

Appeal Number 2022-0325

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 November 29, 2022, which held that the appellant is not eligible for assistance for January, February, and March 2022 because she was absent from BC for over 30 days without prior authorization from the ministry.

Part D - Relevant Legislation

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

The text of the relevant section of the legislation is set out at the end of this decision.

Part E – Summary of Facts

From the ministry file:

- The appellant is a recipient of disability assistance.
- On November 19, 2021, the appellant contacted the ministry to update her contact information now that she was residing in Calgary. She advised that she had not been in British Columbia for over 30 days. The ministry advised her that she was not eligible for disability assistance because she had been outside BC for over 30 days. The ministry switched off cheque production on her file.
- On January 5, 2022, the appellant contacted the ministry to enquire about January assistance. She advised the ministry that she moved to Alberta on January 1, 2022, and that prior to this she had been back and forth between Alberta and BC before deciding to move permanently to Alberta. The ministry advised that she was not eligible for January benefits because she was not residing in BC. The ministry noted that the last benefits she had received from BC disability assistance were for December 2021.
- On March 22, 2022, the appellant contacted the ministry to request that her cheques be sent to Alberta so that she could afford to return to BC. She advised that she was residing at her son's place, and she was in receipt of Alberta income assistance, as well as Canada Pension Plan. She advised that her truck had broken down in Alberta, where she had gone for schooling.
- On April 28, 2022, the appellant attended her local office. She explained that she had been stuck in Alberta for four months and that she had moved back to BC on April 1, 2022.
- On September 2, 2022, the appellant contacted the ministry to request disability assistance for the months of January to March 2022. She advised that she had been in Calgary during this time and was unable to come get her assistance.
- On October 17, 2022 the appellant contacted the ministry to follow up on her request. The ministry advised her to submit bank statements for the months of November 2021 to February 2022 to verify if she had been in Alberta during this period. She advised that her statements would show she was in Alberta this entire time, as she was having car troubles and could not return to BC. She explained that her car needed a new battery and had to be reinsured.
- On October 27, 2022, the appellant submitted the requested bank statements.
- On October 31, 2022 the ministry reviewed the bank statements and determined that she had been in Alberta from November 2021 until March 2022.
- The ministry denied the request for January to March 2022 disability assistance, as it was determined that the appellant had been outside of BC for more than 30 days and was not residing in BC during this time period.

- On November 8, 2022, the appellant attended her local office to submit a scan of her income assistance support cheques from Alberta for the months of January 2022 to March 2022.

In her November 10, 2022, request for reconsideration the appellant wrote that

- She requires assistance for these months to avoid hardship, and she has submitted all paperwork.
- Her benefits were cut off in BC in January 2022.
- Her truck broke down on December 16, 2021 and her truck insurance expired on January 6, 2022. She was going bankrupt and was stranded in Calgary, Alberta.
- She sold her travel trailer to be able to get back to BC on April 1, 2022.
- This seems to be a repeat of August 2017 when her benefits were cut off and she was turned down for two appeal processes.
- She will have no medical coverage. She needs to be put on a new workers benefit program.
- She believes all this is happening because she did her taxes in Calgary for 2021.

In her Notice of Appeal dated December 30, 2022 the appellant wrote: "Benefits were cut off for reasons beyond my control."

On January 12, 2023, the appellant submitted the following documents:

- A 1-page statement in which she repeats information previously given and writes:
 - Her re-submitted bank statement shows that she was in Kelowna on November 25, 2021, and refers to a credit entry from a gas station in Kelowna on November 25, 2021 on a re-submitted bank statement.
 - She did not collect benefits from 2 provinces at the same time.
 - She was commuting from Alberta to BC on a regular basis in 2021.
 - She was forced to apply for assistance because her truck broke down and her insurance expired. She received \$500 monthly for January, February, and March of 2022.
 - "Disclosure of Information requested for November 19, 2021".
- A copy of page 2 of the reconsideration with handwritten remarks stating "Kelowna", "not true", and referring to a "witness ... went back & forth".
- A hand-written statement dated January 10, 2023, from a person confirming that the appellant was in Kelowna on November 25, 2021.
- A copy of the 1st page of the request for reconsideration with 2 illegible stickers attached and "NFA" circled by hand.
- A partly illegible letter by a person naming the appellant as their mother "traveling back and forth ..."
- A 1-page PWD Case Profile Sheet dated November 10, 2004.

At the hearing the appellant stated that

- She neither contacted the ministry on November 19, 2021, nor on January 5, 2022; the ministry made false statements. She stated she contacted the ministry around December 17, 2021.
- She went to Alberta in August 2021 and stayed there until November - she kept going back and forth between Alberta and BC.
- Between August 1 and November 19, 2021, she spent around $\frac{3}{4}$ of the time in Alberta at her son's place.
- In November 2021 she spent around 5 days in BC before she left for Alberta.
- She did not relocate but only took a correspondence course in Alberta.
- She has no fixed address since 2016, except for 1 year in Alberta.
- She did not know that she was not allowed to be out of BC for over 30 days per year.
- She did not request prior approval from the ministry because she did not know about this requirement.

The ministry reviewed the reconsideration decision and, while consulting their records, stated that the appellant had called the ministry on several occasions. The ministry stated that on November 19, 2021, the appellant called and, among other things, requested her file to be transferred to Alberta. The ministry stated further that when the appellant signed the form for disability assistance, she also signed the stipulation that she would have to receive prior approval from the ministry to remain eligible, were she to be absent from BC for more than 30 days. This stipulation is also found on the monthly reporting forms.

Admissibility of New Information

Neither party objected to any new evidence submitted on appeal and at the hearing. The panel finds that the new information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal because it is related to the appellant's request to receive assistance for January, February, and March 2022. The panel therefore admits the new 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 for January, February, and March 2022 because she was absent from BC for over 30 days without prior authorization is reasonably supported by the evidence or a reasonable application of the relevant legislation.

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 she should be eligible for January, February, and March 2022 assistance because she had gone to Alberta for her education and experienced undue hardship when her truck broke down and she could not return to BC for 4 months. Because she could not return, she was unable to get BC disability assistance, was going bankrupt and was forced to apply for disability assistance from Alberta. She sold her travel trailer to be able to get back to BC on April 1, 2022. She had not relocated to Alberta but had been going back and forth between the 2 provinces. She was not aware that after a 30-day absence from BC she would no longer be eligible for assistance.

Ministry Position

The ministry determined that the appellant ceased to be eligible for disability assistance from November 19, 2021, onwards until April 1, 2022 because she had been out of BC for more than 30 days and did not receive the ministry's prior authorization to continue to receive disability assistance for the purpose of participating in a formal education program or to avoid undue hardship.

The ministry found that while there is conflicting information on file regarding the date the appellant first moved to Alberta, a review of her file indicates that she first advised the ministry that she had been residing in Alberta for over 30 days on November 19, 2021. This review further indicates that she was residing in Alberta and receiving Alberta income assistance for the entire months of January to March 2022, and that she returned to BC on April 1, 2022. This information is verified by the bank statements and the scan of her Alberta Income Assistance cheques that she submitted.

The appellant first notified the ministry of issues with her truck during a phone conversation on March 22, 2022. As such, the ministry is not satisfied that the appellant was given prior authorization to receive January to March 2022 disability assistance while in Alberta to avoid undue hardship caused by this situation, because she did not notify the ministry of this matter until March 22, 2022. During this phone conversation on March 22, 2022, the appellant notified the ministry that she had moved to Alberta to go to school. As she did not notify the ministry of this until after she had moved, the ministry is not satisfied that she received prior authorization to continue receiving disability assistance while in Alberta for the purpose of participating in a formal education program.

Panel Analysis

The panel finds the ministry decision is reasonably supported by the following evidence:

- At the hearing the appellant advised that between August 1 and November 19, 2021, she had spent $\frac{3}{4}$ of the time in Alberta at her son's residence.
- On November 19, 2021, the appellant advised the ministry that she was residing in Calgary and that she had not been in British Columbia for over 30 days. While the appellant denied she had made contact with the ministry on November 19, 2021, nor on January 5, 2022, the ministry reported that it had records of both calls. As the ministry has established office procedures and keeps written records, the panel prefers the ministry's evidence over the appellant's.
- On March 22, 2022, the appellant advised the ministry that she had gone to Alberta for schooling, that she was in receipt of Alberta income assistance, and that her truck had broken down on December 16, 2021.
- On April 28, 2022, the appellant informed the ministry that she had returned to BC on April 1, 2022.
- At no time did the appellant request prior authorization from the ministry to leave BC and continue her disability assistance.

While the appellant argues that she was not aware that after a 30 day absence from BC she would no longer be eligible for assistance the panel notes that she had been informed of this when she signed her application.

Conclusion

The panel acknowledges that car break-downs and lack of funds can cause undue hardship. However, the panel finds the ministry reasonably established that the appellant is not eligible for disability assistance for January, February, and March 2022 as she has been absent from BC for over 30 days in a year without prior authorization from the ministry. The appellant is not successful on appeal.

Applicable Legislation

Employment and Assistance for Persons with Disabilities Regulation

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.

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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)

2023/01/20

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2023/01/23

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2023/01/23