

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated January 9, 2012 which found that the Appellant was ineligible for Persons with Disabilities Assistance benefits ("PWD Benefits") for the month of November 2011. The Ministry found that the Appellant did not apply for PWD Benefits until December 5, 2011 and he was therefore not eligible to receive PWD Benefits for the month of November 2011 pursuant to section 23 of the Employment and Assistance for People With Disabilities Regulation ("EAPWDR").

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") section 23

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of:

1. The Appellant's Request for Reconsideration and letter dated December 20, 2011;
2. The Appellant's Employment Insurance Payment Summary dated December 7, 2011; and
3. A Ministry Employment and Assistance for Persons with Disabilities application form dated December 5, 2011.

The Appellant applied for PWD Benefits on December 5, 2011. This application converted his file from Medical Services Only to Persons with Disability ("PWD") Assistance. The Appellant was receiving Employment Insurance benefits at the time of his application for PWD assistance. The Appellant was approved for PWD assistance for the month of December 2011 and on December 6, 2011 he requested PWD assistance for the month of November 2011.

In the Request for Reconsideration, the Appellant says that he did not have any income beginning on November 1, 2011. He states further that he received two separate Employment Insurance benefit payments during the month of November 2011 but that these related to the month of October 2011 and were generated in October 2011. The Appellant notes that he owes money to a credit card company.

In his Notice of Appeal, the Appellant says that he had no income during the month of November 2011 and that all Employment Insurance benefit payments received were for October 2011. He goes on to say that he had no income, no savings and that he owed money to a credit card company.

At the hearing, the Appellant submitted that he first applied for income assistance in 2009 and received benefits retroactively. He submitted that the reason he was denied PWD Benefits for the month of November 2011 was due to the fact that he had received Employment Insurance benefits in November 2011 but as those benefits were for the month of October 2011, he didn't understand why this applied to his request for PWD Benefits for November 2011. The Appellant then confirmed that he was told by the Ministry worker that the reason for his not receiving PWD Benefits for the month of November 2011 was due to the timing of his application on December 5, 2011.

At the hearing, the Ministry stated that the Appellant applied for PWD Benefits on December 5, 2011 and he was found eligible based on his income and asset levels beginning in December 2011 but that due to the language of the EAPWDR and specifically, the date of his application, there was no discretion to backdate the PWD Benefits to November 2011. The Ministry had no knowledge of the Appellant's 2009 receipt of benefits and could not comment on that. The Ministry stated that for Employment Insurance benefits received, the Ministry considers the benefits in the month they were received as opposed to the month they are intended and had the Appellant applied to the Ministry for PWD Benefits in November 2011, his Employment Insurance benefits would have been considered.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which found that the Appellant was ineligible for Persons with Disabilities Assistance benefits ("PWD Benefits") for the month of November 2011. The Ministry found that the Appellant did not apply for PWD Benefits until December 5, 2011 and he was therefore not eligible to receive PWD Benefits for the month of November 2011 pursuant to section 23 of the Employment and Assistance for People With Disabilities Regulation ("EAPWDR").

Section 23 of the EAPWDR provides as follows:

23 (1) Subject to subsection (1.1), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.

(2) A family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement from the date of the minister's decision on the applicant's request under section 16 (1) of the Act [reconsideration and appeal rights] in relation to the supplement.

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the date of the

minister's decision on the applicant's request under section 16 (1) of the Act [reconsideration and appeal rights] in relation to the designation.

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible for disability assistance;

(b) 12 calendar months before the date of payment.

(5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

[am. B.C. Reg. 340/2008, s. 2.]

The Appellant argues that he had no income in November 2011 and despite the written law, the spirit of the EAPWDR and the purpose of income assistance justify his receipt of PWD Benefits for November 2011 despite the fact that he did not apply for them until December 5, 2011.

The Ministry's position is that the Appellant applied for PWD assistance on December 5, 2011 and that s.23 of the EAPWDR is clear that the Appellant did not become eligible for PWD Benefits until the date of his application and that there is no discretion in the regulation whereby the Appellant may receive PWD Benefits prior to the date of eligibility.

The Panel finds that the Appellant applied for PWD Benefits on December 5, 2011 and that he was found eligible for those benefits the same day. Section 23(1.2)(c) of the EAPWDR provides that an applicant for PWD assistance becomes eligible for assistance on the date of the application. There is no discretion in the regulation to backdate the application to provide for the Appellant's request for PWD Benefits in November 2011. The Appellant's receipt of Employment Insurance benefits is not a relevant consideration in the determination of whether he is entitled to PWD Benefits in November 2011.

The Panel finds that the Ministry's determination that the Appellant is not eligible for PWD Benefits in November 2011 is a reasonable application of the enactment in the circumstances of the Appellant and the Panel therefore confirms the Ministry's decision.