

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 9, 2023, which determined the appellant was not eligible for disability assistance while absent from British Columbia for more than 30 days.

Specifically, the ministry determined the appellant was not entitled to disability assistance from March 24 to April 14, 2023.

Part D - Relevant Legislation

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

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Relevant Evidence Before the Minister at Reconsideration**Ministry Records show:**

- The appellant is a sole recipient of disability assistance.
- On March 16, 2023 the ministry received information that the appellant was in another country as of February 20, 2023. The ministry attempted to reach the appellant and suspended her April cheque to prevent an overpayment.
- On March 24, 2023 the appellant contacted the ministry and advised it that she left British Columbia on February 21, 2023 and intended on returning on March 21, 2023; however, she has since rebooked her flight home for April 15, 2023. The ministry advised the appellant she was no longer eligible for assistance as she was outside the province for more than 30 days. The ministry cancelled her April cheque.

Request for Reconsideration (May 1, 2023) - summary

The appellant stated she had no idea about the 30-day rule for travelling. When she booked her trip, it was initially for 28 days. However, her friend asked if she could join her on March 23, for three weeks. So, the appellant changed her flight back to British Columbia for April 15, 2023.

The appellant also stated she did not know about special permissions; she thought a person going to another country was allowed 160 days. If she had known, she would have declined her friend's request and come home on her planned date, March 21, 2023. The appellant also stated that when she called the ministry on March 24, 2023, she was advised of the 30-day stay but her friend was there, they had already paid their rent and she had already changed her plane ticket. The appellant added that her friend had just arrived and she could not leave her by herself. She also stated she is on Persons with Disabilities (PWD) assistance for medical reasons and her doctor was happy she was getting away.

The appellant stated that she made a huge mistake by not reading PWD "leaving country" rules. It was a big learning lesson but she is asking for forgiveness and reconsideration for April's PWD cheque. As she has now learned the rules she states it would never happen

again. It was a vacation done cheaply and not meant to cost \$1700 more. The appellant adds she is a good person, clean and sober for 21 years and she would never break the rules intentionally.

Receipts from a Hotel in another Country (February 23, 2023)

The receipts cover the periods:

February 23, 2023 – March 20, 2023

March 23 – April 23, 2023

Airline Boarding Passes

From Canada to another country – Departure date – February 21, 2023

From another country to Canada - Departure date - April 15, 2023

Additional Information

Appellant

Notice of Appeal (May 12, 2023)

The appellant stated she was told about the 30-day stay on the 28th day but she had already changed her plane tickets and her friend was coming for three weeks. Rent was already paid. She would never have changed her flight had she known there was a 30-day rule.

At the hearing the appellant added that when she called the ministry on March 24, 2023 she was told she may not receive her April cheque. This information was always at the back of her mind throughout her vacation. She had already paid for the hotel (and wasn't able to get these costs back) and would also have to pay the airline for a seat change.

The appellant added that she assumed she could be away for six months but now knows that applies to the Canada Pension Plan disability program. She also added, "everyone makes mistakes".

The panel determined the additional information to be argument.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, the ministry determined the appellant was not eligible for disability assistance while absent from British Columbia for more than 30 days (March 24 to April 14, 2023).

The ministry also determined that as the appellant returned to British Columbia on April 15, 2023, she should not be denied disability assistance for the period April 15 – 30, 2023.

Appellant Position

The appellant argues she had no idea about the 30-day rule nor special permissions. If she had known, she would have declined her friend's request to join her and come home on her planned date, March 21, 2023. However, when she was advised of the 30-day stay, her friend was there, they had already paid their rent, and she had already changed her plane ticket. Her friend just arrived and she could not leave her by herself.

The appellant also stated she made a huge mistake and it was a big learning lesson but it would never happen again. It was a vacation done cheaply; it was not meant to cost \$1700 more. She argues she is a good person, clean and sober for 21 years and she would never break the rules intentionally.

Ministry Position

The ministry argues the appellant did not seek its authorization prior to being outside of British Columbia for more than 30 days. She is not participating in a formal education program outside of British Columbia and is not required to be in another country to receive a prescribed medical therapy. The ministry also argues it is unable to establish that the appellant would face undue hardship if she was not permitted to vacation in another country for an additional three weeks and continue to receive disability assistance.

The ministry added that a review of the appellant's plane tickets confirms that she left British Columbia on February 21, 2023 and returned on April 15, 2023. Under Section 15 of the Regulation, she ceased to be eligible for disability assistance when outside of British Columbia for longer than 30 days - this means the 31st day or March 24, 2023. This period of ineligibility lasted until the appellant returned to British Columbia on April 15, 2023.

Panel Analysis

Section 15, Regulation- absent from BC for more than 30 days

Section 15 of the Regulation states 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 minister has given prior authorization for the continuance of disability assistance for the purpose of:

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy, or
- (c) avoiding undue hardship.

Ministry records show the appellant advised the ministry she left British Columbia on February 21, 2023. The appellant provided a boarding pass showing her flight from Canada to another country with a departure date of February 21, 2023. The appellant also provided a boarding pass showing her flight from another country to Canada on April 15, 2023. The appellant does not dispute that she was outside Canada from February 21 to April 15, 2023. The panel notes the appellant left Canada on February 21, 2023 and would have reached the 30th day on March 23, 2023.

The appellant argues she was unaware of the 30-day rule and special permissions. The panel finds not knowing about the residency requirements while on PWD assistance cannot be considered a reasonable explanation for not complying with the legislation. The panel finds the ministry was reasonable in not consenting to the absence on day 28 when the appellant was advised of the provincial rules.

As well, the panel finds there is insufficient evidence to demonstrate the appellant was in another country to participate in an education program, obtain medical therapy or avoid undue hardship.

Therefore, the panel finds the ministry reasonably determined the appellant was not entitled to disability benefits from March 24, 2023 to April 14, 2023.

The panel notes that the ministry has stated that the appellant will be eligible for disability assistance upon her return to BC. This may be how ministry policy operates with respect to section 15. However, the legislation states that the appellant ceases to be eligible after leaving the province for more than 30 days. Based on the wording of section 15, it is quite possible that the ministry would expect the appellant to reapply.

Conclusion

In conclusion, the panel finds the ministry decision that determined the appellant is not eligible for disability benefits, while absent from British Columbia for more than 30 days (March 24 – April 14, 2023), was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

Schedule of 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.

APPEAL NUMBER 2023-0138

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/07/02

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/07/02

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2023/07/02