

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision dated October 27, 2021 in which the ministry found the appellant was not eligible for disability assistance (“DA”) under section 15 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) because she had been absent from British Columbia for more than 30 days without the minister’s prior authorization to participate in a formal education program, obtain medical therapy, or avoid undue hardship by remaining outside of BC.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 3

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - Section 15

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision stating that:

- The appellant was receiving disability assistance ("DA") as a sole recipient.
- On May 18, 2021, the appellant advised the ministry that she would be going to another country ("Country X") for 3 or 4 months to assist a friend's family and she was planning to leave in August. The ministry advised that the appellant cannot be outside of BC for more than 30 days; that the appellant should call the ministry once she had finalized her travel details, and that the appellant would need to provide a copy of her plane tickets to verify when she left BC and when she would return.
- On July 2, 2021, the appellant advised that she would not be keeping her residence or working for her employer while she was away in Country X. The appellant indicated she would be away for 2-3 months (departing July 29, 2021) and she understood that her file would be suspended after 30 days and until she returned to BC.
- On July 12, 2021, the appellant submitted a copy of her plane ticket receipt, indicating she was leaving BC on July 29, 2021 and arriving in Country X on July 30. The appellant also submitted a shelter information form to update her mailing address while travelling.
- On August 8, 2021, the appellant submitted her monthly report declaring her employment earnings for July 2021 and noting she had moved and submitted her shelter form.
- On September 1, 2021, the appellant submitted her monthly report noting that she was taking a training course. The appellant submitted a receipt in the amount of \$212 for a training course that would qualify her for work abroad.
- On September 15, 2021, the ministry sent the appellant a message through the ministry portal asking for more information about the course. The appellant advised that it was an online course that she had started taking on August 25, 2021. The appellant confirmed that she was travelling outside of BC and she had already received DA for the first month that she was away. The appellant asked the ministry to verify that she would not receive further support that she wasn't eligible for.
- On September 16, 2021, the ministry advised that the appellant was not eligible for DA. The ministry said that the appellant "should have been informed of BC Employment and Assistance Regulation Section 15." The ministry explained that the appellant is no longer eligible for assistance under the Regulation unless she got prior authorization from a manager to participate in a formal education program, obtain medical therapy or avoid undue hardship by staying abroad. The ministry noted that prior authorization was not initiated.
- On September 16, 2021, the appellant sent a message to the ministry stating that she was not informed of the situations in which she could continue to receive DA; that she is participating in an education program while travelling; and she is also undergoing medical therapy. The appellant said she would like the ministry to reconsider the continuation of DA while she is undergoing medical therapy and studying for her diploma abroad.
- The appellant submitted a *Request for Reconsideration* ("RFR") on October 13, 2021, with a written submission; a medical prescription and receipts for treatment; a receipt for the training course; a *Record of Employment* ("ROE") for her last job in BC; an electronic plane ticket receipt; a copy of a *Residential Tenancy Agreement* ("RTA") for her last residence in BC; and a letter from a doctor stating that the appellant has a companion animal.
- On October 27, 2021, the ministry completed the review of the RFR and found the appellant ineligible for DA because she had been absent from BC for more than 30 days as of August 31, 2021.

2. An RFR signed by the appellant on October 13, 2021, with a handwritten list of documents submitted for the reconsideration. The appellant attached the following:

- A typed 4-page submission dated October 13, 2021, in which the appellant states her argument and provides the following information:
 - The appellant's family unit consists of the appellant and one companion animal that is designated by her doctor as an "emotional support animal."
 - The appellant's current address is in Country X where she is paying rent of \$500 Canadian per month.
 - The appellant is currently receiving \$0 for social assistance. The appellant received \$983.42 from the ministry in July 2021 after she submitted updated shelter information indicating she would be outside of BC. The appellant did not receive a shelter allowance from the ministry for July or August 2021. She previously received \$1,358.42 (per month) from the ministry for support and shelter.
 - The appellant states that she had 3 reasons for travelling to Country X: to support her friend's family as they have been ill this past year; to receive medical treatment prescribed by her doctor that was unaffordable in Canada; and to complete an educational training program.
 - The appellant described her medical condition indicating chronic sinus inflammation from a toxic mold diagnosis for which she received a diagnostic treatment (Lidocaine) and is now seeing a medical practitioner in Country X for Botox treatments that were recommended by her medical practitioner in BC. The appellant says she was living with family until November 1, 2020, but had to move to her own place because her family's home had a flood which made her symptoms from toxic mold worse.
 - The appellant described her financial need for DA, stating that her employment contract (in BC) was concluded at the end of July 2021 and not renewed due to the impact of Covid-19 on the business.
 - The appellant does not expect to return to BC before the end of February 2022 as she needs to complete the full course of the Botox treatment for her chronic sinus inflammation: 3 treatments must be administered 12 weeks apart. The appellant says she had originally anticipated a 3 or 4-month absence from BC because she did not realize that the Botox treatments had to be administered 12 weeks apart. Therefore, her anticipated return date is now later than originally stated.
- A prescription from a naturopath licensed to practice in BC. The prescription, dated October 6, 2021, lists 2 treatments: Botox injection "every 12 weeks x 3 treatments then reassess"; and Lidocaine "every 4 weeks x 3 treatments then reassess."
- A *Treatment Record* for Lidocaine signed by the naturopath. Injections were administered on May 20, 2021.
- A 3-page laboratory report dated July 20, 2020, "Mycotox Profile" indicating numeric measurements and describing a chemical produced by molds, with exposure primarily from water damaged buildings. The report states that exposure to the chemical can lead to brain abnormalities and may contribute to the development of neuro-degenerative diseases. The report says that treatment for exposure includes removing the source of the exposure, ingesting charcoal and other agents, taking antioxidant vitamins, and using sauna therapy. Retesting is recommended after 3-6 months of treatment.
- A receipt in a foreign language for \$190.85 Canadian dated August 25, 2021. *[panel note: the appellant explained that the receipt is for Botox therapy administered in Country X]*
- A 2-page payment record in a foreign language dated October 13, 2021, with amounts in a foreign currency *[panel note: the appellant explained that this is another receipt for Botox therapy administered in Country X]*

- A receipt for a training course, dated May 29, 2021. The amount paid was \$212.00.
- An ROE dated August 20, 2021, indicating that the last day for which the appellant was paid was July 31, 2021. The ROE was issued due to a shortage of work.
- A receipt for a plane ticket indicating the appellant departed Canada on July 29, 2021, and arrived in Country X on July 30, 2021. The appellant paid \$522.73 for a one-way flight and an additional \$100 to transport her companion animal.
- An RTA signed by the appellant and her landlord on October 4, 2020 for a residence in BC. The rental term was from November 1, 2020 until October 31, 2021 and month to month thereafter. The amount of rent was \$1,270 per month.

Additional Information

Neither party submitted additional documentation requiring an admissibility determination under section 22(4) of the *Employment and Assistance Act*. After seeing the reconsideration decision, the appellant submitted a *Notice of Appeal* received by the Tribunal on November 1, 2021. The notice included a typed 1-page submission which the panel accepts at argument. At the hearing, both parties presented their arguments which the panel will consider in Part F- *Reasons for Panel Decision*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision which found that the appellant is not eligible for DA because she has been absent from BC for more than 30 days without the ministry's prior authorization to pursue formal education or medical therapy abroad or avoid undue hardship, was reasonably supported by the evidence or was a reasonable application of the EAPWDR in the circumstances of the appellant.

Analysis***Ministry's arguments******Requirement for prior authorization***

In the original decision of September 16, 2021, the ministry states that the appellant's DA was discontinued because she did not obtain prior approval from the minister to be absent from the province for more than 30 days. The ministry summarized the policy on eligibility for assistance where the recipient is absent from BC for more than 30 consecutive days per year. The policy, which the ministry applied at the reconsideration, states that:

Prior authorization of the manager is required for continued assistance for recipients who leave the province for more than 30 days 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*
- *avoiding undue hardship where there are reasonable circumstances to justify this.*
- *All recipients who leave the province for 30 days or more must reapply for assistance when they return.*

The policy states that recipients must provide specific information with their request for prior authorization including confirmation of a proposed education program or therapy, and the recipient's future address and estimated date of return to the province. The panel finds that the ministry's policy is applicable in the circumstances of the appellant because it is consistent with section 15 of the EAPWDR which requires the minister's prior authorization for assistance to continue beyond a 30-day absence from BC.

At the reconsideration, the ministry's position was that the appellant's circumstances do not meet the legislative requirements set out in section 15 of the EAPWDR because the appellant did not obtain the minister's prior authorization to receive DA after being outside of the province for more than 30 days for the purpose of a formal education program or medical therapy. The ministry notes that the appellant advised the worker that the purpose of the trip was to assist a friend's family.

Medical therapy exception

The ministry argues the appellant did not advise that travel to Country X was necessary in order to obtain medical therapy. The ministry acknowledges that a medical practitioner has prescribed the therapy as required by the EAPWDR but argues that the appellant did not need to travel to Country X because the prescribed therapy is available in BC. The ministry notes that the *Treatment Record* the appellant submitted is from a provider in BC. The ministry states that the appellant has not submitted any evidence from a medical practitioner recommending travel to Country X for the therapy.

At the hearing the ministry stressed that the only reason for the trip, as communicated by the appellant, was a family visit in Country X. The ministry said that the most probable reason for the worker not explaining the medical therapy exception was because the appellant did not advise that she was travelling for medical reasons.

At the hearing, the ministry explained the pre-authorization requirement and gave examples of situations that the ministry would accept as a valid reason for assistance to continue beyond a 30-day absence from BC. The ministry explained that a request for prior authorization to receive medical treatment would be forwarded to the manager and the manager would determine if the treatment is available in BC. The ministry explained that if the treatment is available locally, the manager would not authorize continued assistance unless there was a very exceptional circumstance such as a life-threatening medical condition or condition that could worsen if there was a delay in obtaining treatment in BC.

The ministry explained that the manager does not consider the cost of the treatment when determining whether to approve a request for continued assistance due to medical reasons. The ministry stated that even if the appellant had sought prior approval for assistance while undergoing therapy in Country X, her request would have been denied because the manager would not consider the lower cost of the treatment in Country X to be a sufficient reason for obtaining medical therapy outside of BC.

In response to a question from the panel, the ministry acknowledged that the EAPWDR does not state that the therapy needs to be available in BC but argued that prior approval is at the discretion of the minister under the legislation. The ministry said that the manager does not authorize the continuation of assistance just because a treatment may be cheaper abroad. In the ministry's view, the manager bases the decision on whether it is reasonable to obtain treatment abroad by looking at whether the recipient's circumstances indicate a pressing medical need to undergo the treatment outside of BC.

Formal education program exception

The ministry further argues that the appellant did not advise that it was necessary to travel to Country X to attend a formal education program. The ministry notes that the receipt for the training course was dated May 29, 2021 (while the appellant was still in Canada). The ministry notes that the appellant began the online course on August 25, 2021. The ministry argues that the appellant was not required to travel to Country X for the course because it is available online and the appellant could participate from BC.

Undue hardship exception

The ministry says that the appellant has chosen to remain outside of BC for more than 30 days and has not indicated that she has exhausted her financial resources and requires DA to avoid undue hardship. The ministry therefore submits that the appellant has not demonstrated that she requires DA for any of the reasons under section 15 of the EAPWDR. These reasons authorize the minister to provide assistance beyond a 30-day absence from BC.

Appellant's arguments

Requirement for prior authorization

The appellant's position on appeal is that she could not get prior approval for continued DA because the ministry did not give her complete information before her departure about the situations in which the ministry can continue to provide assistance. The appellant argues that she was not aware of the "3

conditions for continued assistance” that are set out in section 15 of the EAPWDR because the ministry did not give her any information about the legislation when she advised them of her travel plans.

The appellant says she was only told that she would cease to be eligible for DA if she was absent from BC for more than 30 days. The appellant notes that she received an email from the ministry with a copy of the legislation only after she had left BC. The appellant says that she promptly applied for a reconsideration when she learned that assistance can be continued when the recipient is receiving prescribed medical therapy abroad.

At the hearing, the appellant said that when she was told she would not get DA beyond a 30-day absence from BC, she understood it to mean that “that’s the way it is.” The appellant argued that she should have been informed of the Regulation so that she could seek prior authorization for continued assistance. The appellant acknowledged that her training course doesn’t qualify because it is an online program, but she maintained that the medical therapy had always been part of her travel plans because none of the very expensive therapies are covered by *Pharmacare* in BC.

The appellant submits that the ministry did not accurately apply the legislation to her situation because the doctor recommended that the appellant seek the treatment abroad. The appellant asked, “how could I initiate prior authorization if not fully informed of the legislation?”

In response to a question at the hearing about how a recipient finds out about the 3 situations that warrant continued assistance under the EAPWDR, the ministry acknowledged that recipients are not required to read the legislation even though it is available to the public on the ministry website. The ministry argued there was no reason to give the appellant a copy of the legislation because the appellant did not bring up any other reason for her trip aside from the family visit.

The ministry added that as soon as the appellant indicated she was taking a course, the ministry asked her for more information. A copy of the legislation was shared with the appellant when she was denied assistance and given the opportunity for reconsideration.

Medical therapy exception

In her appeal submissions, the appellant says that one of her reasons for travel to Country X was to obtain medical therapy that was prescribed by her doctor. The appellant acknowledged that the therapy she is receiving is available in BC but argues that “this particular therapy is simply unaffordable in Canada” and none of her medications have been covered by *Pharmacare*.

The appellant argues that “there is nothing in the Regulation that states that the prescribed medical therapy will only be accepted if it is not available in BC.” The appellant says that her doctor encouraged her to seek out the therapy abroad to minimize the impact on “already large medical expenses.” In her submission for the reconsideration, the appellant explains that it had been a long and expensive process to diagnose her toxic mold infection and pursue the appropriate therapies.

In response to a question from the ministry about whether she had indicated a medical reason for her trip when she spoke to a worker “on multiple occasions”, the appellant explained that she did not know it would be relevant because she was not informed about the Regulation.

When asked why she only focused on the family visit as a reason for the trip despite having multiple discussions with the ministry before her departure, the appellant explained that she does not talk about her medical issues to a lot of people because her toxic mold diagnosis and treatments are not covered or acknowledged by most of her doctors. The appellant explained that Botox injections to the face are not

covered by *Pharmacare* because they are viewed as cosmetic treatments in Canada even though the appellant was prescribed the treatment “to reduce puffiness, and headaches due to muscle tension around the ocular area.”

When asked if the doctor indicated the therapy was prescribed to treat a life-threatening condition, the appellant acknowledged that her condition is not life-threatening. The appellant argued that the legislation does not require a condition to be life-threatening for assistance to continue for the purpose of obtaining medical treatment abroad.

When asked why the prescription for the Lidocaine and Botox therapies was dated in October 2021 (after the appellant had departed BC), the appellant explained that she had contacted her doctor from Country X to get documentation for the RFR and October 6, 2021 is the date the doctor wrote on the prescription. The appellant also explained that the receipt for Lidocaine from May 20, 2021 was a “diagnostic treatment” that she had in Canada to determine whether Botox injections would work.

The appellant maintained that she had talked to the doctor about the Botox treatment before she left Canada and the doctor endorsed taking the treatment abroad where it is less expensive. The appellant explained that she discussed taking the treatment abroad “around April or May.” The discussion with her doctor was in person but it is possible that the doctor made notes.

Formal education program exception

The appellant says she is not sure that the course she is pursuing in Country X would be considered a formal education program under the EAPWDR, but even though her rent is significantly cheaper in country X than in BC (\$500 versus \$1,270 per month) she needs continued assistance because her employment contract in BC was not renewed.

In response to questions from the panel, the appellant explained that even though she had paid for the training course when she was still in BC (receipt dated in May 2021) it was her original plan to do the training during her travels in Country X.

Regardless of whether the training course is viewed as a formal education program, the appellant argues that her medical diagnosis and the prescribed treatments “seem to be very straightforward.” Although she spoke to the ministry “multiple times in the months leading up to the date of travel,” with various workers taking the calls, the appellant says that ministry “never once mentioned the 3 exceptions” under which the ministry can continue to provide DA.

Panel’s decision

Pursuant to section 3 of the EAPWDA, in relation to DA, the family unit must satisfy both the initial and continuing conditions of eligibility established under the Act. The continuing conditions of eligibility include the consequences of being outside of BC for more than 30 days as set out in section 15 of the EAPWDR.

Section 15 states 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 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.

The ministry was satisfied that the appellant has been outside of BC since July 29, 2021 and the appellant does not dispute this. The appellant acknowledges that she did not obtain the minister’s prior

authorization to be outside of BC for more than 30 days to take the training course or obtain medical therapy prescribed by her doctor. However, the appellant stresses that she did not have the opportunity to seek pre-authorization for her course or the therapy because the ministry did not inform her of the prior authorization requirement and provide her with a copy of the EAPWDR until after they had found her ineligible for DA.

The panel has considered all the information and arguments in the record. The panel finds that the reconsideration decision is a reasonable application of the legislation because the minister has not given prior authorization for the appellant's education program or medical therapy as required under section 15 of the EAPWDR.

As noted by the appellant, EAPWDR subsection 15(a) sets out an exception for "permitting the recipient to participate in a formal education program." Subsection 15(b) sets out an exception "permitting the recipient to obtain medical therapy prescribed by a medical practitioner." However, as the ministry explained at the hearing, an exception cannot be made without the manager's pre-authorization. The panel finds that the ministry reasonably applied the legislation in the circumstances of the appellant because EAPWDR section 15 makes it clear that "prior authorization for the continuance of disability assistance" is a legislative requirement under the Regulation.

Ministry communication

The panel has considered the appellant's submissions in their entirety regarding the ministry's communication about the legislative "exceptions", specifically the requirement to obtain prior authorization for the purposes of taking a training program or obtaining medical therapy outside of BC. The evidence indicates that when the appellant called the ministry to advise she was going to Country X for 3-4 months, the ministry told her she "cannot be out of the country for more than 30 days."

The record indicates that the ministry did not explain what the legislation says, and the appellant was not given a copy of the relevant EAPWDR sections until after she was found ineligible for assistance. The evidence is that the appellant did not see the ministry's policy on continued assistance or receive a copy of the legislation until she received the original denial decision on September 16, 2021.

The ministry acknowledged that recipients are not expected to read the legislation but argued that the appellant was not informed of the "3 exceptions" because she did not tell the ministry that she was taking a course or receiving treatment abroad when she advised that she was leaving BC. The appellant stated that she was going to Country X to assist her friend's family.

The ministry argued that the worker had no reason to mention the requirement for prior authorization to take a course of pursue medical treatment abroad because the appellant did not advise that she was going to Country X for those reasons. Although the appellant only mentioned the family visit in her calls to the ministry, there is no information in the record to establish that ministry staff ever asked the appellant if she was travelling for any other reason including the purposes set out in EAPWDR section 15.

After the ministry received the appellant's monthly report (on September 1, 2021) that indicated she was taking a course, the ministry asked the appellant for more information about the training but still did not explain or inform her about the requirement for prior authorization. The ministry reasoned that the appellant was not required to travel to Country X for the training because the course is available online; however, the ministry did not know that the course was an online program until the appellant provided additional details as requested. The denial of DA is made pursuant to the legislation, so the panel finds it reasonable to inform the appellant about the EAPWDR requirement in advance of a decision on her file.

Regarding the appellant's medical reason for travel to Country X, the panel accepts the appellant's explanation that she was uncomfortable talking about her medical issues (which had not been taken seriously in the past) and did not think to bring up the treatment when she was uninformed about the prior authorization requirement. The ministry argued that the appellant would not have received prior approval for medical therapy in Country X because her request was based solely on cost of the treatment.

However, as noted earlier, there is no indication in the record that the ministry asked the appellant if she had a medical reason for her trip abroad. The ministry also did not explain what factors it considers for a "medical exception" until it stated in the reconsideration decision that the therapy is available in BC. The ministry did not explain (prior to the hearing) that the cost of the treatment is not a factor in determining whether to authorize the request.

The panel finds that it would be reasonable for the ministry to inquire about the purposes for travel that are listed in EAPWDR section 15. This Regulation specifies the consequences of the recipient being absent from BC for more than 30 days. It goes without saying that a decision to deny assistance pursuant to section 15 of the EAPWDR has significant financial consequences for the recipient; therefore, clear and complete communication from the ministry is a reasonable expectation.

Conclusion

The panel is sympathetic to the appellant's circumstances but only has the authority to confirm or rescind the reconsideration decision based on whether the decision was reasonably supported by the evidence or a reasonable application of the legislation. The panel is not authorized to decide the appeal on the basis of deficiencies with communication.

The parties accept that the minister has not given the appellant prior authorization for the continuance of DA while studying or obtaining medical therapy abroad. The parties acknowledge that prior authorization is required under section 15 of the EAPWDR. The panel therefore finds that the ministry's application of the legislation was reasonable in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful in her appeal.

Schedule – 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.

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.

APPEAL NUMBER 2021-0209

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

Part H – Signatures

Print Name

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2021/11/23

Print Name

Nancy Eidsvik

Signature of Member

Date (Year/Month/Day)

2021/11/23

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2021/11/23