

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated June 21, 2018 (the “Reconsideration Decision”) which determined that the Appellant had received disability assistance for which she was not eligible for the months of February, March, and April of 2018 and was liable to repay the Ministry for an overpayment under section 18(1) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry had determined that the Appellant was ineligible for part of the disability assistance she had received in each of February and April and all of the disability assistance that she had received for March, as she was outside of British Columbia for a period in excess of 30 days, without the prior approval of the Ministry, and the Ministry was not satisfied that her trip was for the purpose of

- participating in a formal education program;
- obtaining medical therapy prescribed by a medical practitioner; or
- avoiding undue hardship

as required by section 15 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

PART D – RELEVANT LEGISLATION

EAPWDR, section 15

EAPWDA, sections 18 and 19

PART E – SUMMARY OF FACTS

On January 16, 2018 the Appellant travelled overseas and did not return to British Columbia until April 16, 2018. The Ministry determined that the Appellant was ineligible for disability assistance from February 16, 2018, thirty days after she left British Columbia, until April 16, 2018 and determined that the Appellant was ineligible for a pro-rated amount of her regular disability assistance in February and April and all of the disability assistance that she received in March.

The information before the Ministry at the time of the Reconsideration Decision included:

- The Ministry's letter to the Appellant, dated May 10, 2018, confirming that the Appellant had potentially been overpaid disability assistance in April, 2018 in the amount of \$579.21;
- The Ministry's letter to the Appellant, dated May 10, 2018, confirming that the Appellant had potentially been overpaid disability assistance in February, 2018, March, 2018, and April, 2018 in the amount of \$2370.84, due to having been outside of British Columbia for a period in excess of 30 days;
- The Appellant's signed Review dated April 30, 2018 (the "Review"), authorizing a number of organizations and agencies to provide information to the Ministry, including financial institutions;
- A history of transactions on the appellant's bank account at VanCity for the period from February 21, 2018 to April 5, 2018;
- A copy of the Appellant's tenancy extension agreement, dated May 29, 2017;
- The Appellant's flight itinerary;
- The Appellant's Request for Reconsideration, in which she stated that:
 - she had been advised to take her overseas trip by her doctor because she had been experiencing depression and needed the support of close family members;
 - she was unable to cover her April rent and the potential garnishment of her disability assistance could result in her losing her current housing; and
 - she was now aware of the rules and would not leave the province for more than 30 days without reporting same in advance;
- A letter from the Appellant's doctor, dated June 6, 2018, in which the Appellant's doctor stated that:
 - The Appellant has "Major depressive disorder" with suicidal ideation;
 - The Appellant's symptoms had worsened after her children left Vancouver;
 - She had recommended that the Appellant visit her family; and the Appellant's symptoms had improved since her trip.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had received disability for which she was not eligible for the months of February, March, and April of 2018 as she was outside of British Columbia for a period in excess of 30 days in those months, without the prior approval of the Ministry, and the Ministry was not satisfied that her trip was for the purpose of

- participating in a formal education program;
- obtaining medical therapy prescribed by a medical practitioner; or
- avoiding undue hardship

as required by section 15 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

Legislation

Section 15 of the EAPWDR requires a recipient to obtain the prior approval of the Ministry before leaving British Columbia for a period of 30 days or more:

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.

Section 18 of the EAPWDA sets out that where a recipient receives assistance for which he or she is not eligible, the recipient is liable to repay the amount of the overpayment:

Overpayments

- 18**
- (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
 - (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Section 19 of the EAPWDA governs how monies for which a recipient may be liable can be repaid to the Ministry:

Liability for and recovery of debts under Act

- 19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
 - (b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

The Ministry's position is as set out in the Reconsideration Decision. Namely, the Ministry's position is that the Appellant ceased to be eligible for disability assistance from 30 days after she left British Columbia (February 16, 2018) and remained ineligible until her return on April 16, 2018 because the Appellant had not obtained approval from the Ministry to be absent from British Columbia for one of the reasons set out in section 15 of the EAPWDR prior to being outside of the province for 30 days.

The Appellant's position is that she was outside of British Columbia for a period in excess of 30 days without knowing that same would impact her eligibility to receive disability assistance and that her absence from the province was on the advice of her family doctor who advised her to spend time with her family in order to deal with depression issues that she was having.

Panel Decision

It is clear that the Appellant was out of the province for a period of 30 days or more. The Appellant does not dispute this. It is equally clear that the Appellant did not obtain the prior approval of the Ministry to be absent from British Columbia for a period longer than 30 days.

The EAPWDR does permit a recipient to be absent from British Columbia for more than 30 days if the absence is approved in advance and is for one of the following reasons set out in section 15 of the EAPWDR:

- (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.

In this case, the Appellant's absence was clearly not for the purposes of (a). The Appellant does not suggest that she was participating in a formal education program overseas.

With respect to (b), the term "medical therapy" is not defined in the EAPWDR. The Appellant and the Appellant's doctor both provided evidence that was before the Ministry at the time of the Reconsideration Decision that indicated that the reason for the Appellant's overseas trip was for the sake of her mental health.

With respect to (c), the term “undue hardship” is also not defined in the EAPWDR, despite appearing in several other provisions. Its presence in section 15 appears to be for the purposes of serving as a “catch all” provision permitting a recipient, who doesn’t qualify under subsections (a) or (b), to make a case for being absent from British Columbia for a period in excess of 30 days.

As such, it is possible that had the Appellant sought the approval of the Ministry prior to her absence, she may have been approved under either of subsection (b) or (c) of section 15 of the EAPWDR. However, the inclusion of the word “prior” in section 15 of the EAPWDR indicates that the Ministry does not have the legislative authority to consider retroactive requests for approval to leave the province for periods in excess of 30 days and the panel finds that the Reconsideration Decision, which determined that the Appellant was ineligible for disability assistance for parts of February and April and all of March, 2018 by virtue of having been outside of British Columbia for more than 30 days and is liable to the Ministry for the overpayment of assistance in that period was a reasonable application of section 15 of the EAPWDR. The Panel confirms the Ministry’s decision.

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)