

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 February 25, 2022, which held that the appellant is not eligible for disability assistance as they have 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) sections 3 and 11

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 15

Part E – Summary of Facts

From ministry files:

- The appellant's PWD designation was effective June 2012.
- The appellant has been receiving disability assistance as a single recipient with no dependents.
- The appellant did not have any contact with the ministry between March 2, 2021 and January 12, 2022.
- A file review was initiated in January 2022 as the ministry received information that the appellant left the country.
- Upon contact, the appellant reported that they went to Argentina on September 16, 2021 [on appeal the appellant stated they left on September 15] as they were offered a full-time job/school at the university there doing art and were trying to come back on December 16, 2021 but did not return as the airline cancelled the flight. The appellant indicated that they are eligible for MSP coverage while out of the country.
- The appellant had not informed the ministry of being out of the country. The ministry advised that they cannot assist the appellant as they are not eligible once they've been out of the province/country for 30 days. The appellant reported that the university has free tuition; however, the appellant was concerned that without assistance the appellant would be homeless in Argentina. The ministry advised the appellant to contact the local Canadian Embassy.

On February 9, 2022 the appellant submitted the Request for Reconsideration: They reported that

- they went to Argentina on September 16, 2021 as they were offered a scholastic residency in visual arts in conjunction with the Cathedral and the University in Argentina;
- the Canada Council for the Arts could not pay for the residency;
- due to the flight being cancelled in December and the refund delayed they chose to register for the 6-year Architecture Degree program in Argentina that began in February 2022;
- as a PWD recipient, that had not had to submit information since at least 2013; they did not realize they had to discuss this change with the ministry and had discussed their leave with their Housing Supporter which gave them permission to be away for three months and continue to collect rent from the ministry. They thought they had fulfilled their obligations.
- they fled the country for respite from hostilities and persecution for medical and other reasons.
- they have more expenses than before they left, work is still scholastic and non-commercial, they are still disabled. They need to pay rent and storage in Vancouver and live "off credit".
- it was just a small oversight that they did not alert the ministry before they left, because of not knowing the policy and legislation.

At reconsideration the appellant submitted the following documents:

- a letter from Health Insurance BC to support that the appellant qualifies to be out of province for one year for school purposes and still maintain their Medical Services Plan (MSP), and the appellant's letters to them appealing the decision to make their MSP temporary coverage only.
- a letter from a physician supporting the appellant being away for medical reasons,
- documents pertaining to the appellant's dispute with their previous landlord,
- the Letter of Invitation for the appellant's acceptance into the artistic residency,
- and the confirmation of the appellant's university registration for the degree program.

In their Notice of Appeal dated February 28, 2022 the appellant wrote: "We cannot even download the Ministry's Decision". The appellant added 1 page of argument expressing general dissatisfaction with the government for religious and ethical reasons.

On March 24, 2022, the appellant submitted the following documents:

- 1. a submission letter containing argument, plus the information that the appellant left for Argentina on September 15;
- 2. a grant application to the Canadian Council of Arts dated March 30, 2021;
- 3. correspondence between May 17, 2019 and August 11, 2021, comprised of 6 letters by the appellant and 3 responses concerning an art exhibition;
- 4. an undated letter by the British Columbia Arts Council regarding a program application;
- 5. an undated list of monthly expenses and revenues;
- 6. a settlement agreement between the appellant and a BC university, dated October 15, 2021.

Admissibility of New Information

The panel finds that documents 1 to 5 are reasonably required for a full and fair disclosure of all matters related to the decision under appeal:

- document 1 modifies the date of the appellant's departure;
- documents 2-4 illuminate the appellant's background in the arts which was a reason they left for Argentina;
- document 5 appears to be related to the appellant's financial circumstances.

The panel therefore admits the above mentioned information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel does not admit the settlement agreement because it does not relate to the decision in any way.

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 they have 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.

The panel notes that issues concerning the BC Human Rights Code or the Charter of Rights and Freedoms are outside of the Tribunal's jurisdiction.

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 they should be eligible for disability assistance because they did not know the legislation and did not realize they had to report the move to Argentina to the ministry; it was just a small oversight that they did not alert the ministry before they left.

They were unable to return because their flight was cancelled and they then decided to stay on in Argentina in order to pursue a degree program in architecture.

They are going into debt because they have more expenses than before they left because they need to pay for rent and storage in BC. Their work is scholastic and doesn't produce any income, and without assistance they will be homeless in Argentina.

They argue further that they had to flee Canada to escape hostilities and persecution for medical, political and religious reasons.

Ministry Position

The ministry determined that the appellant did not have prior approval from the ministry to be out of province over 30 days for any reason, and did not report the change as required. As a result they ceased to be eligible for disability assistance.

They left BC on September 16, 2021 without prior approval to reside in Argentina, and still reside there. They did not have any contact with the ministry between March 2, 2021 and January 12, 2022 when they only reported their change to another BC address. The appellant did not advise the ministry that they had left BC or that they were in Argentina until the end of January 2022, yet the letter of invitation reports they were accepted into the residency in March 2021, giving the appellant plenty of time to discuss this opportunity with the ministry prior to leaving the province in September 2021. The appellant did not have prior authorization to be absent from BC for over 30 days to remain in Argentina to complete a university program.

As a resident of BC with the PWD designation, the appellant would not be required to leave the province to obtain medical therapy or to attend a formal education program, nor is the ministry satisfied that the appellant would be required to be absent from BC for 6 years to avoid undue hardship.

The ministry added that the Canada Student Financial Assistance Program is available to people with permanent disabilities. Information about the program is available online at www.canada.ca. The ministry suggested the appellant contact the Canadian Embassy again to explore what options and resources there are available while the appellant remains in Argentina.

Panel Analysis

The panel finds the ministry decision reasonable based on the following evidence which the appellant does not dispute:

- The appellant has left BC for Argentina on September 15 or 16, 2021 and is still there.
- At no time has the appellant sought ministry authorization for the continuation of disability assistance.

While the appellant argues they should be able to stay in Argentina to pursue their educational and research goals the panel finds that legislation requires that the minister give prior authorization for the continuance of disability assistance for the purpose of permitting the appellant to participate in a formal education program.

While the appellant argues that they have to stay on in Argentina for medical reasons the panel finds that legislation requires that the minister give prior authorization for the continuance of disability assistance for the purpose of permitting the appellant to obtain medical therapy prescribed by a medical practitioner.

While the appellant argues that they were not aware of the reporting and approval requirements the panel notes that legislation requires a recipient to inform the ministry of changes in their circumstances which implicitly includes a move to a different country - the ministry has no discretion in the matter.

Conclusion

The panel acknowledges that flight cancellations, lack of funds, loss of educational and research opportunities, medical issues or a hostile environment can cause undue hardship. However, 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 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

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.

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)
2022/04/10

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)
2022/04/10

Print Name

Rick Bizarro

Signature of Member

Date (Year
2022/04/10