

Appeal Number 2021-0205

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 October 25, 2021, which held that the appellant is not eligible for disability assistance as he has been out of the province over 30 days without prior authorization from the ministry.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 11

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

Part E – Summary of Facts

From ministry files:

- The appellant is a sole recipient of disability assistance with no dependents.
- He received the PWD designation effective March 2019.
- He receives his assistance by EFT and accesses MySelfServe.
- A review of the appellant's file confirmed that on November 13, 2020 the ministry received a Shelter Information reporting the appellant's change of address with a start date of November 1, 2020, and his file was updated as requested.

- On September 10, 2021 the appellant contacted the ministry about another matter and indicated that he was in Quebec staying with family because of the pandemic, had been there since October 2020, and has also been maintaining a residence in [REDACTED].
 - The appellant was told that he was ineligible for disability assistance as he had been out of province over 30 days without prior approval from the ministry, explained the applicable legislation, and was advised of his options to apply for assistance in Quebec or return to BC so his disability assistance payments would not be interrupted.
 - The appellant indicated that he was not aware that he needed to inform the ministry when he has been outside of BC more than 30 days.

- On September 29, 2021 the appellant requested special approval from the ministry to continue to receive disability assistance while he stayed in Quebec for an undetermined amount of time and was not sure when he would return. The request was denied.
 - The worker noted on file that the appellant was not eligible for assistance, advised him of his right to reconsideration, and consulted with a supervisor who also confirmed his ineligibility and the denial.

- In his Request for Reconsideration dated October 12, 2021, the appellant reported that
 - he left BC at the onset of the 3rd wave of the pandemic to temporarily stay with family in a small town in Quebec with under 1800 people and no covid cases;
 - he made this decision out of fear for his safety and well-being as the pandemic is causing him undue hardship because he suffers from a back injury and social anxiety;
 - his intent is to be absent until the pandemic is more under control and when he feels safer to return home to BC - he lived in BC most of his life and intends to continue to live in BC;
 - while in Quebec with family the appellant does not need to pay shelter costs, only costs for food, clothing, and other essentials as needed;
 - while away he was required to pay his shelter costs in BC;
 - the appellant did not expect to be away so long nor could anyone have predicted the pandemic to last this long;
 - as soon as the pandemic becomes more under control and the appellant feels safer to return, he will expedite his return;
 - not having an income has caused the appellant undue hardship and put him at risk of losing his home and belongings in BC after not paying his shelter costs for October.

In his Notice of Appeal dated October 27, 2021 the appellant wrote: "I had no way of knowing when I left BC during the pandemic that I was doing anything wrong."

On November 12, 2021, in addition to statements made previously, the appellant reported that:

- waiting in line in stores in BC caused more harm to his back injury and increased the appellant's social anxiety;
- to avoid more problems with social anxiety and with travelling "on place" [sic] he traveled by self-contained motor home across the country;
- once he arrived in Quebec he notified the ministry of his change of address within BC;
- had he known he was supposed to request approval from the ministry for being absent from BC for more than 30 days outside BC he would certainly have done so;
- the ministry decision has caused him new undue hardship by losing his income and not being able to pay his shelter costs in BC;
- Despite several promises by the ministry that he would be receiving a phone call from them "to assist [him] to reinstate [his] funds while the decision was being made" the ministry has not called the appellant on this subject. He stated:
 - "Multiple workers have misled [him] through this process. One time, [he] directly asked to the ministry worker if he was adding notes to [his] file, which he replied yes. Another ministry worker said that she was writing notes on my file, but when I called back, the other person kept saying that no notes appeared on my file since the decision of suspending my income was made. At one point, [he] even asked a worker if the ministry workers were allowed to lie to ministry clients to which she replied no. I cannot understand why they would choose to tell me that I would get a return phone call or that they wrote notes on my file if it was not true. I am left hurt, anxious about finances and untrusting of ministry workers, and I feel that the ministry workers that I talked to do not want to help me at all and actually want to cause me extra undue hardships."

On November 22, 2021 the ministry provided the following submission:

- "The ministry will rely on the Reconsideration Decision as it's written submission for the appeal tribunal.
- The ministry notes in [the appellant's] written submission, he indicates he is having difficulty with receiving the appeal supplements while awaiting the appeal tribunal's decision. Please note on November 17, 2021 a message from the ministry, along with documents for [the appellant's] signature for the appeal supplements were sent to him via the ministry's computer portal MySelfServe. Once [the appellant] has signed the required documents and sent them back, the ministry will provide the requested appeal supplements through electronic funds deposit into his bank account."

Admissibility of New Information

The panel finds that the information provided by the appellant and the ministry in the Notice of Appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's absence from BC. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that the appellant is not eligible for disability assistance as he has been out of the province over 30 days without prior authorization from the ministry is reasonably supported by the evidence or a reasonable application of the relevant legislation.

Panel Decision

Section 15 of the EAPWDR 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.

Appellant's Position

The appellant argues that he should be eligible for disability assistance because

- he was not aware of the legislation about being absent for more than 30 days and needing the ministry's prior approval;
- he is experiencing undue hardship due to the pandemic: waiting in line in stores causes more harm to his injured back and increases his social anxiety;
- he moved to a small town in Quebec that was without covid out of fear for his safety and well-being;
- he did not expect to be away so long nor could he have predicted the pandemic to last this long;
- he did not pay his October shelter costs because he has no income now; this has caused additional undue hardship and put him at risk of losing his home and belongings in BC;
- the ministry has misled him, does not want to help him and wants to cause him additional undue hardship because they did not call him as promised and did not add notes to his files.

Ministry Position

The appellant reported that he left BC in October 2020 and is still in Quebec. However, he did not advise the ministry that he was leaving the province and did not receive prior authorization for the continuance of his disability assistance while being out of the province for over 30 days. As such, the appellant ceased to be eligible for disability assistance.

Panel Analysis

The appellant reported that he had left BC in October 2020 and has not returned to BC since then. He also confirmed that he did not request prior approval of the ministry before leaving BC. While the appellant argues that he did not expect to be away for so long the panel finds the ministry reasonably determined that he was outside of BC for more than 30 days without the ministry's prior authorization and therefore ceased to be eligible for disability assistance.

The panel finds further that the appellant's argument that the ministry does not wish to help him is not sufficiently supported by the evidence: the ministry stated that it communicates with the appellant via MySelfServe and the appellant does not dispute this. While the appellant claims that the ministry does not add notes to his file the panel finds it to be improbable that the ministry fails to enter notes on an ongoing basis. There is sufficient evidence that the ministry keeps making notes of its communications with the appellant in its files: When the appellant notified the ministry of his change of address within BC

this was noted in the ministry files on November 13, 2020; communication about the appellant's stay in Quebec was recorded on September 10, 2021; communication about the appellant's request for special approval was recorded on September 29, 2021.

While the appellant argues that he was not aware of the legislation about being absent for more than 30 days and needing the ministry's prior approval the panel notes that a recipient is required to inform the ministry of changes in their circumstances including address changes.

The ministry noted that its decision is in respect to current eligibility and that a separate review will be required in respect to reviewing past eligibility. The panel confirms that this anticipated separate review is not part of this appeal decision. When the ministry indicated that they will provide "appeal supplements" once the appellant has signed the required documents the ministry is referring to a reconsideration or appeal supplement in respect of a decision that, in the case of a family unit that is eligible for disability assistance, resulted in a discontinuation or reduction of disability assistance as set out in section 54.7. The panel notes that section 54.7 does not apply in this appeal.

Conclusion

The panel acknowledges that due to hardships brought on by the pandemic the appellant moved temporarily to Quebec out of fear for his safety and well-being. The panel also acknowledges that the appellant may be at risk of losing his home and belongings in BC which may cause additional hardship. However, the panel finds the ministry reasonably established that the appellant is not eligible for disability assistance as he has been out of the province for over 30 days in a year without prior authorization from the ministry to participate in a formal education program or medical therapy, or to avoid undue hardship. The appellant is not successful on appeal.

Applicable Legislation

EAPWDA

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...

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

Part H – Signatures

Print Name
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)
2021/11/30

Print Name
John Pickford

Signature of Member

Date (Year/Month/Day)
2021/11/30

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)
2021/11/30