

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 30, 2017, 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 for “Medical Services Only” (MSO) supplements.

PART D – RELEVANT LEGISLATION

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) Letter dated January 23, 2017 from Work Safe BC confirming the appellant's long-term wage rate of \$393.81 per week;
- 2) Letter dated November 19, 2017 from the appellant; and,
- 3) Request for Reconsideration dated November 1, 2017.

In the letter dated November 19, 2017, the appellant wrote that:

- Her Work Safe BC PTSD [Post Traumatic Stress Disorder] claim was finally accepted on January 17, 2017.
- Her treatment ended at the end of March and she was left homeless. Her medical team's advice was not to return to her previous community. It was at this time that she was asked to provide the ministry with supporting documentation of her Work Safe BC claim, forwarding addresses, and a request to stay on Medical Services Only (MSO).
- She had three days to find a residence, arranged for her possessions to come out of storage, and move to a new apartment.
- She continued to struggle with her PTSD as the treatment program was not sufficient, her employer was not supportive, and neither was her union.
- She asked for a social worker once she was settled in her new residence but both were not of any assistance. She has no family, friends or supports.
- It was only recently, when she required changes to her medication, she realized she was not on MSO as she believed this had already been arranged.
- She found an apartment for \$1,600.50 per month, which does not include any utilities, groceries, etc. Her monthly income from Work Safe BC is \$791 bi-weekly, leaving her with no finances to cover any medical expenses including medications.
- Work Safe BC does not cover her medications and she cannot pay for them.

Additional information

In her Notice of Appeal dated December 11, 2017, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that:

- She is a PWD [Persons with Disabilities] and still meets the financial criteria.
- Work Safe BC does not cover medical costs.
- Her mental health injury impaired her memory and concentration, and she was not receiving assistance from her social worker, which was needed due to her disability.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Incident Report dated June 15, 2014;
- 2) Estimate dated February 22, 2016 for the cost of moving and storage of household goods;

- 3) Letter dated March 2, 2016 from a lawyer with excerpts from legislation;
- 4) Copies of emails dated March 21 and 22, 2016 regarding the appellant's Workers' Compensation Appeal Tribunal (WCAT) appeal;
- 5) Letter dated March 22, 2016 from a lawyer to the WCAT;
- 6) Letter dated May 5, 2016 from a lawyer to the appellant;
- 7) Copies of emails between the lawyer and the appellant dated May 14, 16, 28, and June 28, 29, 2016;
- 8) Memo dated August 29, 2016 to the Law Society, Complaints Division;
- 9) Invoice dated September 3, 2016 for cost of moving and storage;
- 10) Statement dated December 12, 2016 for the amount owing for storage and moving;
- 11) Letter dated December 13, 2016 from the ministry to the appellant;
- 12) Letter dated December 22, 2016 from a social worker to BC Housing;
- 13) Letter dated May 20, 2017 from the appellant to the property management;
- 14) Copy of an email dated July 4, 2018 in which the appellant wrote:
 - She is still on WSBC benefits and struggling with the symptoms of PTSD, and this is why she forgot to send a forwarding address to the ministry in the first place.
 - She had advised the ministry of her claim being won but requested that she stay on the medical benefits only.
 - She had the PWD designation in the first place.
 - It was only because WSBC had her in a hotel, then she had a week to find a home and arrange for movers and somehow manage her symptoms.
 - She found out her [medical] benefits were cut off because she forgot to send in a forwarding address.
 - A major symptom of PTSD is memory loss, concentration, and comprehension/organization.
- 15) Emails dated January 15 and 17, 2019 between the appellant to the Tribunal;
- 16) Canada Revenue Agency Statement of Benefits (T5007) for the year 2018 from the Workers' Compensation Board of BC; and,
- 17) Bank Statement for the period December 1 to 31, 2018.

At the hearing, the appellant stated that:

- She used to be much more organized and informed. Her memory has been impacted, but she remembers the incident where she and her partner were assaulted and their employer did nothing about it.
- She had applied for workers' compensation benefits and hired a lawyer but, when they were close to going to the WCAT, the lawyer wanted to switch her claim from PTSD to a physical injury claim and she did not agree. She had risked too much at that point, having lost her home and having to live in her car, and she wanted to pursue her PTSD claim.
- She was abandoned by everyone when she developed PTSD so she had little support.
- The lawyer lied and was quite abusive and she ended up having to fight with the Law Society to get the lawyer's \$10,000 fee removed.
- She had to proceed with WCAT by herself, which was 16 hours a day, every day, and she was ultimately awarded benefits.
- She had to move to another community because of restrictions to her safety and the

- movers would not release any of her furniture. The movers never sent out an invoice and she had to get the RCMP involved. It ended up that she had to pay an additional \$300.
- Her new landlord knew she had PTSD but still charged 6 month's rent and engaged in intimidation and blackmail. Over the year that she lived at that location, she was singled out by the landlord and this was very stressful.
 - She was trying to start a new life and to heal and all of these things were happening.
 - She had to move again and, when she got to the hotel, she immediately notified the ministry that she no longer required disability assistance. She dealt with the local ministry office in her previous community and had a social worker with her during their discussions. The ministry told her that she would qualify for MSO coverage and told her how to apply. She cannot remember if she wrote a letter to the ministry requesting coverage.
 - She was granted medical coverage because she got some dental work covered before she left the community.
 - She later got a letter from the ministry saying that she did not qualify for MSO coverage because she did not give them a forwarding address. She does not have a copy of this letter as it likely got misplaced with her moves. She was dealing with the movers and with the police during this time and she was "pretty messed up."
 - She still has the PWD designation and she has teeth that have not been cleaned. She cannot go to the dentist.
 - She had a noble profession that she loved and she has never achieved closure over the way she was forced out. She received threats and did not get assistance from her union. There was a distinction made between the employees in terms of status. She has contributed to the community for many years and she did all the right things.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that the reason that the appellant's request for MSO coverage was denied was not related to the lack of a forwarding address for the appellant. The ministry clarified that the appellant was found not eligible for MSO coverage because her situation did not fall within the requirements of Section 61.1(3) of the EAPWDR as she did not cease to be eligible for disability assistance for one of the required reasons as set out. The ministry stated that if the appellant was initially in receipt of MSO coverage for dental work, this may have been paid in error and then later rectified. The ministry also clarified that the ministry does not consider workers' compensation benefits as "employment income" under Section 61.1(3)(d) of the EAPWDR.

Admissibility of additional information

The ministry did not object to the admissibility of the additional documents. The panel admitted the additional documents as information regarding the appellant's circumstances prior to and at the time that her request for MSO coverage was denied, which was highlighted by the appellant at reconsideration, and is therefore in support of information and records before the ministry at reconsideration in accordance with 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," was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The definition of "unearned income" is set out in Section 1 of the EAPWDR as follows:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: . . .

(j) workers' compensation benefits and disability payments or pensions; . . .

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 included 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.

Panel Decision

In the reconsideration decision, the ministry wrote that to be eligible for Medical Services Only Coverage (MSO), Section 61.1 of the EAPWDR requires that a family unit include a person with the PWD designation on the date the family unit ceases to be eligible for disability assistance, meet the applicable income test for the family unit, and cease to be eligible for disability assistance for one of the reasons set out. The ministry wrote that the appellant ceased to be eligible for disability assistance due to being in receipt of workers' compensation benefits from Work Safe BC, which benefits were in an amount that exceeded her assistance rate. The ministry found that the appellant did not cease to be eligible for disability assistance for one of the reasons set out in Section 61.1(3) of the EAPWDR and, therefore, she does not meet the requirements for consideration as a "continued person" and is not eligible for MSO Supplements.

The appellant wrote in her Request for Reconsideration that her claim for benefits from Work Safe BC for job-related PTSD was finally accepted on January 17, 2017. The appellant acknowledges that she ceased to be eligible for disability assistance because she was in receipt of these benefits. At the hearing, the appellant stated that she advised the ministry immediately when she started to receive the workers' compensation benefits. The letter dated January 27, 2017 from Work Safe BC outlines the long-term wage rate that had been set for her claim. Section 9(2) of the EAPWDR states that a family unit is not eligible for disability assistance if the

net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A, and net income includes both earned and unearned income except certain types of earned and unearned income that are specifically excluded. Under Section 1 of the EAPWDR, the definition of "unearned income" includes "without limitation" workers' compensation benefits and disability payments or pensions.

In her Request for Reconsideration, the appellant argued that Work Safe BC does not cover her medications and she cannot pay for them. In the email dated July 4, 2018, the appellant wrote that she had advised the ministry of her workers' compensation claim being won and requested that she stay on the medical benefits only. The appellant wrote that it was only when she required changes to her medications that she realized she was not on MSO and she believed this had already been arranged. At the hearing, the appellant clarified that she was initially granted MSO coverage because she got dental work paid for before she left her previous community. In the email dated July 4, 2018, the appellant wrote that she found out her medical benefits were cut off because she forgot to send in a forwarding address. At the hearing, the appellant clarified that she got a letter from the ministry saying that she did not qualify for MSO coverage because she did not give them a forwarding address. She does not have a copy of this letter as it likely got misplaced with the disruption of her moves.

The ministry stated at the hearing that the appellant's request for MSO coverage was denied not because of a lack of a forwarding address for the appellant but, rather, because her receipt of workers' compensation benefits resulted in her ceasing to be eligible for disability assistance and the ministry's determination was that the receipt of workers' compensation benefits is not captured under the provisions of Section 61.1(3) of the EAPWDR in order to allow for MSO coverage.

To qualify as a "continued person" under Section 61.01 of the EAPWDR, the requirements of Section 61.1(1) must be met. Section 61.1(1)(a) 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. Section 61.1(3) sets out that 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 included 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.

At the hearing, the appellant argued that she met the requirements of Section 61.1(3)(d) because she ceased to be eligible for disability assistance because she was in receipt of employment income, being her workers' compensation benefits. The appellant also argued that the various categories in Section 61.1(3) of the EAPWDR include payments in other situations, such as under CPP, and other awards, and her workers' compensation benefits are similar to these types of payments. The ministry clarified at the hearing that workers' compensation benefits are considered "unearned" income that is not employment income and employment income is "earned income." The ministry also stated that workers' compensation benefits would have been specifically added by the Legislature to the list of categories in Section 61.1(3) of the EAPWDR if they were intended to be included, and the ministry must apply the legislation as worded.

The panel finds that the ministry reasonably considered the wording of Section 61.1(3) of the EAPWDR and determined that workers' compensation benefits have not been included as one of the reasons that a person has ceased to be eligible for disability assistance. Although the appellant stated at the hearing that she was initially granted MSO coverage because she got dental work paid for before she left her previous community, the ministry suggested that an error may have been made initially, which may have been later rectified. The appellant acknowledged that she was ineligible for disability assistance because she was in receipt of workers' compensation benefits, which are specifically included in the definition of "unearned income" in Section 1 of the EAPWDR and are not earned income, or employment income. The panel finds that the ministry reasonably concluded that the appellant, therefore, did not cease to be eligible for disability assistance for any of the reasons set out in subsection (3) of Section 61.1 of the EAPWDR, the appellant does not meet the requirements for consideration as a "continued person" and, therefore, is not eligible for 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(1) of the EAPWDR for consideration as a continued person and, therefore, is not eligible for MSO supplements, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-01-21

PRINT NAME

Fazal Bhimji

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-01-21

PRINT NAME

Adam Rollins

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-01-21