

APPEAL NUMBER  
2021-00065

**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 March 15, 2021, which held that the appellant is not eligible for disability assistance as the appellant has been out of the province for over 30 days without prior authorization from the ministry.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), sections 3 and 11

Employment and Assistance for Persons with Disabilities Regulation (EAPWD) sections 15, 54.7 and 73

## **PART E – SUMMARY OF FACTS**

### **Information before the ministry at reconsideration**

On March 16, 2020 the Ministry initiated a file review and mailed a letter to the appellant requesting information to ensure the appellant was receiving the correct amount of assistance and the appellant's information was accurate and up to date. This letter was returned April 1, 2020 by Canada Post as undeliverable 'moved/unknown'.

On April 6, 2020 the Ministry attempted to contact the appellant about the returned mail; the appellant's number was out-of-service. Due to the start of the Covid-19 pandemic, file reviews were postponed, and no further action was taken at that time.

On November 30, 2020 the Ministry initiated the file review again:

- The appellant's file was updated to no fixed address (NFA) due to the previous notes on file regarding the returned mail and out-of-service phone number.
- The file review letter was sent to the appellant via MySelfServe and the letter was attached to a signal placed on the appellant's January assistance cheque.
- The file review again was to ensure the appellant is receiving the correct amount of assistance and the appellant's information is accurate and up-to-date. Confirmation of current address, shelter arrangements and expenses, and banking information was requested.

The following documents were submitted in response to the file review request letter:

- The appellant's China Airlines ticket showing the appellant left BC on June 16, 2017
- A December 2020 rent receipt for a one-bedroom apartment in India
- A 5-year Indian eTourist VISA, date of issue February 4, 2020
- 3 months of bank statements

The appellant had also emailed the Minister's Office prior to the Reconsideration Decision with reasons, concerns, and a request for authorization to receive the reconsideration supplement and continue to receive disability assistance.

- On January 4, 2021 the appellant wrote to the Minister's Office: "I have been given prior authorization from the Minister's office, from/during the phone call I had with the Minister's office where I also informed the Minister's office that I had no long term fixed address."
- On January 15, 2021 the Minister's office responded: "We encourage you to continue to work with ministry staff and to submit your completed reconsideration package through MySS at <https://www.myselfserve.gov.bc.ca/>."

On January 12, 2021 the ministry determined the appellant ineligible for disability assistance due to being out of province over 30 days without prior approval from the ministry.

- Although the appellant indicated in a submission to have spoken with the ministry to seek and obtain prior authorization before leaving BC, there is no record on file to indicate that the appellant has spoken to a ministry worker since December 31, 2013.

On February 13, 2021 the appellant submitted the Request for Reconsideration via MySelfServe, requesting an extension and providing reasons for Requesting the Reconsideration. The appellant wrote:

- PWD assistance is not sufficient to pay for accommodation and living expenses in BC, and having to share accommodation with roommates causes problems. The appellant became indebted and experienced undue hardship. Eventually the appellant may have become homeless.

- “During [a] phone call with the Ministry, I asked and was given prior authorization to be out of BC Canada for more than 30 days to avoid undue hardships. I was told that I could do so as long as I don’t make more money than I am allowed to remain eligible it doesn’t matter where I go.”

On March 12, 2021, a Manager of Service Quality completed a review of the appellant’s file and attached the emails and documents to the appellant’s case.

On March 15, 2021 the ministry proceeded with the review and reconsideration decision. No additional documents had been received from the appellant after the request for extension.

Additional Information provided by the ministry:

- The appellant is ■ years of age and has been receiving disability assistance as sole recipient with no dependents
- The assistance file opened June 2011
- The appellant received the PWD designation effective December 2012
- The appellant was in receipt of income assistance prior to receiving the PWD designation
- The appellant has been receiving the maximum disability assistance rate available for a single person, including both support and shelter.

**Information provided on appeal and admissibility**

In the Notice of Appeal dated March 23, 2021 the appellant wrote:

- “I did call the Ministry in 2016 and obtained prior authorization to be out of BC, Canada for more than 30 days to avoid undue hardship, as well as having NFA. There has been a Ministry clerical and/or technical error in regards to recording this call in my file that has caused a mistake which has erroneously affected my eligibility.”

In a submission dated April 5, 2021 the appellant repeated earlier statements and added:

- The appellant was not able to apply for reconsideration and appeal supplements because the ministry did not make the forms available.
- “I chose to come to India ... The covid situation is not too bad where I am located and the cost of living is in line with what I can afford with PWD.”
- The appellant’s suffers from chronic pain; this condition is easier to bear in warmer climates.
- Trying to return to live in BC would cause undue hardship due to the pandemic and cause uncertainty on when the appellant would be able to leave BC again for more affordable countries.
- PWD assistance is the appellant’s only source of income.

In a submission dated April 10, 2021 the appellant repeated previous statements and added:

- In other countries dental services are more affordable. The appellant had to have two dental cavities filled which cost \$35; in BC this could have cost 5-10x more, which would be difficult to pay for with PWD assistance.
- Since leaving Canada the appellant had root canals and crowns done; in BC these procedures would have been unaffordable. The appellant has to budget for additional crowns and dental implants.

In a submission dated April 13/14, 2021 the appellant repeated earlier statements and added:

- “In January I requested Reconsideration and Appeal assistance, but I have still not been provided with the application form for this. As it has been 4 months since my PWD assistance has been discontinued, it has become difficult for me without any assistance and so yesterday I messaged the Ministry and asked them to send me the form to apply for Reconsideration and Appeal assistance.”
- From the appellant’s MySelfServe:  
“From: Ministry  
Tuesday April 13, 2021  
A reconsideration supplement is only available when income assistance, disability assistance or a supplement is either discontinued or reduced. It is not available when income assistance, disability assistance or a supplement has been denied.”

The ministry submission of April 12 and 13, 2021 was the reconsideration summary.

**Information provided on appeal and admissibility**

The panel accepted the appellant’s Notice of Appeal as argument.

The appellant’s appeal submissions included argument and some new information about the appellant’s medical condition, dental treatments, financial circumstances, and the request for the reconsideration and appeal supplement. The panel considered this information to be necessary for a full and fair disclosure of the matters related to the appeal and therefore admitted this information under section 22(4) of the EAA.

The positions of both parties are set out in part F of this decision.

## **PART F – REASONS FOR PANEL DECISION**

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant disability assistance was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not eligible for disability assistance as the appellant has been out of the province for over 30 days without prior authorization from the ministry.

### **Panel Decision**

Section 15 sets out that if a recipient is outside of BC for more than a total of 30 days in a year, this person ceases to be eligible for disability assistance, unless prior authorization from the ministry was received for the following reasons; to participate in a formal education program, to obtain medical therapy prescribed by a medical practitioner, or to avoid undue hardship.

### **Position of the Parties**

The appellant's position is that they are not able to survive in BC; the PWD assistance is not enough to pay for living expenses and medical and dental treatments in BC which causes undue hardship. In other countries these expenses are covered by the assistance amount. The appellant insists that during a phone call with the ministry in 2016 the appellant's NFA situation was discussed and approval to leave BC due to undue hardship was given. Further, the ministry prevented the appellant from applying for the very much needed reconsideration and appeal supplements; they ignored the appellant's request and never sent the required forms. The appellant states that the ministry committed multiple errors which led to a denial of assistance.

The ministry's position is that to be eligible for assistance, the family unit must reside in BC unless prior authorization to leave BC was received. The appellant is required to notify the minister of any change in circumstances or information that may affect eligibility. Yet, the appellant did not notify the ministry when they became homeless and, more importantly, when the appellant left BC. While the appellant claims they contacted the ministry in 2016 about being NFA and talked to the ministry about being out of BC over 30 days there is no record of that contact, no record of when the appellant became NFA, and no record of the move to another country. Had the appellant reported that they stopped residing at the last known address, the ministry would have updated the file to NFA at that time. Had the appellant contacted the ministry to request prior approval to move to another country, a manager would have made a note on the file with the outcome of that decision.

As the appellant continued to receive shelter allowance, the ministry is satisfied that both the move from the last known address and the move to another country were not reported to the ministry and that the appellant did not obtain prior ministry approval for the move to another country. Although the appellant indicates that they spoke with the ministry to seek and obtain prior authorization before leaving BC, there is no record on file to indicate that the appellant has spoken to a ministry worker since December 31, 2013. Although the appellant indicates that the appellant experienced hardship because of being of no fixed address, evidence has not been provided to establish moving indefinitely to another country is necessary. The appellant has indicated to have no intention of returning to BC.

### Panel Analysis

Evidence provided by the appellant and by the ministry is as follows:

- The appellant stated they contacted the ministry in 2016 about being NFA and talked to the ministry about being out of BC for over 30 days.
- The appellant reported that the ministry gave approval on the phone.
- The ministry reported that the last record of a telephone call with the appellant dates from 2013; there is no ministry record of a telephone call in 2016.
- There is no ministry record of when the appellant moved from the last known address and became NFA.
- There is no ministry record of the appellant's move to another country.

While it is obvious that the ministry can make mistakes the panel finds the evidence provided by the ministry to be more convincing than the appellant's for the following reasons: A recipient is required to inform the ministry of changes in their circumstances including address changes. The ministry is expected to create records of contacts with their clients. As the ministry points out, had the appellant reported that they left from their last known address, the ministry would have updated the file to NFA. Had the appellant contacted the ministry to request prior approval to move to another country, this would have been noted on file with the outcome of their request. According to the ministry, the last record of a phone conversation with the appellant dates back to 2013. As the appellant continued to receive shelter allowance, the panel finds there is sufficient evidence that both the move from the last known address and the subsequent NFA status, as well as the move to another country were not reported to the ministry and the appellant did not obtain prior ministry approval for the move to another country.

While the appellant testified that they experienced hardship because they had no fixed address, the panel finds there is not enough evidence to establish that moving indefinitely to another country was necessary. Many people in BC manage to budget within the limits of their disability assistance. The panel notes that the appellant has no intention of returning to BC.

As the appellant ceased to be eligible for disability assistance in accordance with section 15 the appellant is not eligible for the reconsideration or appeal supplement of section 54.7. The panel notes that the ministry had informed the appellant that they are not eligible for the supplement as it is only available when income assistance is either discontinued or reduced, not when income assistance has been denied.

### *Conclusion*

Based on the analysis of the evidence the panel finds the ministry reasonably established that the appellant is not eligible for disability assistance as they have been out of the province for over 30 days without prior authorization from the ministry. The appellant is not successful in the appeal.

**Relevant Legislation**

**EAPWDA**

**Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

**Reporting obligations**

**11** (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form specified by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

**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.

**Reconsideration or appeal supplement**

**54.7**

(2) The minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance if a recipient in the family unit delivers a request for a reconsideration under section 71 [*how a request to reconsider a decision is made*] or submits an appeal form under section 84 [*commencing an appeal*] of the Employment and Assistance Regulation in respect of a decision that,

- (a) in the case of a family unit that is eligible for disability assistance, resulted in a discontinuation or reduction of disability assistance ...

**Decisions that may not be appealed**

**73** (1) The following categories of supplements may not be appealed to the tribunal:

...

(b) reconsideration and appeal supplements under section 54.7;

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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)  and Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/04/28

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/28

PRINT NAME

Jeremy Scott

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/28