

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 26 June 2018 that denied the appellant's request for continued disability assistance while attending a spiritual retreat centre outside of British Columbia for more than 30 days. The ministry determined that the appellant's request did not meet any of the purposes set out in section 15 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry found that the information provided did not establish that the requested continuance of disability assistance is for the purpose of (a) participating in a formal education program, (b) obtaining medical therapy prescribed by a medical practitioner, or (c) avoiding undue hardship.

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 reconsideration included the following:

1. The appellant is a recipient of disability assistance.
2. Letter from the appellant's psychiatrist, dated 12 April 2018. The psychiatrist writes:
“[The appellant's] father passed away last year, and she is hoping to spend the month of June in [another province] with her mother and then July, August and September at a spiritual retreat centre in [US state]. I am requesting that she be able to travel outside of BC for the months of June – September without any interruption in her disability benefits as contact with her family and spiritual community will be a benefit to her mental health.”
3. The appellant's Request for Reconsideration dated 01 June 2018. Under Reasons, the appellant writes that:
 - Going to the meditation centre is a very important part of her recovery. Meditation has been scientifically evaluated to have a healing effect on depression and anxiety. She will still taking her medications and can still connect with her psychiatrist electronically.
 - Further, in 2015 and 2016 the ministry approved her attendance at the same centre to do the same meditation classes, as requested by the same doctor.
 - Learning a new skill such as meditation and practising it, and interacting with others in a drug-free, smoke-free, alcohol-free environment is healthy and helps her cope.
 - Her goal is to start leading meditation classes herself one day and help others who suffer with anxiety and depression.
 - It is not as though going to the retreat is a vacation. It is therapeutic – she has to get dressed and showered every day to attend meditation classes and to socialize with others, something that is often hard for her. She also has the opportunity to prepare meals. By contrast at home she often struggles to dress and feed herself daily.
 - Approving the benefits will allow her to pay her rent so she has a place to return to in October – this is important, as her rent is \$400 and it's hard to find a place with rent that low and so she'd like to keep it.
4. Accompanying the Request for Reconsideration is a further letter dated 07 June 2018 from the psychiatrist, who writes:
“... The appellant has struggled with issues related to the PTSD for many years and has responded best to a multimodal approach which includes medications, psychotherapy and lifestyle modifications. Regarding lifestyle, one of [the appellant's] biggest challenges is her tendency to lapse into severe depression and social isolation which exacerbate her condition (i.e. lead to substance abuse or suicidality). To address the isolation and teach her healthier ways of dealing with her emotions/stress management, she has found the retreat centre in [US state] to be extremely helpful. She has attended this retreat centre in 2015 and 2016 and [the ministry] allowed for her to be out of province on both these occasions. I am writing to request that she once again be allowed to attend this retreat centre without an interruption in social assistance. Although the centre is not a “medical” facility, there is very strong medical evidence for social support, meditation, mindfulness and exercise in the treatment of the type of chronic mental health condition from which [the appellant] suffers. This retreat is even more important for [the appellant] now as she is just lost her father last year has been dealing with grief in addition to the PTSD.”

Notice of Appeal

The appellant's Notice of Appeal is dated 08 July, 2018. Under Reasons, she writes:

“ The scientific evidence & my psychiatrist agree the meditation curriculum in [US state] is in the best interest of my health & recovery.” The balance of her reasons goes to argument regarding EAPWDR section 15 (see Part F, Reasons for Panel Decision, below).

In a separate email submission of 08 July 2018, the appellant adds the following information: There is nowhere else where she can get the level and intensity of treatment for what this school charges. She gets accommodation, classes twice daily and meals for \$1000 per month. Any other school/retreat charges at least \$100 per day – that's \$3000 per month, so she cannot afford that.

The appellant also provides the web address of the facility.

The hearing

At the hearing, the appellant took issue with the delay in her being informed of the ministry's initial decision. She sent in her request on 23 April 2018 to be allowed to attend the retreat centre in July, August and September and did not receive the ministry's decision until she called the ministry on 30 May 2018, the day before she was to leave to visit her mother in another province. She considers this delay as contrary to ministry protocol, and this delay and subsequent appeal have been very difficult for her emotionally.

The appellant explained that she had first been diagnosed with depression at age 14 and this mood disorder has been a constant factor since then. She described how her depression has adversely affected her education, her employment, her relationships, and her daily living activities such as eating and grooming. For the past several years, she has not had three straight weeks depression-free without having a severe, prolonged depressive episode, despite regular contact with her psychiatrist and attempting some 20 different medications. Thus she cannot rely only on medications to help her recover, and has found that the meditation program at the retreat centre provides the kind of healing environment she needs – much like at an addiction treatment centre (attendance at which would be funded by the ministry) with a similar emphasis on proper diet, exercise and socialization.

In the balance of her presentation, the appellant provided information along the lines presented in her Request for Reconsideration and Notice of Appeal, as well as argument in support of her request (see Part F, Reasons for Panel Decision, below).

The ministry stood by its reconsideration decision. The ministry representative could not speak to the reasons for the delay in responding to the appellant's request, but noted that such a request is referred to the manager level and placed in a queue. When the appellant contacted the ministry on 31 May 2018, as she was about to leave to visit her mother, consideration of the request was expedited.

Admissibility of additional information

The ministry did not object to the admissibility of the additional information provided by the appellant in her Notice of Appeal or in her testimony at the hearing. The panel finds that this information is in support of the information and records before the ministry at reconsideration. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for continued disability assistance while attending a spiritual retreat centre outside of British Columbia for more than 30 days. More specifically, the issue is whether the ministry determination that the appellant's request did not meet any of the purposes set out in section 15 of the EAPWDR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the EAPWDR:

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.

Analysis

Previous decisions

The appellant argues that the ministry had previously approved the continuation of disability assistance while attending the meditation retreat centre. If she met the criteria in the past, she cannot understand why the request would be denied this time. In the reconsideration decision, the ministry acknowledged that the appellant had been approved in the past for requests to travel outside of BC for more than 30 days. The ministry stated that with each request a new decision is made as the out of province legislation is assessed on a case-by-case basis and does not include an ongoing approval.

The legislation requires the minister to give "prior authorization" for the continuation of disability assistance for the purposes described in section 15. Clearly this means that the ministry can give approval only on a case-by-case basis, considering the current circumstances by the requestor and the information provided on how the outside BC absence meets one of purposes set out in the legislation. Therefore the panel finds that the ministry was reasonable in finding that it is not bound by previous approvals.

Medical therapy

In its decision, the ministry found that although meditation may be beneficial for the appellant's health, it is not considered a medical therapy, but a way to explore her spirituality and manage her stress. The ministry noted that the psychiatrist states that the retreat centre is not a "medical facility," and that there is no information available about the program she would be attending in [US state], including the name of the program or the address of the retreat centre, only that is located in [US state]. The ministry also noted that the appellant has not provided any information about whether she can find a meditation and stress management program in BC or Canada

In her Notice of Appeal and at the hearing the appellant argued that meditation is a medically approved and scientifically validated adjunct treatment for depressive disorder. She also argued that facilities offering similar programs in BC or Canada are more expensive than she can afford to pay out of her disability assistance.

The issue here is whether the requested attendance at the meditation retreat centre is for the purpose of obtaining *medical therapy*. The panel understands the adjective *medical* in this context to mean “relating to the science or practice of medicine” [Oxford]. In the panel’s view, in the context of a therapy (in this case, meditation training), applying this meaning requires that the therapy be supervised by, administered by or performed by a person trained in a field of the practice of medicine. The panel notes that simply because a medical practitioner might prescribe or recommend that a patient do something does not mean that it meets the definition of *medical* (e.g. “follow a low salt diet,” “get more exercise.”) As noted by the ministry, the appellant has not provided any information describing the program at the retreat centre. The panel considers it reasonable for the ministry to expect that such information would include the name and address of the centre, whether it is licensed in a practice of medicine by an official body and what the credentials might be of the persons responsible for providing the service. Without such information, the panel finds that the ministry reasonably concluded that it had not been established that the purpose of the appellant’s stay at the centre was to obtain *medical therapy* prescribed by a medical practitioner.

Undue hardship

In her Notice of Appeal, the appellant writes, “I will experience undue hardship otherwise.” In its reconsideration decision, referring to the absence of any information about the program at the retreat centre, the ministry states that it cannot determine that failure to leave the province for more than 30 days to go to [US state] will avoid undue hardship.

In the panel’s view, *to avoid undue hardship* must be seen in the context of the continuation of disability assistance and therefore from the perspective of taking steps to prevent *financial* hardship. The appellant argues that the requested training in meditation might ultimately lead to work in that field, or to a state of wellness where she might to be able to secure gainful employment and thus no longer require disability assistance. In the panel’s view, the verb *avoid* has a sense of immediacy and the appellant has not provided any medical opinion that the *purpose* of the attendance at the retreat centre is one of these outcomes in the near future. The panel therefore finds that the ministry was reasonable in concluding that it has not been established that avoiding undue hardship was a purpose of the stay at the retreat centre.

Formal education program

In her Notice of Appeal, the appellant writes, “It is educational as I would like to teach meditation one day after I recover.” The ministry did not specifically address this purpose in the reconsideration decision. At the hearing, the ministry noted that there was no information provided that would suggest that the program offered at the retreat centre constituted a program of formal education, as required in the legislation. In the panel’s view, the meaning of a *formal education program* is one that would lead to a degree, diploma or certificate from a recognized educational institution. As the appellant has not provided any information that such is the case with the program offered at the retreat centre, the panel finds that the ministry was reasonable in not considering that this was a purpose for the appellant’s absence from the province for more than 30 days.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision that denied the appellant's request for continuation of disability assistance while absent from the province for more than 30 days is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful in her appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:*Employment and Assistance Act*Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 July 27

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 July 27

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 July 27