

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 May 12, 2023, which held that the appellant is not eligible for continuing disability assistance while she is living in Alberta.

Part D – Relevant Legislation

Employment and Assistance for People with Disabilities Regulation – Section 15

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

Part E – Summary of Facts

From the ministry file:

- The appellant is a sole recipient of disability assistance with four dependent children.
- On October 21, 2022, the ministry provided the appellant with its prior approval for the appellant to be provided with disability assistance for the maximum of six months so that the appellant's daughter could receive medical therapy in Alberta. The ministry advised the appellant that if she had to stay in Alberta longer than six months, the appellant was to make arrangements to apply for assistance in Alberta because an extension would not be approved.
- The ministry noted that the appellant had been receiving social assistance (AISH) from Alberta Works since November 2022 which is being deducted as income from the disability assistance being provided from BC each month. The ministry also noted that the appellant's Alberta Works file remains open, and that the appellant has received the following payments:
 - November 2022: \$1003 and \$419.94 for prescription drugs
 - December 2022: \$1622 and \$543.38 for prescription drugs
 - January 2023: \$1721 and \$1121.07 for prescription drugs
 - February 2023: \$1721 and \$502.86 for prescription drugs
 - March 2023: \$403.22 for prescription drugs.
- On March 20, 2023, the ministry noted that the appellant requested an extension of the six-month approval to continue providing the appellant with disability assistance while in Alberta temporarily. In this request, the appellant stated that her child was just beginning therapy in Alberta and that she did not see the family moving back to BC before August.
- On April 5, 2023, the ministry denied the appellant's request for continued disability assistance while in Alberta. The ministry also noted the appellant had told them that she needed to remain in Edmonton for her child's care and that the child had medical procedures coming up. These upcoming medical procedures made it impossible for the appellant to predict when she would be able to return to BC. The appellant was no longer maintaining housing in BC but plans to re-establish housing in BC when her child's treatments are complete.

- On April 21, 2023, a ministry worker contacted the appellant by phone to discuss the exception request and told the appellant that “ ... a set date for the end of treatment and a confirmed address in BC would be necessary to consider an extension of your current exception, and at this point, as of May 1 onward, you are no longer eligible for disability assistance with the Ministry of Social Development and Poverty Reduction.”
- On April 25, 2023, the ministry advised the appellant that she was not eligible for continued disability assistance.

In her May 1, 2023 request for reconsideration, the appellant wrote:

“I am applying for a reconsideration due to circumstances beyond my control. Please see attached paperwork regarding my situation. I ask that you kindly grant the reconsideration request in order for my family to continue to be proper [sic] financially supported in Alberta on the basis its [sic] in my family’s best interest, [o]r until we can maintain another feasible outcome by returning to BC.”

The appellant’s request for reconsideration also included the following documentation:

- The appellant’s Residential Tenancy Lease for accommodations in Alberta indicating that the appellant is in a lease from October 2022 to October 2023, paying \$2,495 per month.
- A letter dated April 5, 2023, from the child’s pediatrician that notes: “It is important that [the appellant’s child] stay in the city to continue her medical care, and this will be ongoing for a prolonged period of time.”

On May 16, 2023, the appellant’s advocate submitted the appellant’s Notice of Appeal form, copies of the appellant’s bank statements from October 31, 2022 to April 28, 2023, and a May 5, 2023 email from the Alberta Government’s Ministry of Community and Social Services to the appellant that confirmed file closure for Child Support Services.

The appellant’s Notice of Appeal form included a one-page attachment titled, “Why I disagree with the Ministry’s Decision.” This document consisted of the following points:

- “There was never a firm decision made RE length of time allowed in Alta
- It was agreed to allow a six-month period then to revisit the situation prior to the six months being completed
- It was not decided that an extension would be had

- I am not receiving AISH benefits, AISH is the equivalent to BC PWD and do not qualify
- My file in Alta is closed. I've submitted the requested documents several times
- My file in Alta was for REGULAR assistance
- I had applied for regular assistance to get my daughters [sic] prescription covered
- RE Alberta works payments;
- Nov \$1003 was received as noted in my bank statements, \$419.94 for medications was never received. This can be verified in the submitted bank statements
- Dec \$1336 was deposited. Not \$1622 as you state. \$543.38 for medications was never received directly. This can be shown on the previously submitted bank statements requested back in March/April
- Jan \$0 was received. You state I received \$1721.00. \$1121.07 for medications was never received directly. This can be shown on the bank statements.
- January assistance is still left owing to me
- February \$1721 was received. \$502.56 for medication was not received directly. This can be confirmed on my bank statements
- March \$403.22 was not received for medication as a direct payment. This can be confirmed by looking at my bank statements
- My daughter was misdiagnosed and over-sedated by BCCH. She stopped breathing Aug. 6 2022. I was denied access to BCCH to get my daughter the care she needed due to conflict between our pediatrician in the community/myself/BCCH. In the best interest of my child, I had to come to Edmonton to see [her child's pediatrician]
- You've outlined section 15 of the legislation; my family does qualify for continued assistance until my daughter is stabilized medically and therapeutically.
- You've outlined section 15 of the legislation; my family does qualify to be supported on the basis of avoiding hardship
- It's important to note my transparency around receiving amounts from Alberta Works. I've been very cooperative in providing all supportive documentation to you
- I've been very open on our journey and continue to be open in working out some sort of a plan moving forward to make things easier
- As you state that be receiving child support, assistance in Alberta and child tax benefit should be sufficient income to support my family of five, I'd like to note that it is not sufficient as I'm left paying for prescriptions, higher utility costs, child support is deducted dollar for dollar while on assistance in Alta, that I have to pay for my daughter and my sons medical equipment, supplies, formula etc."

At the hearing, the appellant walked the panel through he points in her "Why I disagree with the Ministry's Decision" document. The appellant pointed out several errors in the ministry position.

The appellant expressed her frustration in having to deal with a different ministry worker every time she made an enquiry and asserted that this contributed to the ministry making errors.

The appellant outlined the need for her child to be receiving therapy treatment from a doctor in Edmonton and explained that this service was not available to her family in BC due to a conflict situation.

The appellant insisted she had not been told at the time of approval for a six-month exception that an extension would not be possible. Instead, the appellant testified she had been told by a ministry worker to apply for an extension before the initial six-month exception period ended.

The appellant stated that she had been receiving “regular” payments from the Alberta government and not disability assistance. The appellant also explained that she likely would not be eligible to receive disability payments from the Alberta government because its eligibility requirements are different from BC’s requirements.

The appellant stated that the ministry is wrong in claiming that the appellant is still receiving payments from Alberta Works. There also are errors in the amount of government funds that the ministry claims the appellant received from November 2022 to April 2023. The appellant referred the panel to her bank statements to illustrate these errors.

The appellant explained that she applied for an extension prior to the expiry of the initial sixth month exception period, as she had been told to do by a ministry worker in October 2022.

The appellant also addressed the ministry’s April 21, 2023 verbal statement that, before granting an extension, the ministry would need proof of residency in BC and a note from the child’s doctor identifying when her treatment would be concluded.

The appellant explained that she is paying \$2495 in rent monthly in Alberta and cannot afford to pay for rent concurrently in BC. The appellant’s advocate has been working with her to locate housing when the family does return to BC. The appellant also pointed out that her child’s doctor will not provide a firm date for completion of therapy because her child’s medical situation is complex, and it is impossible for the doctor to know when the therapy treatment will be completed.

In response to a panel question, the appellant advised that she did not receive written notice of the original approval for a six-month exception for her disability assistance in October 2022. The approval was communicated verbally instead.

In response to a related panel question to the ministry, the ministry representative confirmed that the original approval in October 2022 appears to have been communicated verbally only.

Based on the relevant legislation being silent on the question of possible extensions, the panel asked the ministry representative if there is specific policy about the length of exceptions and possible extensions. The ministry representative noted that approval for an extension for an exception regarding continuing disability assistance and the duration length of a possible extension appears to be made at the discretion of ministry personnel.

In the hearing, the ministry relied on its reconsideration decision and pointed out the following component of its reconsideration decision:

“Under Section 2 - Decision to be Reconsidered, the original approval (received October 21, 2022) stated, “Approval granted to continue disability assistance for 6 months maximum while the client is absent from BC to obtain medical therapy as prescribed by a medical practitioner for her dependent child. There may not be an extension granted. If the client has to stay longer the client should make arrangements to apply for assistance in Alberta.”

Admissibility of New Evidence

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 continuing disability assistance while she is living in Alberta. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Decision

The issue in this appeal is whether the ministry decision that the appellant is not eligible for continuing disability assistance while living in Alberta 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 argued that she should be eligible for continuing disability assistance while living in Alberta because her family is living in Edmonton on a temporary basis only while her child receives medical therapy. The ministry initially approved a six-month exception for continuation of her disability assistance for this reason.

The appellant asserted the ministry's requirement that she needs to provide proof of current residence in BC, and a note from the child's doctor identifying when medical therapy will be completed, is unreasonable.

The appellant is paying \$2,495 rent in Alberta and cannot afford pay rent in BC at the same time. The appellant's advocate is helping her locate housing in BC for the family's return to the province when her child's medical therapy treatments in Edmonton are finished.

The family's return date is unknown as her child's doctor cannot predict when therapy treatments will be completed because of the child's complex medical condition.

The appellant stated that she followed ministry instructions and made application for an extension of her exception for continuation of disability assistance, one month before the extension expired.

The appellant emphasized that she has been transparent in her dealings with the ministry and the Alberta government, including providing requested paperwork on several occasions.

Ministry Position

The ministry determined that the appellant ceased to be eligible for disability assistance because she is no longer maintaining a residence in BC. The ministry also asserted that the appellant is receiving sufficient payments from other sources.

The ministry noted the appellant was told in October 2022 when she was given a six-month exception for her disability assistance that "... there may not be an extension granted. If the client has to stay longer the client should make arrangements to apply for assistance in Alberta."

The panel asked the ministry if the Act, Regulation, or policy defines the word "resident" and, separately, the word "may." The ministry stated that they could not locate a definition for these words in the Act, Regulation, or policy.

The panel also asked the ministry if there was an expectation for the appellant to be maintaining two residences, one in Alberta and one in BC. The ministry stated that this was not an expectation.

Panel Analysis

The panel finds that the ministry decision was not reasonably supported by the following evidence:

The Ministry initially determined that the appellant qualified for a six-month exception for continuation of disability assistance under Section 15 (b) of the Employment and Assistance for Persons with Disabilities Regulation, "... permitting the recipient to obtain medical therapy prescribed by a medical practitioner."

Section 15 (b) of the Regulation is silent on the possibility and length of an extension to an initial exception granted by the ministry. The ministry relies on its policy for interpretation of whether it can offer an extension and the length of an extension period. In the hearing, the ministry representative noted that interpretation of the ministry's policy for granting an exception and possible extension of the exception is at the discretion of the ministry worker who handles an individual request.

The appellant stated that a ministry worker advised her verbally in October 2022 that, if the appellant needed an extension of the exception granted in October 2022, to make application for this before the approved six-month exception period ended.

The appellant's daughter continues to receive medical therapy in Edmonton, and the appellant filed for an extension before the approved six-month exception time period ended. The panel finds the appellant to be credible in this claim.

The ministry noted in its reconsideration decision that when the appellant was given approval for her six-month exception for disability assistance in October 2022, she was informed of the following: "... There may not be an extension granted. If the client has to stay longer the client should make arrangements to apply for assistance in Alberta."

The panel notes the ministry advised the appellant of the original six-month extension decision verbally and not in writing. Written notification of the ministry's exception decision at the time of approval in October 2022, including information about the possibility of an extension, would have provided the appellant with important clarity in this regard, from the outset.

The ministry's April 21, 2023 statement that an extension of the original six-month exception would be considered if the appellant could provide proof of current residency in BC, along with a letter from the child's doctor stating when medical therapy will be completed in Alberta, supports the interpretation that an extension of the original six-month exception is, in fact, possible.

The panel asked the ministry representative during the hearing if the ministry expected the appellant to maintain a temporary residence in Alberta and a residence in BC concurrently. The ministry representative stated that this would not be expected. This difference in policy interpretation also suggests that the ministry has latitude in the interpretation of its policy on exceptions and extensions for disability assistance.

While the ministry should not be expected to provide an "open-ended" extension to an exception for disability assistance, giving consideration to the approval of a time-specific extension would be consistent with the time-specific nature of the original exception for disability assistance.

The panel also finds that the ministry's requirement of a letter from the child's doctor in Edmonton stating when her medical therapy will be completed, is not a reasonable expectation due to the child's complex, multi-factored medical conditions.

Conclusion

The panel recognizes that this is a complex situation and that there is a difference of opinion between the appellant and the ministry regarding the possibility and terms of an extension for her initial six-month exception of disability assistance.

The panel finds that the ministry was not clear in its October 2022 verbal approval for the original exception, specifically with respect to the comments made at the time about a possible extension of the approved six-month exception.

The appellant is successful on appeal.

Applicable Legislation

Employment and Assistance for Persons with Disabilities Act

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 the Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

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

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

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2023/06/13

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2023/06/12

Print Name

Wendy Marten

Signature of Member

Date (Year/Month/Day)

2023/06/12