 61.1 of the EAPWDR stipulates that a person may access MSO coverage “while in receipt of disability assistance [the person] ceases to be eligible for disability assistance” for one of the specified reasons, and the appellant has not received disability assistance and, therefore, did not cease to be eligible for disability assistance for one of the specified reasons. The ministry wrote that the appellant had been in receipt of income assistance as a sole recipient and the ministry received information through the government Data Match service that the appellant received CPP income for March and April 2017, as well as medical EI benefits for May 2017. The ministry wrote that the appellant was not eligible for income assistance for April and May 2017 as he was in receipt of income, he did not submit a monthly report to request additional assistance, and the ministry had no other form of contact from the appellant for several months. The ministry wrote that although the appellant was approved as a PWD, the designation became effective May 1, 2017 and the appellant did not contact the ministry to complete the process, as instructed in the ministry’s letter to him dated April 21, 2017, in order to begin receiving disability assistance.

At the hearing, the appellant stated that he called the ministry around March 2017 because he was receiving other income and did not want to have an overpayment due to his CPP and EI benefits. The appellant stated that he knew he was receiving too much money to receive income assistance and he agreed with the ministry decision to close his file. The appellant may

not have understood the full repercussions of his file with the ministry closing as he stated at the hearing that he needs some medical equipment that he cannot afford to pay for given his current income from long term disability and CPP payments and his expenses, which may include increasing costs for medication.

The appellant stated that, from the beginning, he has requested that the ministry provide him with a scooter, which he requires to get to his many medical appointments. In his Request for Reconsideration, the appellant wrote that he has a severe lung disease and is waiting for a lung transplant. He stated at the hearing that he has many appointments at the hospital and he has a hard time walking with his walker and carrying two oxygen containers. The appellant stated that every time he moves, he needs to stop to catch his breath and he cannot walk half a block.

The appellant also argued that he has no financial ability to buy a scooter. He stated that his long term disability income is not very much and it does not cover his expenses. The appellant provided his income and expense documents to show the amount of his net long term disability amount and CPP benefits (\$1,500), as well as his monthly rent (\$1,176), his HandyDART expense (\$25) and food (\$300). The appellant stated that he has to take medications every month and they are very expensive and he will not know until next week if all his medications will be covered by Fair PharmaCare.

Section 61.01 of the EAPWDR defines a "continued person" as including a main continued person under section 61.1(1), which stipulates that a person is a main continued person if the person was part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and a person with disabilities on that date. The appellant received regular income assistance in March 2017, but was not eligible for income assistance for April and May 2017 as he was in receipt of other income and he did not submit a monthly report to request additional assistance. The appellant's file with the ministry closed in June 2017 because the appellant had not received any benefits since March 2017.

While the appellant was granted the PWD designation, effective May 1, 2017, he does not dispute that he was never in receipt of disability assistance. In the letter dated April 21, 2017, the ministry advised the appellant that he would need to contact the ministry office "to complete requirements" and that receiving disability assistance "is also dependent on financial and other eligibility criteria being met." As the appellant did not contact the ministry to fulfill the requirements and to establish that the "financial and other criteria" were met, he did not complete the process in order to begin to receive disability assistance at that time.

The panel finds that the ministry reasonably determined that since the appellant was never in receipt of disability assistance, he could not "cease" being eligible for disability assistance as required to be included in the definition of a "continued person and, therefore, was not eligible to access MSO supplements.

Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant did not meet the statutory requirements of Section 61.1 of the EAPWDR for consideration as a "continued person," and, therefore, is not eligible to access MSO supplements, was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.