

APPEAL NUMBER
2017-00143

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 April 22, 2020 that denied continuing PWD benefits while the appellant is absent from British Columbia for more than 30 days.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 15.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

1. The appellant and spouse both have Persons with Disabilities (PWD) designation and receive assistance as a couple.
2. On January 20, 2020, the appellant contacted the ministry by phone and requested approval to live outside of the country for 6 months per year for health reasons. The appellant stated that the appellant's health would benefit from being in a warmer climate in winter while the appellant's spouse remained in Canada. The appellant provided a note from his medical practitioner which said:
"I am here to confirm that we have been trying for 2 years to help the appellant's breathing. The appellant has been using a CPAP machine for the appellant's obstruction but unable to tolerate it. The appellant has repeated throat and mouth infections. I think the culprit is dust and heat through venting systems. The appellant even gets asthma induced by this. I think the appellant will benefit from going to certain areas of the world for 6 months during the cold seasons of Canada to avoid excessive heating system issues and avoid chronic sinus/throat infections related to chronic nasal obstruction. Failure of medical, machine interventions have both been unsuccessful for 2 years. The appellant reports no symptoms while in warm weather."
3. On February 20, 2020, the ministry denied the appellant's request because there was no medical therapy prescribed by a doctor that the appellant's health might benefit from.
4. On March 31, 2020, the appellant submitted a request for reconsideration in which the appellant stated:
"I have a request to ask that I be heard that people like snowbird people who usually goes to warmer side to live there for 6 months or people who are pension plan, also they can live outside of country for 6 months. I have a medical reason, so allow me the exemption to got to USA or other country. Because I have joint pain problem, it hurts more in winter time over here."

Notice of Appeal

On May 21, 2020, the appellant completed a notice of appeal which stated:

"I have not only diabetes but also health problems such as joint stiffening in cold weather, not being able to breathe properly because of heating systems. My spouse also have arthritis and gets joint ache and stiffness in winter. If you want to save our lives please give us permission."

Hearing

At the request of the appellant, a written hearing was held on June 26, 2020, in accordance with the Employment and Assistance Act, Section 22(3)(b).

The appellant did not provide a submission for the hearing and the ministry, in an email dated June 20, 2020, stated that the ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant's request for continuing disability coverage while the appellant is absent from British Columbia for more than 30 days is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Ministry Position

The ministry reconsideration decision notes that EAPWDR, Section 15 states that a recipient who is outside British Columbia for more than 30 days without ministry authorization, ceases to be eligible for disability assistance. The legislation designates that authorization must be for the purpose of permitting the recipient to participate in a formal education program, permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or avoiding undue hardship. The ministry notes:

1. the appellant is not in a formal education program outside British Columbia.
2. the appellant's medical practitioners indication that the appellant's health should benefit from living in a warmer climate for 6 month's is not a prescribed medical therapy.
3. the ministry is unable to establish the appellant will face an undue hardship as there is not sufficient evidence that improvements to the appellant's health cannot be achieved in British Columbia and whether steps have been taken to resolve the issues associated with dust in the ventilation system.

Appellant's Position

The appellant states that in addition to diabetes, the appellant has health problems such as joint pain/stiffening and breathing difficulties which would be improved if the appellant was granted permission to live outside British Columbia for 6 months of the year. The medical practitioner states that the appellant suffers from repeated throat and mouth infections and has difficulty breathing which is believed to be due to heat and dust in the ventilation systems. The medical practitioner believes the appellant would benefit from living in other areas of the world for 6 months to avoid the heating system issues. The medical practitioner notes that this might avoid chronic sinus/throat infections related to chronic nasal obstruction. Medical/machine interventions have been unsuccessful for 2 years. The appellant reports no symptoms while in warm weather.

Panel Decision

The panel is in agreement with the ministry position that EAPWDR Section 15 clearly lays out that in order to live outside of British Columbia for more than 30 days with a continuation of benefits, a recipient must receive prior approval of the ministry and that such approval must be for one of the purposes of: permitting the recipient to participate in a formal education program, permit the recipient to obtain medical therapy prescribed by a medical practitioner, or avoid undue hardship.

The panel also agrees that the appellant's request clearly does not involve participating in a formal education program and this cannot be the basis for an approval.

In respect of the request being to obtain medical therapy, the ministry argues that warm weather (and presumably the absence of a cold weather heating system) does not constitute a prescribed medical therapy. The panel concurs with the ministry position and notes that the appellant's request and arguments do not align with being absent for a prescribed medical therapy which might resolve medical issues. Rather, in the absence of any such successful proposed medical or machine intervention to resolve the medical issues, it is the recommendation of the medical practitioner that residing in a warm area for 6 months will ultimately benefit the appellant's health. The panel concludes that these reasons together do not rise to the level of a prescribed medical therapy to resolve the appellant's medical issues but rather suggests a more comfortable environment to deal with them.

Finally, the Panel concurs with the ministry assertion that the appellant does not face a situation where ministry approval should be provided to avoid an undue hardship. Having found that the request does not involve obtaining a prescribed medical therapy that might resolve the appellant's medical issues, the panel can see no hardship that is undue in the appellant's dealing with issues that are considered part of living in British Columbia. The appellant points to the ability of "snowbirds" to do the same without losing pension benefits but the panel finds this not to be comparable or relevant as there is no legislated requirement for residence for pension benefits as there is for PWD.

Conclusion

The panel confirms the ministry reconsideration decision as it was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful upon appeal.

Employment and Assistance for Persons with Disabilities Regulation:

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.

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PARTG-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)

PARTH-SIGNATURES

PRINT NAME

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/06/26

PRINT NAME

Glenn Prior

DATE (YEAR/MONTH/DAY)

2020/06/26

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/26