

PART C – Decision under Appeal

The decision under appeal is the April 11, 2012 reconsideration decision of the Ministry of Social Development (the ministry) in which the ministry denied the appellant disability assistance for approximately two months by finding her eligibility to commence on February 1, 2012 rather than on the date of submission of the appellant's application for designation as a person with disabilities (PWD) which was December 7, 2011.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWD), section 23

PART E – Summary of Facts

With the written consent of both parties, this hearing was conducted as a written hearing in accordance with s. 22(3)(b) of the *Employment and Assistance Act* (EAA).

The information before the minister at the time of reconsideration included the following:

- A letter from the ministry to the appellant dated January 9, 2012 advising the appellant that her PWD application had been approved effective February 1, 2012. The letter explained that disability assistance includes medical/dental coverage, access to health supplements and exemption from time limits, but is dependent on financial and other criteria being met.
- A letter from the appellant to the ministry dated January 31, 2012 in which the appellant requested that her eligibility for disability assistance be made effective to December 7, 2011 – the date on which the appellant submitted her PWD application to the ministry. The appellant explained that she had signed her portion of the PWD application in September, 2011 and that rather than completing and submitting the form to the ministry, her physician's office misplaced the PWD application until the appellant made enquiries in December. The appellant then picked up the completed PWD application from her physician's office and hand-delivered it to the ministry on December 7, 2011. The appellant wrote that she had been informed by two representatives of the ministry's office that her PWD application would be date stamped on the day it was received by the ministry and made effective for that date. She explained that her landlord had been waiting for payment.
- A Request for Reconsideration, including a written submission by the appellant. In her submission the appellant largely reiterated the information that had been in her January 31, 2012 letter with some additional detail. She stated that 2 different employees of the ministry had told her on 2 separate occasions that a decision on her PWD application would likely take 3 months, but that if approved the effective date would be in December 2011. The appellant wrote that determining eligibility from the date of application must be a practice of the ministry, and that if other files are handled that way then hers should be no exception. She also asserted that she was aware that owing to her particular disability "normal" deadlines and time frames are not applicable. The latter was a reference to the "exemption from time limits" referenced in the ministry's approval letter of January 9, 2012. The appellant wrote that she'd had severe symptoms of her disability recently.

With her Notice of Appeal the appellant provided a written submission dated April 20, 2012. In it she largely reiterated her previous evidence. She advised that on the basis of verbal commitments made by the ministry with respect to the effective date of her eligibility being the date of submission of her application, the appellant had assured her landlord that additional rent money would be forthcoming and she continued to live at her residence. She explained her frustration at discovering that she was "out \$600" and facing eviction from her residence of 3 years.

The panel considered the appellant's April 20 submission as providing additional detail of her request for an earlier eligibility date for disability assistance. Accordingly, the panel accepted her submission as being written testimony in support of information and records that had been before the ministry at the time of reconsideration, in accordance with s. 22(4)(b) of the EAA.

The ministry relied on its reconsideration decision, in which it had relied on s. 23 of the EAPWDR in declaring the appellant's eligibility for disability assistance effective February 1, 2012 being the first day of the month following her designation as a PWD. The ministry determined that there was no record of ministry workers advising the appellant that her effective date would be the date of submission of her PWD application to the ministry, but that the ministry's Reconsideration Branch had "made the ministry's Health Assistance Branch and the Employment and Assistance Office aware of the situation."

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in its decision to deny the appellant almost 2 months of eligibility for disability assistance by declaring her eligible for disability assistance effective February 1, 2012 rather than December 7, 2011.

The relevant legislation is as follows:

EAPWDR

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 sections 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 sections 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date...

The appellant's position is that she relied on verbal advice received from 2 ministry workers on 2 separate occasions to assure her landlord that she would have the funds to pay for rent for December 2011 and January 2012. She feels that it must be a standard practice of the ministry to backdate the effective date for eligibility in this manner and that it is unfair to deny her the same consideration as has been provided to other applicants.

The ministry's position, as expressed in the reconsideration decision, is that it determined the eligibility date simply by applying the relevant the legislation.

In the panel's view, the language of s. 23 is clear and unambiguous in setting the eligibility date for disability assistance as the first day of the month following the appellant's designation as a PWD. The appellant's PWD application was approved on January 9, 2012 and the designation was declared in the ministry's January 9 letter to be effective February 1, 2012. The reconsideration decision which is the subject of this appeal clarified that the PWD designation was made on January 9, 2012 and that the appellant's eligibility for disability assistance commenced February 1st. Despite the appellant's belief that backdating eligibility to the date of submission of the PWD application is a common practice within the ministry, and even accepting that she was so advised by ministry staff, the panel has not been provided with any evidence that such a policy or practice exists, or that any authority for such a policy or practice exists. The legislation does not provide the ministry with any discretion in this regard. The ministry has done precisely what the legislation requires it to do. This panel is bound to apply the legislation.

Accordingly, the panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant, and confirms that decision.