

Appeal Number 2023-0357

Part C - Decision Under Appeal

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

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act) section 3
Employment and Assistance for Persons with Disabilities Regulation (the Regulation) section 15

Part E – Summary of Facts

The appellant has Persons with Disabilities designation and last received disability assistance for the month of July 2023.

Information Before the Ministry at Reconsideration

- An undated (appears to be a birthdate rather than date signed) monthly report where the appellant declared changes in her shelter cost; that she was attending/enrolled in school or training and that she had moved or entered a facility. As explanation she wrote, “I have temporarily relocated to another province for school. My planned return date is December 15th. My rent is now \$950 per month, until December, when I will return to my old apartment in Vancouver, where I pay \$1300 per month in rent.
- An undated note from the appellant to the ministry where she writes (summarized):
 - I am writing this letter in response to the message that appeared in My Account on July 31.
 - My response has been delayed because as per the suggestion in your letter, I have been trying to contact an advocate, but have been unable to get a response.
 - On July 4, 2023, she relocated to the other province to begin a post-secondary program.
 - Because of her precarious health status, the institution agreed she could start a two-week class and, if successful, she could pursue the remaining summer classes. If she was able to successfully complete the summer classes, she could then pursue fall classes.
 - She has now completed the summer semester, and even with some severely limiting health days, she maintained sufficient grades.
 - The admin staff at the institution have been understanding about honouring accommodations that allow her to attend class in person. Her hope is to remain there until mid-December to complete the required in-person classes.
 - On August 24 she received \$11,030 in funding from BC student loans. (This amount covers the year’s school costs only; it does not pay for any living expenses.)
- A Request for Reconsideration form wherein the ministry notes that the appellant’s September 7, 2023 monthly report, indicating the appellant was in another province, was reviewed and she had been determined ineligible to receive assistance. As reasons for requesting a reconsideration the appellant wrote: (summarized)
 - She would like to be granted permission from the ministry to be out of the province from July 1, 2023, to December 15, 2023, on the basis of the ministry’s

policy that allows a person with disabilities to participate in a formal education program and to avoid undue hardship.

- She sincerely apologizes for failing to request prior authorization to leave the province. The main reasons she did not give prior notice is simply that she did not know she was supposed to.
- Prior to starting the program, she consulted a booklet from Disability Alliance, which confirmed that she has the right to access post-secondary education. There is nothing in the booklet about needing to notify the ministry and it did not occur to her to do so. The only requirement that the booklet highlighted was that she had an obligation to inform Student Aid BC that she was receiving income from the ministry, which she did.
- The Student Aid Notice of Assessment form (which was included with Reconsideration) confirms that she is not receiving a living allowance from Student Aid BC, on the basis that she reported to them that she receives benefits from the ministry.
- When she started the program, she only intended to be out of BC for two weeks, in order to complete the first class of the program. She was not confident that the program would be able to accommodate her disabling health conditions enough for her to be able to complete the remainder of the program.
- However, she was lucky to have classroom accommodations put in place. She explained all this to the ministry in August.
- Prior to pursuing this degree, she weighed some choices: (1) If she pursued the degree, she knew she may not be able to complete it because of health; that her health might be negatively impacted; and retraining in a field that has a diverse range of job opportunities would give her the best odds of being able to return to the workforce someday. (2) She could decline her acceptance into the program which would: leave little or no hope that she could move off of disability assistance because the disability rate is currently only \$100 more than her rent. If she is unable to pay for food and shelter, she will not be able to continue living. She is trying to fight hard for a different outcome.
- Her first application for disability assistance was denied in January 2023. She resubmitted the application and was approved. The initial denial and subsequent suspension immediately after being approved has placed her in an economic crisis. She has been pushed into the cracks of the social safety net. She is trying to climb her way out of extreme poverty, with the goal of one day moving off disability.
- She is trying to complete her studies as quickly as possible before she loses all capacity to do so.

- She has been without income for months and has been living on credit, which is now running out.
- If she has to drop out of school she will be relegated to living out the rest of her life on disability.
- When she first contacted the ministry in September about the decision to suspend her benefits, they did not inform her of her right to appeal. If she had not again called the ministry and spoke to another worker, she would not even have been aware of her right to reconsideration. It is important to ensure that persons with disabilities are made aware of their rights.
- She wants to sincerely apologize for failing to notify the ministry of her intention to pursue post-secondary education outside of the province. She was genuinely unaware that she needed to and would have notified the ministry back in June, prior to enrolment, if she thought that this was of interest to the ministry.
- She was not trying to hide this information, as evidenced by the fact that she casually mentioned it during a phone call with a ministry agent in August.
- BC Student Aid Revised Notification of Assessment dated October 20, 2023, shows the appellant is eligible to receive \$13,315. In the conditions of this assessment, it explains the breakdown and they note that as a recipient of disability assistance with the ministry she is eligible to receive assistance from Student Aid BC for educational costs only. She is expected to use her disability assistance to pay for living expenses.
- Enrolment verification from a university in the other province confirms the appellant's enrolment term start date was May 1, 2023, and end date August 31, 2023, for part-time attendance in a full course equivalent. A second enrolment verification shows term start date of September 5, 2023, with end date of April 30, 2024, for part-time attendance in a full course equivalent.
- A four-page ministry handout labelled Information for New Persons with Disabilities Designation that provides information about services and programs for which a person may be eligible.

Information Received After Reconsideration

On the Notice of Appeal form dated November 20, 2023, the appellant wrote: "Several of the reasons given for this denial were based on inaccurate information that the university provided about enrollment dates (I will submit corrected documents to the tribunal), and false assumptions by the ministry (i.e. "You must have been outside of BC since at least April"). I can submit my plane tickets correcting this."

On December 1, 2023, the appellant submitted an e-mail noting that the ministry stated that she "must have been in a different province since at least May", which is not true. She

advises that she is trying to obtain some clarifying information from Student Aid BC regarding the fact they were withholding any living allowance on the basis that she is a person with disability recipient. The appellant attached the following documentation to prove the dates of the university degree program she is enrolled in, and the dates when she left and returned to the province:

- E-ticket showing flight from BC to the other province on June 29 and June 30, 2023
- E-ticket showing flight from the other province to BC on November 30, 2023
- 10-page course outline for period January 8 – June 20, 2024, provides course description for two courses related to the practise of Social Work in approved settings and online learning modules.

At the hearing, the appellant reiterated the points previously written in her request for reconsideration and with the notice of appeal. She emphasized that she had not intentionally set out to do something against the ministry's policy and if she had been aware of the requirements to request prior approval she would have done so. It was an honest mistake. She states, due to her disability, she finds it difficult to understand information she receives from the ministry and relies on the Disability Alliance interpretation of what she may, or may not, be eligible for. Disability Alliance explains that the ministry's policy allows for persons with disabilities to attend post secondary education. Nowhere does it say she needs prior approval to do so, only that she must notify Student Aid if she were receiving disability assistance, which she did. She received funding only for tuition and books, nothing for living expenses.

The appellant states the ministry wrote that she "must have been out of province since at least the end of April because that is when the formal education started". She provided confirmation of her flight to the other province, and she did not get there until June 29, 2023. When she initially went to the other province for her program, she did not know if she would be able to complete it because of her disability and accommodations that would need to be made. Each course took one to two weeks, and it depended on how she did as to whether she would stay for the remaining fall program. As it turned out, she completed it and she returned to BC on November 30, 2023. She has been accepted for the final six months of her program, which is for online courses and a placement at an agency in BC. She does not have to go outside BC to complete the course.

The appellant states that the ministry suggested she apply for disability assistance in the other province, however you must be there for three months to establish residency, she would have had to find a doctor to complete the forms, and then another three months for a decision to be made. By the time that all went through, she would be back home in BC.

The appellant explained that the program she is taking allows her to complete her degree in one year, rather than two as would be the case if she took it in BC. Because of her deteriorating health, she wanted to complete the course as quickly as she could.

At the hearing, the ministry relied on its reconsideration and emphasized that it is a legislated requirement that a person cannot be outside the province more than 30 days without prior approval. If there was approval, it can only be for specified reasons with attending post-secondary education being one reason.

The ministry states the appellant had not obtained prior approval to be outside the province for more than 30 days. The ministry explained that persons with disabilities may attend post-secondary education, but the fact that the program she was attending was out of the province is the issue. The ministry would have required additional information to determine why the program could not be taken within BC, and this information was not provided.

When asked whether the ministry requested this information from the appellant, the response was that the appellant was informed on July 31, 2023, that a monthly report was required, and she needed to notify the ministry if she would be outside the province for more than 30 days. The next contact the appellant had with the ministry was when a monthly report was submitted on September 7, 2023.

Admissibility of Additional Information

The panel admits the appellant's Notice of Appeal statement, plane tickets, and educational program submission, along with the oral evidence given at the hearing, under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision to discontinue disability assistance because she has been absent from British Columbia for more than 30 days was reasonably supported by the evidence or was a reasonable application of legislation in the circumstances of the appellant.

Appellant Position

The appellant's position is she was not aware that she was required to report to the ministry she was attending an educational program in another province, and if she had been aware she most certainly would have sought prior approval. The appellant considers it unreasonable that her benefits were discontinued due to an honest mistake on her part. She objects to the insinuation that she was dishonest with the ministry. She made no efforts to hide her activities, and she needs the income from this period of time to survive. In her view, had she not made this honest mistake, the ministry would have given approval for her to attend the out of province program.

Ministry Position

The ministry's position is that the legislation requires prior approval be obtained prior to obtaining post-secondary education outside the province for more than 30 days and the appellant did not have their prior approval.

Panel Decision

Section 3 of the Act explains how a family unit is eligible for disability assistance if each person satisfies the initial and continuing conditions of eligibility and have not been declared ineligible for the disability assistance. The ministry has determined the appellant is ineligible for disability assistance because the requirements of section 15 of the Regulation have not been met.

Section 15 of the Regulation sets out that a recipient of disability assistance, who is outside of BC 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 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

In the appellant's circumstance, she admits she did not obtain prior authorization to attend her post-secondary program because she was not aware she was required to do so. The panel notes the appellant contacted the ministry on July 31, 2023, because she had not received her August disability assistance. On this call she informed the ministry she had been out of the province for about two weeks. The ministry informed the appellant that a monthly report was required and that she would need to notify the ministry if she would be out of the province more than 30 days. In her written submission, and oral statements, the appellant indicated that initially she did not know how long she would be in the program, that she was taking it week by week. It is unfortunate the ministry did not fully explain, while on this call, that, if she were to continue with the program, she must have prior authorization to stay more than the 30 days. The panel notes that the record shows there was no contact from the appellant between the phone call on July 31, 2023, and the letter from the appellant dated September 7, 2023. The appellant did not receive prior authorization from the ministry to be out of the province for more than 30 days to attend a formal education program.

The appellant was not receiving out of province medical therapy, so this subsection is not relevant.

The ministry argues that because the appellant did not provide documentation that she could not receive assistance in the other province, that she was not facing an undue hardship, therefore not eligible per section 15(c). The panel notes the wording of section 15(c) indicates that "unless the minister has given prior authorization for the continuance of disability assistance for purpose of (c) avoiding undue hardship." The appellant did not indicate the reason she was out of BC was to avoid undue hardship, only that she was out to attend her educational program, so this subsection is not relevant.

The panel appreciates that the appellant was not trying to mislead the ministry in any way and understands that she looks to the Disability Alliance for interpretations, rather than contacting the ministry, because she finds the ministry's wording confusing. However, the ministry must apply the legislative requirements. Any requests or changes in circumstance must be reported to the ministry to ensure ongoing eligibility. The panel makes its decision based upon whether the ministry was reasonable in its application of the legislative requirements. The panel finds the ministry was reasonable to discontinue assistance because the appellant was outside the province for more than 30 days without prior authorization.

Conclusion

The Panel finds that the ministry's reconsideration decision to discontinue disability assistance because the appellant had been absent for more than 30 days was a reasonable application of the legislation in the appellant's circumstances and therefore confirms the decision. The appellant is not successful on appeal.

RELEVANT LEGISLATION

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,
(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.

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) or Section 24(1)(b)

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

Part H – Signatures

Print Name

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023/12/05

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2023/12/07

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/12/07