

APPEAL NUMBER
2020-00272

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 23, 2020, which denied the appellant's request for continued disability assistance while out of British Columbia for more than 30 days. The ministry found that the appellant's request did not meet the purposes set out in section 13 of the Employment and Assistance for Persons with Disabilities Regulation; namely, 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.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 13.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- Email correspondence dated September, 2020 between the ministry and the appellant's advocate.
- A copy of the appellant's Residential Tenancy Agreement signed December 4, 2019.
- Copies of photos taken in January, 2020 showing the appellant digging a grave.
- A copy of a burial permit signed January 2, 2020.
- A copy of a "Death Card" indicating that the appellant's parent died December 2, 2019.
- A copy of a letter from the appellant's advocate to the ministry dated September 23, 2020.
- A Notarized note from the appellant's brother stating that he must return to Canada for medical treatment, dated October 6, 2020.
- A letter from the appellant's physician To Whom it May Concern, dated September 28, 2020 stating that the appellant is able to travel.
- Copies of 2 newspaper articles, undated.
- A copy of a questionnaire, dated October 5, 2020, provided by an attorney to the appellant's advocate.
- A submission from the appellant's advocate provided with the appellant's Request for Reconsideration, signed October 23, 2010.

The appellant submitted additional material prior to the hearing:

- A submission from the appellant's advocate, and
- A notarized note from the appellant's brother, who is out of Canada.

The Panel accepted these documents as part of the appellant's argument.

At the hearing, the appellant stated that the request for permission to remain outside of Canada for longer than 30 days is to avoid hardship while settling the parent's estate. There is a possibility of losing the rent-subsidized apartment the appellant currently rents due to inability to pay the rent while out of Canada with no income. The appellant noted that the events in the other country are out of anyone's control. The appellant stated that all of the dealings with the ministry have been open and forthright and evidence of the differences between Canada and the other jurisdiction has been provided. Months have passed since the death of the appellant's mother with no resolution. The appellant's brother remains abroad, but plans to return to Canada for health reasons. The appellant stated that health issues also applied to them, but are sufficiently resolved to allow travel. The death certificate has not yet been released; therefore, nothing can proceed with respect to the mother's estate. The appellant stated that no other source of income is available other than disability assistance and it would be an undue hardship to lose that while out of the country dealing with the mother's estate.

In response to questions from the Panel, the appellant stated that the authorities advised that the death certificate is ready to be picked up now that the inquest has been held, but the estate cannot be settled and the property sold until it is picked up. The sale may take time due to the location of the property, which is in disrepair. With the assistance of local people, they have been trying to get the estate into presentable condition so it can be sold for proper value. With respect to the timeframe, the appellant stated that they do not wish to sell until the current COVID pandemic is over and the estate is presentable and ready to sell. The appellant's brother has been working on it, but he must return to Canada for his health. The appellant stated that the death of the mother was sudden and unexpected and there is no money for supplies to run the business. The death certificate will allow bank accounts to be accessed, but no revenue is coming in. Periodically someone stays and whatever is collected is used for upkeep. Three gardeners and two maids are required for maintenance, but no real commercial enterprise is going on. The appellant was asked by the Panel about the clause in the tenancy agreement requiring prior written consent from the landlord for any absence longer than three consecutive months and whether the landlord has agreed. The appellant replied that there is no written agreement, but the Appellant is confident that the landlord would be OK with an absence of 150 days. The appellant stated that the request is still for an additional 150 days, but the process may not take that long. The appellant noted that travel is difficult to this particular country.

The ministry responded by referring to the Reconsideration Decision. The ministry stated that the documentation provided by the appellant does not show that they are required to be absent from Canada; it appears to be the

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appellant's brother's responsibility to settle the estate. The ministry stated that they found that it is not necessary for the appellant to be out of the country for longer than 30 days. The ministry acknowledges the appellant's responsibilities, but the ministry should not be responsible for supporting the appellant while he performs them.

In reply to the ministry, the appellant stated that the person who found the body must pick up the death certificate; in this case, it was the appellant.

In response to questions from the Panel, the ministry stated that the appellant was not absent from Canada twice, the permission was extended to 60 days. The ministry stated that because a new year has begun, the appellant would be entitled to 30 days' absence for the new year.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision to deny the appellant's request for continued disability assistance while out of British Columbia for more than 30 days. The ministry found that the appellant's request did not meet the purposes set out in section 13 of the Employment and Assistance for Persons with Disabilities Regulation; namely, 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.

Legislation

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.

The appellant's position is that the trip to settle the mother's estate is necessary. It will take longer than the 30 days absence provided for in the legislation and the appellant would suffer undue hardship by being denied disability assistance while out of Canada due to the possibility of losing a subsidized apartment due to non-payment of rent. The appellant argued that the brother who has been dealing with improving the property to make it ready for sale must return to Canada for medical reasons and the appellant must take over or the property will be unmanaged.

The ministry position is that denial of the appellant's request would not create an undue hardship. The appellant is not participating in a formal education program outside of B.C., not required to be out of the country to receive a prescribed medical therapy and the ministry is unable to establish that the appellant will face undue hardship if not permitted to reside outside of B.C. and continue to receive disability assistance. The appellant has confirmed that they are not the executor of the mother's estate. The ministry found no evidence to show that the appellant's presence in the other country is required for the inquest into the mother's death to be completed or for the death certificate to be issued so that her estate may be settled.

Panel Decision

The appellant has not argued that subsections (a) and (b) of Section 15, EAPWDR apply. The appellant stated that the authorities have advised that the inquest into the mother's death is now complete and the death certificate is ready. The appellant argued that they are the only person who may pick it up, however the Panel notes that the new year allows the appellant an additional 30-day absence from the province to accomplish this. It appears that the role of executor has been carried out by the appellant's brother to date, and the appellant argues that the brother's health is such that he must return to Canada; therefore the appellant must take over the preparation and improvement of the property for sale.

The Panel notes that despite the appellant's confidence that there will not be a problem, no written permission from the landlord in Canada has been obtained allowing the appellant to allow the unit to be vacant for longer than three consecutive months as required by the tenancy agreement. The issue of the possibility of losing the apartment is central to the appellant's argument about undue hardship. The Panel also notes that the length of the proposed absence from the province is open-ended; other than statements about the difficulties involved in preparing and improving the property for sale, no information has been provided about how long this will take. The appellant stated that they wish to improve the property prior to sale in order to get it into presentable condition so the sale will

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bring proper value. The delay in obtaining the death certificate has ended, as the appellant stated that it is ready to be picked up. The reason for the delay in selling the property and finalizing the estate now appears to be the length of time required to improve the property for sale. The Panel finds that this future delay, which may be considered at least to some degree within the appellant's discretion, was reasonably determined by the ministry not to constitute an undue hardship by potentially causing the suspension of disability assistance. The Panel finds that the ministry reasonably denied the appellant's request to continue to receive disability assistance while absent from the province for more than 30 days.

The ministry decision is confirmed. The appeal is not successful.

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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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 JAN 12

PRINT NAME

Kenneth Smith

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 JAN 12

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 JAN 12