

APPEAL NUMBER
2021-0111

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 May 25, 2021 which held that the appellant is not eligible for disability assistance between January 13, 2021 and April 19, 2021 because he had been absent from British Columbia for more than 30 days without the ministry's prior approval; a replacement of the appellant's February and March disability assistance cheques would therefore result in an overpayment.

The ministry noted that should the appellant dispute the amount of assistance he received for April when he returned to BC, this matter needs to be addressed separately by ministry staff.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 15 and 77.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

The appellant left B.C. on December 13, 2020 when he flew from Vancouver to [REDACTED]. A review of the appellant's file confirms he did not inform the ministry prior to leaving or contact the ministry while he was away.

On January 20, 2021 the ministry mailed a cheque for February disability assistance in the amount of \$1010.42 to the appellant, and a rent cheque of \$375 to his landlord.

On February 17, 2021 the ministry mailed a cheque for March disability assistance in the amount of \$1010.42 to the appellant, and a rent cheque of \$375 to his landlord.

On March 17, 2021 the ministry signaled (which the panel takes to mean directed) the appellant's April cheque to the ministry office for the appellant to provide a Statement of Contributions from Service Canada. As the appellant did not respond, his April cheques were cancelled.

On April 21, 2021 the appellant contacted the ministry and said that he had been in [REDACTED] from December 13, 2020 until April 20, 2021 as he had to take care of a family member. He said he lived off his credit cards and borrowed money. He asked to have his eligibility for disability assistance re-established and to replace the cheques he did not receive while he was gone. The ministry provided the appellant with pro-rated April and May disability assistance.

On April 21, 2021 the ministry reviewed the appellant's file and noted that his February and March assistance cheques were showing as cashed in the ministry's payment system.

On April 22, 2021 the ministry determined the appellant was absent from BC for more than 30 days (December 13, 2020 to April 19, 2021) without the ministry's pre-approval and therefore he was not eligible for disability assistance for February and March assistance months. The ministry denied the appellant's request to replace his February and March cheques.

On April 22, 2021 the ministry noted the appellant's January cheque was showing as outstanding in the ministry's payment system and issued a replacement cheque for January assistance that was originally paid to the appellant on December 16, 2020.

On April 29, 2021 the ministry denied the appellant's request to replace February and March assistance cheques because he was out of the province for more than 30 days.

On May 6, 2021 the appellant provided a police file number to demonstrate that he had reported the missing cheques to the police.

On May 10, 2021 the appellant submitted his request for reconsideration. He explained that he left to care for someone with Covid-19 and that he was in extreme debt because of it and was expecting his cheques to be in his mailbox. He also wrote "As well I was reported missing which shows up on your system so my story is valid."

Information provided at the hearing

At the hearing the appellant stated that when he found out that his mother was in intensive care he immediately left for [REDACTED] - within 2 days. It was an emergency situation and he stayed there for 5 months. His airline tickets were purchased by his family. In [REDACTED] he went to the ministry office and asked whether he could get his assistance cheques; they told him that this would take a long time and so he did not pursue the matter any further. When he arrived back home the expected cheques were not in his mailbox. The appellant stated only he has access to his mailbox; later on he said that anyone could have taken his cheques. He has never been in such a situation before, does not understand the rules and was not aware of the 30 days absence regulation. His rent has not been paid and his assistance cheques have gone missing. He has financial difficulties.

The ministry summarized its decision and, in answer to questions by the panel, added the following information:

The ministry does not send out information on Acts and Regulations to clients; this information is available on the ministry website. The appellant's last contacts before he left BC were on December 4 and 7, 2021, no indication was given on what was discussed. A Statement of Contributions from Service Canada is a statement that shows CPP contributions. The ministry had requested this statement from the appellant on several occasions but the appellant never responded. When the ministry directed the April cheque on March 17, 2021 to the ministry office for the appellant to provide the Statement of Contributions from Service Canada the appellant again did not respond, and his April cheques were cancelled. At that time the ministry was not aware that the appellant was in [REDACTED]. The ministry consulted its files and stated that it looked like the February assistance cheque was cashed on February 10 and the March assistance cheque on March 5, 2021.

Admissibility

The appellant's testimony about his visit to a government office in [REDACTED] in order to access his disability assistance is new information; the ministry's testimony that it had requested the Statement of Contributions from Service Canada several times prior to March 17, 2021 was also new information. 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.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is the reasonableness of the ministry reconsideration decision which held that the appellant is not eligible for disability assistance between January 13, 2021 and April 19, 2021 because he has been absent from British Columbia for more than 30 days without the ministry's prior approval.

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 argues that he is entitled to have his stolen February and March assistance cheques re-issued because he is eligible for February and March disability assistance; he had to leave the province to care for a family member with Covid-19 and experiences financial hardship because he did not have the funds available from his February and March assistance cheques.

The ministry's position is that the appellant was not eligible for disability assistance between January 13, 2021 and April 19, 2021 because he was absent from British Columbia for more than 30 days without the ministry's prior approval; the appellant did not request or receive the ministry's prior authorization to leave British Columbia for more than 30 days and continue to receive disability assistance and the appellant did not indicate that any exceptional circumstance prevented him from speaking with the ministry before he left or prevented him from returning to B.C. sooner than 30 days. Replacing the appellant's February and March disability assistance would have resulted in overpayment.

The ministry further determined that it could not be established that the appellant faced undue hardship while residing outside of BC; while it cannot be determined who cashed the appellant's cheques, the appellant did not contact the ministry for help while he was away. The ministry may issue a replacement cheque when an unendorsed cheque has been lost or stolen and in case of theft the matter had been reported to the police. The ministry found that there is insufficient evidence to determine whether the cheque was endorsed by the appellant.

Panel Analysis

The panel finds that as the appellant was outside of BC from December 13, 2020 to April 20, 2021 and had not asked the ministry for pre-approval before he left or while he was away, the ministry reasonably determined that the appellant was not eligible for disability assistance for February and March 2021 because he had been absent from British Columbia for more than 30 days without the ministry's prior approval. The legislation is clear and the panel finds the ministry has no discretion in the matter.

The panel finds that the ministry reasonably determined that it could not be established that the appellant faced undue hardship while residing outside of BC. While the appellant argued that he incurred heavy debts because he had no access to his disability cheques and at the hearing stated that he went to a government office in [REDACTED] to inquire about getting his February and March cheques transferred to him in [REDACTED], the panel finds that a visit to a government office in [REDACTED] to make an inquiry does

not constitute evidence that the minister has given prior authorization for the continuance of disability assistance for the purpose of avoiding undue hardship. Further, it is unclear who cashed the February and March 2021 assistance cheques.

The evidence on what happened to the February and March 2021 assistance cheques is inconclusive. While the appellant argues the cheques were stolen and should be replaced the ministry reported these 2 cheques as cashed. The panel finds that without further evidence supporting the appellant's statements the ministry reasonably determined that there is insufficient evidence to determine whether the February and March 2021 assistance cheques were endorsed by the appellant.

Conclusion

Based on the analysis of the evidence the panel finds the ministry reasonably established that the appellant is not eligible for disability assistance for February and March 2021 as he has been out of the province for over 30 days without prior authorization from the ministry. The appellant is not successful in his appeal.

Relevant 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.

Replacement of lost or stolen assistance cheque

77 If satisfied that an unendorsed assistance cheque has been lost or stolen, the minister may issue a replacement as long as,

- (a) in the case of theft, the matter has been reported to police, and
- (b) in the case of loss or theft, the recipient
 - (i) makes a declaration of the facts, and
 - (ii) undertakes to promptly deliver the lost or stolen cheque to the minister if it is recovered.

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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

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/16

PRINT NAME

Carmen Pickering

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/16

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/16