

Part C – Decision Under Appeal

This is a decision on the Appellant's appeal from a reconsideration decision of the Ministry of Social Development and Poverty Reduction (the Ministry) dated January 6, 2022 (the January 6 Decision). The January 6 Decision denied the Appellant's request to continue receiving income assistance after being deemed ineligible as of January 1, 2022. The ineligibility was based upon a Ministry determining that the Appellant departed the province on December 1, 2021 and thus that after 30 days his eligibility for income assistance would cease January 1, 2022.

Part D – Relevant Legislation

Employment and Assistance Act, (EAA) section 24

Employment and Assistance Regulation, (EAR) section 17

Full text of the legislation appears in the Appendix after the decision

Part E – Summary of Facts

Summary of the January 6 Decision and Evidence Before the Minister

The reconsideration was “of the decision to deny [the Appellant] January income assistance.”

That decision of January 6, 2022 stated to the Appellant:

Upon reconsideration the ministry has denied your request to continue to receive income assistance while you are outside of the province for more than 30 days. This means you ceased to be eligible for income assistance on January 1, 2022.

Section 17 of EAR was applied and none of the three exceptions for continuing payment after the 30 days was found to have been authorized or to apply (see the terms of s.17 in the Appendix below).

The background summary in the January 6 Decision stated:

- You are a sole recipient. Your file has been open since October 13, 2021. Although you applied to have your wife added as a dependent to your file, this process was not complete when you left B.C.
- On December 6, 2021 you contacted the ministry by phone, you explained you are in the process of moving to Ontario, you left B.C. on December 1, 2021 but you ran out of money. The ministry worker noted that they discussed the requirements for a moving supplement with you. The ministry worker turned cheque production off on your file and transferred your call to the Ontario assistance program.
- On December 7, 2021 you contacted the ministry by phone. You explained you should be able to continue to receive income assistance while living in Ontario. You said it is taking too long to apply for assistance in Ontario. You asked that your file not be closed because you are in limbo and may return to B.C. The ministry worker advised you that if you do return to B.C. you will need to attend a ministry office and provide travel documents to show when you left B.C. and when you returned to show that you were not outside of B.C. for more than 30 days.
- On December 10, 2021 you submitted your monthly report. You declared that you are attending school, you received \$1900 for student funding and \$600 for spousal support.
- On December 15, 2021 you contacted the ministry and asked for January income assistance.
- On December 16, 2021 a supervisor contacted you to discuss your concerns. The ministry reiterated that you were not eligible for income assistance as you were residing out of province. The supervisor advised you to present to an office upon your return so your eligibility can be assessed, additionally the ministry noted that you will need to provide documents for school registration and spousal support as both may affect your eligibility.
- On December 20, 2021 you submitted a monthly report declaring \$1000 spousal support and indicated that you are enrolled in online training.
- On December 21, 2021 you submitted your request for reconsideration. You explained you are back with your wife who is awaiting an EI decision, yet you are only receiving \$935. You explained you did not understand why you could not get a cheque for December 15 as you had only been out of the province for a week or so. You also provided a written statement about you and your wife's history.

Submissions at the Hearing

-Appellant

The Appellant described his reunification with his wife and that on October 20, 2021 he applied to include her in his family unit. He also described his financial inability to afford housing which caused them to have to vacate his rental unit but left them with the prospect of homelessness.

This, along with his feelings of being the subject of discrimination, prompted their decision to move to her parents in Ontario for an indeterminate period.

According to the Appellant - and his wife who testified as a witness - they left the rental on November 30, 2021. They arrived in Golden BC, on December 1 and days later drove on to Cranbrook, staying in each "a couple of days" at good rates in hotels. The wife, as witness, stated that they departed BC on December 7, 2021; leaving Cranbrook that morning and arriving in Lethbridge Alberta the same day. They state that they have retained hotel receipts for moving expenses which would show this.

The Panel considered the testimony as relevant new evidence and accepted it as reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Appellant stated that when he spoke on the telephone to the Ministry staff that he was interrupted, not able to make himself understood, and was treated rudely. He also expressed distress at not receiving income assistance by mid-December payment leaving him with no funds for the Christmas season. He also questioned why his October application for inclusion of his wife in his family unit was summarily terminated.

It was apparent that there was some earlier confusion of whether the Appellant had received assistance for December. During the hearing this was resolved and understood by the Appellant as having been paid in November and that a mid-December payment would have been for January. Payment for January was what he sought, and for assistance to continue until he obtained Ontario assistance.

Aside from the departure date from BC, the Appellant did not dispute that he has remained outside of BC since then.

-Ministry

The Ministry representative read from and reiterated the basis and conclusions in the Ministry's January 6, 2022 reconsideration.

The representative confirmed that the record of the December 6, 2021 phone call from the Appellant to the Ministry stated that the Appellant "explained you are in the process of moving to Ontario, you left BC on December 1, 2021 ..." [underlining added]. However, there was no record of the location of the Appellant on December 6th or departure point.

The representative advised that on December 6, 2021 when cheque production was turned off, consideration halted on the Applicant's application for assistance to include his wife.

Part F – Reasons for Panel Decision

Panel's Role

Our role as an impartial and independent panel is not to make a new decision. We can merely confirm or rescind the January 6 Decision. If we rescind the matter is sent back for another Ministry reconsideration. As set out in section 17 of the EAR, a panel may only rescind if it finds that the Ministry's reconsideration decision had either of 2 problems; specifically, if it was:

1. not reasonably supported by the evidence or
2. an unreasonable application of the legislation.

Our assessment is not limited to what the Ministry knew at the time. We are able to consider new evidence and a decision may be rescinded on information received after the decision being appealed was made.

Analysis

It is common ground between the parties that the Appellant has not returned to BC since departure from BC in December 2021. It is undisputed that on December 7, 2021 the Ministry requested the Appellant attend its offices upon return and provide travel documents to show his departure from BC and his return dates. That was the date the Appellant states he left BC. The day beforehand the Ministry had turned off cheque production. There was no evidence of a request for travel documents (such as hotel receipts) before then that would show his departure date, because the Ministry had already recorded this departure as December 1, 2021.

We were not presented with evidence that the Appellant filed under s17 of EAR for continuation of income assistance or hardship assistance within the 30 days of his absence from BC and thus before he became disentitled.

This matter comes down to when the Appellant became disentitled which is calculated from when he left BC. If he left BC on December 1, 2021, he was disentitled January 1, 2022 and would not receive income assistance from then (which would have been issued mid-December). However, if he departed BC December 7, 2021 the disentitlement date would have been January 6, 2022 (which is the issuance date of the January 6 Decision under appeal).

That conflict involves a difference of mere days, but in the present circumstances this is potentially significant, and thus also potentially not in keeping with the intent of the legislation to assist those in need when in need.

While not part of the January 6 Decision at issue here the Appellant made repeated reference to an issue that the Panel considers as warranting comment. This is that the Ministry halting processing of cheques it also halted consideration of the October 20th application by the Appellant for inclusion of his wife in his family unit for assistance. It was apparent to the Panel that if assessed as payable from the application date may well have provided the resources to avoid the necessity of the move. We acknowledge that we are unable to render a decision on that halted consideration but nevertheless offer that the halt is difficult to reconcile with the spirit of the EAA. That halt is the equivalent of denial without an identifiable decision or notice which could be appealed, as would be a person's right.

Turning to the disparity of the date of departure, and thus the date of disentitlement, we do not have the file records upon which the January 6 Decision was made. We have not seen the record of calls or submitted documents. We must rely upon the text in the body of the January 6 Decision which synthesizes what the Ministry considers as accurate and relevant. In the synopsis and the January 6 Decision it is clear that the Ministry understood that the Appellant departed BC on December 1; however, the basis of that understanding is not clear. The record is not clear whether the date was based upon an express statement of the Appellant or an assessment of the date of commencing the move or the date of departure from the province. In contrast, it is clear that only at the hearing did the Ministry hear that, according to the Appellant and his witness, the date of departure was December 7.

We have the Appellant's evidence that when he spoke to Ministry staff that he could not communicate his meaning. The staff also struggled to be understood as it is clear in the January 6 Decision that the staff were attempting to put its records into a state that would allow the Appellant to have an Ontario assistance application processed without an active file in BC blocking it. It was undisputed that he had an application or was in the process of one in Ontario. Indeed, we recognized that while this matter remains open in BC that it may be creating that very gap in coverage that the Appellant and the staff were, each in their own way, seeking to avoid.

We have no need to resolve those or determine the cause of the communication difficulty, it is enough in these circumstances to find that there was a substantive issue of communication resulting in serious doubt about the date of departure from BC. Considering this we find that it is probable that there was confused, incomplete or miscommunicated information about when the move to Ontario was commenced and the actual date of departure from BC. Accordingly, we find that we need not receive and review the receipts concerning departure dates before deciding. This is because we also find that we need not decide the date of departure as that can be determined by the Ministry upon the January 6 Decision being rescinded. They are free to seek receipts then if desired.

Conclusion

Given the conflict about the date of departure from BC and the new and substantive evidence presented at the hearing about the date of departure from BC, we find that the January 6 Decision is not reasonably supported by the evidence. Thus, on that evidence the date of disentitlement and the determination to not pay the Appellant any amount of assistance in January was also not made reasonably. We stress that we are not determining any specific date of disentitlement or payment, or indeed that the Ministry might find that its original dates were correct, or some other dates apply.

We also stress that given this rescinding it is our understanding that the Ministry would have the opportunity to conclude consideration of the Appellant's application to include his wife within his family unit for income assistance, and any accrued benefits until disentitlement.

The Appellant is successful on appeal and the Ministry's reconsideration decision of January 6, 2022 is rescinded.

Panel Member Chin:

I agree with the reasons for rescinding above to which I add the follows:

Based on the evidence presented at the hearing by the Appellant and his wife, and even in the absence of any travel receipts as proof, I find it probable that their departure from BC was at a date after December 1. It is up to the Ministry to determine the correct date of departure. The evidence is sufficient for me to decide that the Appellant was deemed ineligible prematurely and therefore not in accordance with the 30 days provided by the legislation.

Appendix

Employment and Assistance Act, SBC 2002, c 40 (EAA).

Decision of panel

24 (1)After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a)reasonably supported by the evidence, or
- (b)a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Employment and Assistance Regulation, BC Reg 263/2002 (EAR) section 17

Effect of recipient being absent from BC for more than 30 days

17 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 income assistance or hardship assistance unless the minister has given prior authorization for the continuance of income 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 2022-0010

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
Kent Ashby

Signature of Chair

Date (Year/Month/Day)
2022/02/09

Print Name
Wesley Nelson

Signature of Member

Date (Year/Month/Day)
2022/02/06

Print Name
Vivienne Chin

Signature of Member

Date (Year/Month/Day)
2022/02/06