

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated January 6, 2023, in which the ministry denied the appellant continued disability assistance because the appellant was outside British Columbia for more than a total of 30 days in a year without prior authorization from the ministry for continuation of disability assistance.

Part D – Relevant Legislation

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

Interpretation Act, section 29, definition of “medical practitioner”

Full text of the legislation is provided in the Schedule of Legislation after the Reasons.

Part E – Summary of Facts

The hearing took place by videoconference. The appellant joined the hearing from Country A, with a support person who joined from within British Columbia.

Evidence Before the Ministry at Reconsideration:

The appellant had Persons with Disabilities designation since 2012, under the Employment and Assistance for Persons with Disabilities Act. The appellant received disability assistance from the ministry until March 2022, when the ministry discontinued the appellant's disability assistance because it determined that the appellant had been outside British Columbia for more than 30 days.

The appellant had travelled to Country A in September 2021 for a three-month artist's residency. After the residency ended, the appellant enrolled in a six-year university degree program in Country A, beginning in February 2022.

The appellant re-applied for disability assistance when the appellant returned to British Columbia on November 15, 2022. The appellant advised the ministry that the appellant was returning to Country A on November 25, 2022 to write exams. The appellant asked for continuation of disability assistance while in Country A because the appellant was going to Country A to participate in a formal education program, to obtain medical therapy, and to avoid undue hardship.

The appellant gave the ministry documents and correspondence from the university in Country A, confirming enrollment in the degree program. Under a settlement agreement with Post-Secondary Institution #1 in British Columbia, the appellant cannot enroll in any program or attend at Post-Secondary Institution #1. The appellant cannot obtain student loan funding to attend another post-secondary institution in British Columbia, as a condition of a waiver of repayment of previous loans under the Severe Permanent Disability Benefit with the Canada Student Loans Program. There are no tuition costs for the degree program at the university in Country A.

With respect to medical therapy, the appellant gave the ministry a letter from a psychiatrist in British Columbia, dated December 23, 2021, stating that the appellant was "away on medical respite from the occupational, social, and economic stressors which [the appellant] has been suffering at home due to political, religious, and gender-based persecution." The appellant also gave the ministry a medical report for a Canada Pension Plan Disability Benefit completed by a psychiatrist in Country A, identifying certain medical conditions and stating that "Symbolic Psychotherapy (developed only in [Country A]) will be very helpful for the patient's mental health. ...It's probable that the technique is a more powerful strategy than pharmacotherapy."

With respect to undue hardship, the appellant explained to the ministry that, because of the appellant's political and social views and activities, the appellant had been persecuted and harassed by certain individuals and organizations in British Columbia since 2016. As a result, the appellant maintained that the appellant had been fired from employment and was unable to

rent space to carry out professional artistic activities. The appellant told the ministry that, because of the persecution and harassment, the appellant had to take refuge in Country A.

When the appellant returned to British Columbia and re-applied for disability assistance in November 2022, the ministry provided the appellant with disability assistance, pro-rated from the date the appellant re-applied. The appellant returned to Country A on November 25, 2022.

On December 15, 2022, the ministry notified the appellant that the request for continued disability assistance was denied because the appellant was out of the country and planned to be attending school in Country A for more than 30 days. The appellant requested reconsideration, and on January 6, 2023, the ministry again denied the appellant continued disability assistance.

Additional Evidence:

The appellant provided a 256-page written submission, some of which is argument. While not listing every document, or the detailed contents, the additional evidence includes:

1. In a written submission, undated, responding to the ministry's letter dated January 12, 2023:
 - a. The appellant was requesting authorization to commence the second year of the program, which had not yet begun.
 - b. Technically, the appellant was not enrolled in the program because of an issue around verification of the appellant's secondary school graduation certificate; if that issue was not resolved by February, the appellant would lose credit for all the previous year's courses.
2. Email correspondence, various dates, between the appellant and the university in Country A, about verification of academic documents and enrollment.
3. Amended Shelter Information form dated January 19, 2022, indicating that the appellant rented a room at an address in Municipality #1 in British Columbia.
4. Appellant's personal and business bank statements dated October 20, 2022 and November 1, 2022 respectively, from a financial institution in Municipality #1, showing the address on the Shelter Information form.
5. Correspondence from the ministry to the appellant dated October 21, 2022, stating "It be determined eligible [sic] you will need to provide confirmation of residence in BC, bank statements, and confirmation of rent or shelter expenses."
6. Email from the psychiatrist in British Columbia, dated October 7, 2022, stating that the psychiatrist is "no longer practising due to extreme circumstances."
7. Telephone bill for mobile service from a utility with offices in British Columbia, addressed to the appellant at the address in Municipality #1, dated August 24, 2022.
8. Correspondence from Health Insurance BC dated January 14, 2022, stating that the appellant qualifies "to be out of the province for school purposes and still maintain your Medical Services Plan (MSP)." The letter goes on to explain the basis for continued eligibility for MSP coverage for students attending school outside British Columbia.
9. Submissions and correspondence related to a Human Rights Complaint against Post-Secondary Institution #1 between 2019 and 2021, based on the discrimination alleged by the appellant as a result of the appellant's political and social views and activities, which the Human Rights Tribunal did not accept for filing.

10. 194-page report titled “Academic Freedom in Crisis: Punishment, Political Discrimination, and Self-Censorship.”
11. Document titled “On Public Incitement to Hatred”, written by the appellant, dated May 17, 2019, providing details of the appellant’s experience with alleged discrimination and harassment by Post-Secondary Institution #1, the media, and an individual, on the basis of “sex, disability, gender and political belief.”
12. Submissions and correspondence related to a Human Rights Complaint against an arts organization in 2018, which the Human Rights Tribunal did not accept for filing.
13. Email to the Employment and Assistance Appeals Tribunal dated January 17, 2023, in which the appellant stated, among other things, that the ministry had given the appellant the reconsideration decision denying disability assistance “after returning to Canada, requesting and receiving permission to study abroad, and then returning to [the appellant’s] country of refuge to write...final exams.”

Evidence at the Hearing:

At the hearing, the appellant stated:

- The appellant returned to British Columbia in November 2022 to provide the additional documents the ministry requested.
- The ministry gave the appellant disability assistance for December 2022, as well as the pro-rated disability assistance for November.
- On reviewing notes and recordings of conversations, the appellant realized that the ministry had not given permission to study abroad as the appellant indicated in the January 17, 2023 email. Rather, the ministry had told the appellant that the ministry would provide disability assistance for December 2022, and a decision about disability assistance for January 2023 onwards would have to go to a manager for a decision.
- The university in Country A has very strict rules, and the appellant is not a student unless the appellant can produce a certified secondary school graduation diploma.
- If the appellant cannot provide the certified diploma by the end of February, the appellant will lose credit for all the first-year courses that the appellant completed in 2022.
- The new school year for the post-secondary degree program in Country A starts in March 2023.
- The appellant described life in British Columbia as “a living hell” since 2016, because of discrimination and harassment.
- The appellant has taken artist residencies in cities outside British Columbia for more than 30 days in the past, and the ministry “never had a problem” with that activity.
- The appellant has used up all available credit for financial support over the past year.
- At the time of the original decision, the appellant had been absent from British Columbia for 18 days.
- Without access to Canada Student Loans, the appellant could not afford to attend a formal education program elsewhere in British Columbia.

Admissibility of Additional Evidence:

The ministry did not object to the additional evidence in the appellant’s written submission, or to the appellant’s oral evidence at the hearing.

The additional evidence gives further information about the appellant's travel to and from British Columbia, their student status at the post-secondary institution in Country A, the circumstances in support of the appellant's position on undue hardship, and the ministry's communication about the appellant's eligibility and requirements for approval of continuation of benefits when a recipient is outside British Columbia for more than 30 days. The panel finds that the additional evidence is reasonably necessary for the full and fair determination of all matters relating to the decision under appeal, and therefore it is admissible under section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision to deny the appellant's request for continued disability assistance while the appellant was absent from British Columbia for more than a total of 30 days in a year was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Appellant's Position:

The appellant maintains that the request for continuation of disability assistance meets all the three possible criteria for approval of continued disability assistance, found in section 15 of the EAPWDR. Therefore, the appellant says that the ministry was not reasonable in denying continued disability assistance. The appellant points to the documents provided, confirming that:

- the appellant is enrolled in a formal education program in Country A;
- the appellant is undergoing Symbolic Psychotherapy in Country A, which is not available in Canada;
- a psychiatrist in British Columbia has prescribed medical respite in Country A due to occupational, social, and economic stressors in British Columbia; and
- the appellant faces undue hardship in British Columbia, where the appellant is unable to work in a chosen profession, rent studio space or keep employment because of harassment and discrimination for the appellant's political and social views.

Therefore, the appellant argues that it is not reasonable for the ministry to deny the appellant disability assistance while the appellant is outside British Columbia, because the appellant is in Country A for all the purposes listed in section 15.

Further, the appellant says that the appellant returned to British Columbia in November 2022 for the purpose of applying for disability assistance, has provided all documents requested by the ministry, and followed all instructions for applying for authorization. The appellant maintains that the ministry keeps changing the requirements and finding new reasons to deny authorization.

In response to the ministry's statement in the reconsideration decision that the ministry cannot provide prior authorization because the appellant is already participating in the formal education program in Country A, the appellant argues that, technically the appellant is not enrolled in the degree program at present. The appellant states that, until the secondary school graduation certificate is accepted by the post-secondary institution in Country A, the appellant is not formally enrolled, and the new school year has not yet started in Country A. Therefore, the appellant argues that the ministry could provide "prior authorization" because the appellant is not technically participating in the educational program until the certificate is accepted and second year classes resume in March 2023.

Ministry Position:

On appeal, the ministry relies on its reconsideration decision. The ministry maintains that the appellant did not have prior authorization for continuance of disability assistance before the appellant left British Columbia.

The ministry accepts that the appellant is participating in a formal education program outside British Columbia and says that participation commenced on February 1, 2022. Although the appellant returned to British Columbia temporarily in November 2022, the ministry argued that the appellant continued to be a student in the program, and as the appellant was already participating in the program, the ministry could not provide prior authorization.

The ministry also argues that the appellant had started Symbolic Therapy in Country A before asking for authorization, and therefore the ministry could not provide prior authorization for that purpose. The ministry adds that the psychiatrist in Country A is not a “medical practitioner” as defined in the Interpretation Act, because the psychiatrist is not a registrant of the College of Physicians and Surgeons of British Columbia. Therefore, the ministry maintains that the appellant is not in Country A for the purpose of “obtaining medical therapy prescribed by a medical practitioner” under section 15(b) of the EAPWDR. (At the hearing, the ministry agreed with the appellant that the ministry was aware that the appellant’s psychiatrist in British Columbia had “prescribed respite” since 2021.)

With respect to the appellant’s argument that the appellant is outside British Columbia to avoid undue hardship, the ministry took the position that there was insufficient evidence to show that the appellant was prevented from holding a job or renting studio space anywhere in British Columbia, or that the appellant would face undue hardship if the appellant was not permitted to reside outside British Columbia for more than 30 days. Again, however, the ministry stated that, as the appellant “had been residing in [Country A] for some time” the ministry could not give prior authorization.

Panel Reasons:

Section 15 of the EAPWDR provides that a recipient who is outside of British Columbia for more than 30 days in a year ceases to be eligible for disability assistance unless the ministry has given prior authorization for continuance of disability assistance for one of the purposes listed in section 15. Those purposes are:

- to permit the recipient to participate in a formal education program;
- to permit the recipient to obtain medical therapy prescribed by a medical practitioner; or
- to avoid undue hardship.

The appellant maintains that the appellant’s reasons for being outside British Columbia fall under all of the three purposes listed in the legislation.

In the reconsideration decision, the ministry does consider whether the appellant's departure to Country A is for those purposes. However, the consistent basis for denying continuation of benefits is that the ministry had not provided prior authorization for continuation of disability assistance. The panel finds that "prior authorization" means authorization provided before the recipient is outside of British Columbia for more than a total of 30 days in a year. The ministry does not have discretion under the legislation to continue disability assistance for a recipient who is outside British Columbia for more than 30 days in a year, if the ministry has not given authorization before the person leaves the province.

The appellant had ceased to be eligible for disability assistance in March 2022 because the appellant had been outside British Columbia for more than 30 days in a year. That decision was confirmed on appeal in April 2022. The appellant reapplied for disability assistance on November 15, 2022, having returned to British Columbia for two weeks and intending to return to Country A on November 25, 2022. The appellant was candid with the ministry about the length of time the appellant would be in British Columbia. The ministry provided the appellant with pro-rated disability assistance for November. The ministry stated at the hearing that the appellant was eligible for disability allowance in November 2022, but the basis for eligibility is unclear to the panel.

If the appellant was eligible for disability assistance in November 2022, then the question is whether the appellant then ceased to be eligible again because the appellant was outside British Columbia for more than 30 days in the year. As the appellant pointed out, the appellant had been outside British Columbia for only 18 days by the time of the original ministry decision. However, on appeal, the panel must determine whether the reconsideration decision was reasonable. By the time of the reconsideration decision, the appellant had been outside British Columbia for more than 30 days. Therefore, the panel finds that the appellant was not eligible for disability assistance at the time of the reconsideration decision.

The only way the appellant could continue to be eligible for disability assistance while outside British Columbia is if the ministry gave prior authorization for the appellant's absence from British Columbia for one of the reasons in section 15. The appellant has focused on the purpose for being outside the province. However, the key question is whether the appellant had prior authorization from the ministry, that is, authorization before the appellant was outside the province for more than 30 days.

The panel also notes that ministry authorization for continuation of disability benefits is not guaranteed or automatic even if a person is outside British Columbia for one of the purposes listed in section 15. The ministry has discretion to give authorization, considering all the circumstances.

Whether or not the ministry was satisfied that the appellant's purpose for being outside British Columbia fell under one of the categories in section 15, the ministry determined that the appellant did not have prior authorization for continuation of disability assistance before the appellant was outside British Columbia for more than a total of 30 days in a year. While the ministry has discretion in determining whether to give authorization for continuation of disability assistance while a person is outside British Columbia, the ministry does not have discretion under the legislation to continue disability assistance if there has been no prior authorization.

The appellant returned to Country A on November 25, 2022. The ministry has not authorized continuation of disability assistance. Therefore the panel finds that the ministry reasonably determined that the appellant did not have prior authorization for continuation of disability assistance and therefore the appellant was not eligible for disability assistance.

Conclusion:

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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

Section 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.

Interpretation Act

Expressions defined

Section 29 In an enactment:

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner";

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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) or Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/02/15

Print Name
Anil Agarwal

Signature of Member

Date (Year/Month/Day)
2023/02/15

Print Name
Edward Wong

Signature of Member

Date (Year/Month/Day)
2023/02/15