

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 3, 2024 that determined that the appellant is not eligible for Medical Services Only (MSO).

Specifically, the ministry stated that "EI (Employment Insurance) income is not one of the eligibility reasons for MSO as per section 61.1 of the Regulation". The ministry added that that the fact that they closed the appellant's file in December 2023 has no impact on their decision.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the Regulation) section 61.1

This section of the legislation can be found at the end of the decision.

Part E – Summary of Facts

The hearing took place on May 24, 2024 as a written hearing.

Information before the Ministry at Reconsideration

In Section 2 of the Request for Reconsideration form (Decision to be Reconsidered) the ministry noted:

- On February 15th, 2024 the appellant requested a document that states why his file was closed.
- The appellant indicated that he had continued to submit monthly reports and that he believes he is eligible for disability assistance at the time of his annual earnings exemption roll over. [On appeal the ministry clarified that the appellant contacted the ministry about his March 2024 disability assistance as he expected that he would qualify for March 2024 disability assistance when the AEE reset.]
- He was advised he can reapply for assistance to reopen his file, but he requested this document with the information as to why his file was closed.

In the request for reconsideration dated March 15, 2024, the appellant's advocate wrote, in part:

- In October 2023 when his Employment Insurance benefit ended, the appellant was not provided with an opportunity to request an eligibility review that may have prevented his file from closing in December 2023.
- The appellant is a person with disabilities and as such not aware of all benefits and remedies that may be available to him.
- The appellant continued to complete his monthly reports and was surprised his file had closed. That put him in a position of financial hardship, which could have been avoided had the ministry notified him of the status of his file.
- The appellant's focus is on the ministry's decision to close his file. Other factors contributed to the effects of the decision to close his file such as medical coverage and recent medical issues.

In their reconsideration decision dated April 3, 2024, the ministry wrote:

- "This review is about eligibility for MSO.
- Upon review, the ministry confirms that you were not eligible for a Medical Services Only (MSO) file as a continued person, because you ceased being eligible for disability assistance because of EI income. EI income is not one of the eligible reasons for MSO as per section 61.1 of the EAPWD Regulation...

- The fact that your case remained opened while on EI and auto closed in December 2023 has no impact on the outcome of this decision.”

Additional Information Submitted after Reconsideration

In his Notice of Appeal (April 11, 2024) the appellant submits that he did not request an MSO file but wants to know why his “PWD monthly income account” had been closed.

In his April 29, 2024 submission to the Tribunal the appellant submits, in part:

- His request was not about MSO but about the closure of his file and his monthly disability assistance.
- The ministry told him that his Employment Insurance would be deducted “\$ for \$” against his monthly assistance, and that he should keep filing monthly reports. They did not tell him that his file would be closed.
- The ministry ignored his advocates arguments.

In its May 7, 2024, submission, in response to the appellant’s April 29, 2024 submission, the ministry writes that they would like to provide the following information and explanation:

- The reconsideration decision was intended to explain why the appellant ceased to be eligible for disability assistance in May of 2023, why his file closed in December of 2023, and why it is reasonable the ministry required a re-application to establish his eligibility for disability assistance.
- Closing the appellant’s file is an administrative task performed by the ministry’s case management system.
- The appellant received disability assistance for March and April of 2023. On April 5, 2023 the appellant reported \$2240 Employment Insurance he received in March. As this amount was more than the rate of assistance for their family unit size, he ceased to be eligible for disability assistance as of May 1, 2023. The appellant continued to receive Employment Insurance in the amount of \$2240 per month until October 2023, and therefore they remained ineligible up to and including the month of December 2023.
- As the appellant did not cease to be eligible for disability assistance because of federal pensions or employment income, the appellant did not qualify for coverage under the ministry’s MSO program. In cases where a recipient is no longer eligible for assistance or MSO their file remains open for 6 months in case there is a change in their circumstance.
- A review of the appellant’s file confirms he reached the Annual Earnings Exemption (AEE) limit for 2023 employment income in September. This occurred because he

reported \$4980.18 employment income in January 2023 reducing his remaining limit to \$10019.18. For each month he did not receive assistance in 2023 the remaining limit was reduced by \$1250. Once the AEE limit was reached, any other employment income received in 2023 is not exempt and would be deducted from his assistance dollar for dollar according to the reporting cycle.

- When the appellant returned to work in November of 2023, he declared \$3451.61 employment income received in November. As his November income was more than the rate of assistance for the family unit size, the appellant was not eligible for January disability assistance. On December 16, 2023 the appellant's file closed automatically by the system because he had not received assistance since April of 2023, and did not qualify for MSO.
- The appellant did not submit a monthly report declaring December income and does not dispute the denial of disability assistance for the period of May 2023 to January 2024.
- The appellant contacted the ministry about his March 2024 disability assistance on February 13, 2024 as he expected that he would qualify for March 2024 disability assistance when the AEE reset. The ministry worker noted on the appellants file that they informed him that he would need to re-apply because his file had closed two months earlier.
- As the appellant had not received disability assistance in 9 months and the file was closed it is reasonable the ministry required a re-application to establish their eligibility for disability assistance.

In an email dated May 9, 2024, the appellant writes, in part:

- He filed all monthly reports, contrary to the ministry's statement that he did not submit 1 report.
- He is poor and has debts that affect his health.
- He would prefer not to be dependent on assistance.

New Evidence Provided on Appeal and Admissibility

Neither the appellant nor the ministry objected to the admission of the additional information. The panel finds that the information provided by the appellant and the ministry on appeal is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, because it provides a fuller picture and explanation of the appellant's original request and the ministry's closure of his file. The panel therefore admits this 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 determined that the appellant is not eligible for MSO benefits is reasonably supported by the evidence or a reasonable application of the legislation. Was the ministry reasonable when it found that Employment Insurance income is not one of the eligibility reasons for MSO as per section 61.1 of the Regulation? Was the ministry reasonable when their decision did not explain or respond to the issue of the closure of the appellant's file?

Appellant's Position

The appellant argues that his main issue is the ministry's decision to close his file. He did not request MSO benefits but wants to know why his "PWD monthly income account" had been closed. He should have been provided with an opportunity to request an eligibility review that may have prevented his file from closing. When his file unexpectedly closed, he was put in a position of financial hardship, which could have been avoided had the ministry notified him of the status of his file.

Ministry's Position

In the reconsideration decision the ministry stated that their review was about eligibility for MSO. The ministry determined the appellant does not meet the eligibility criteria set out in section 61.1 of the EAPWD Regulation and is therefore not eligible for MSO. They submit that the appellant ceased being eligible for disability assistance due to Employment Insurance income which is not one of the allowable reasons to provide an MSO file.

On appeal, the ministry clarified that the reconsideration decision was intended to explain why the appellant ceased to be eligible for disability assistance, why his file closed, and why the ministry was reasonable when it required the appellant to re-apply for disability assistance. The ministry explained that in cases where a recipient is no longer eligible for assistance or MSO their file remains open for 6 months in case there is a change in their circumstance. Closing a recipient's file is an administrative task performed by the ministry's case management system. As the appellant did not cease to be eligible for disability assistance because of federal pensions or employment income, the appellant did not qualify for coverage under the ministry's MSO program, and eventually his file was closed automatically by the system. As the appellant had not received disability assistance

in 9 months and the file was closed it is reasonable that the ministry required a re-application to establish the appellant's eligibility for disability assistance.

Panel Decision

The panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for MSO is not reasonably supported by the evidence, nor is it a reasonable application of the legislation.

Section 61.1(3) sets out 6 types of income that allow for the MSO eligibility.

Section 61.1(3)(d) sets out that a person is eligible for the MSO program if the person, while in receipt of disability assistance, ceases to be eligible for disability assistance as a result of receiving employment income. The panel finds that Employment Insurance falls into this category, as it is the result of receiving employment income and there is no stipulation that section 61.1(3)(d) only applies to earned income. The legislature chose the term "result of ... receiving employment income" to describe the type of employment referred to in section 61.1. The legislature did not refer to "earned" or "unearned income" as defined in section 1. Because a different term is used, it must mean something different. The meaning of "result of ... receiving employment income" differs from the meaning of "earned" or "unearned income". The panel considers "employment insurance" to be a "result of employment income" because a person must have been employed to receive employment insurance.

The panel finds that the ministry's decision that the appellant is not eligible for MSO is not a reasonable application of section 61.1 of the Regulation. The appellant's Employment Insurance is income received "as a result of receiving employment income" (section 61.1(3)(d)). As mentioned above, there is no requirement in the legislation that section 61.1(3)(d) only applies to earned income. Therefore, the ministry was not reasonable when it determined that receiving Employment Insurance disqualified the appellant from MSO status.

The panel finds further that the ministry is unreasonable when it closes clients' files routinely or automatically without considering the circumstances of a client, for example, where a client receives employment income and other benefits that are deducted \$ for \$ from the assistance rate, and where it is foreseeable that at some point this client may qualify for assistance again. The panel also finds the ministry to be unreasonable when no advance notice is given in case of a possible file closure. Advance notice allows the client to deal with the consequences of a file closure in a timely manner and to exercise their reconsideration and appeal rights.

In addition, the panel finds that the ministry's decision to auto-close the appellant's file was unreasonable and that his file should have remained open because he meets the requirements of section 61.1(3)(d) of the Regulation. (see above).

Lastly, the panel finds the ministry's reasons were insufficient because the ministry did not address the appellant's request. The appellant's request was not for MSO benefits, but for his file to remain open. This is confirmed by the ministry on appeal. In their reconsideration decision, the ministry solely discussed the appellant's MSO status and failed to explain how the appellant's request that his file remain open relates to their determination that the appellant does not qualify for MSO.

Conclusion

The panel finds that the ministry's decision that the appellant is not eligible for MSO is not reasonably supported by the evidence nor is it a reasonable application of the legislation in the circumstances of the appellant. The ministry's decision is rescinded, and the appellant is successful in his appeal.

Employment and Assistance for Persons with Disabilities Regulation

Definitions

1 (1) In this regulation:

"earned income" means

(a) any money or value received in exchange for work or the provision of a service,

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(g) employment insurance;

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and

(ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance ...

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan* (Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

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(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

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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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2024/05/29

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2024/06/01

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2024/06/01