

PART C – Decision under Appeal

The decision under appeal is the June 7, 2012 reconsideration decision of the Ministry of Social Development (the ministry) in which it determined that it could not back date the appellant's disability assistance for several months before June 1, 2012 because it had not determined that the appellant qualified for PWD status until May 15, 2012.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The appellant suffers from a cognitive impairment and did not attend the hearing, but was represented by his spouse. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing in accordance with s. 86(b) of the Employment and Assistance Regulation.

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

- The appellant has a severe cognitive impairment, and has also had knee surgery and an intestinal resection.
- The appellant had originally applied for PWD status in late 2010 or early 2011. Because the appellant lives in a remote community, his dealings with the ministry initially took place through the Service BC office in his local community rather than directly with the ministry.
- Throughout the time subsequent to filing the PWD application, the appellant's spouse made diligent enquiries at the Service BC office as to the status of the application. She was repeatedly told to be patient, that PWD decisions take time, and that the decision was pending. Finally, on making another enquiry on October 3, 2011, the appellant was advised that the appellant's application had been denied on August 22, 2011. The appellant had received no notification of the denial from Service BC or the ministry prior to the appellant's spouse's enquiries on October 3.
- On October 5, 2011 the ministry provided the appellant with a Request for Reconsideration package. On October 26, the appellant's spouse submitted supplementary medical information.
- Subsequently, as directed by the ministry, the appellant continued to provide supplementary medical information as it became available, including on October 26, 2011; January 6, 2012, and April 24, 2012.
- The ministry has no record of ever receiving the Request for Reconsideration. Accordingly, on December 6, 2011 the ministry determined that the appellant's application had been abandoned and closed his file. On April 24, 2012 the appellant's spouse made further enquiries about the status of the application and she was advised that no decision had been made. The appellant received no notification that his file had been closed until his spouse was again making status enquiries on May 2, 2012.
- On May 10, 2012 the appellant's spouse spoke to a ministry supervisor who went through the ministry's files and confirmed that there was no record of the Request for Reconsideration on file. A new Request for Reconsideration was signed and submitted that day.
- The appellant was advised by the ministry by letter dated May 15, 2012 that his PWD application had been approved effective June 1, 2012.
- On May 24, 2012 the appellant submitted a Request for Reconsideration regarding the effective date of his PWD eligibility, stating that the eligibility should have been assessed as of

"last fall", as by then the appellant had already submitted results of his cognitive assessment. The Request for Reconsideration included an undated letter from a clinician confirming that the appellant had been diagnosed by a psychiatrist on October 25, 2011 as having adjustment disorder with depressed mood and anxiety, including difficulty with anger and communication. On Nov. 4, 2011 a Montreal Cognitive Assessment of the appellant was completed and he scored 22/30, with any score less than 26 indicating cognitive impairment. The letter also referred to the appellant's recent intestinal surgery and pending knee surgery. In the written submission made as part of the Request for Reconsideration the appellant's spouse reported that the knee surgery had been performed before Christmas 2011.

On June 7, 2012 the ministry made the reconsideration decision which is the subject of this appeal. The ministry acknowledged that there "may have been a miscommunication" regarding the status of the appellant's PWD application. The ministry speculated that the appellant may not have been eligible for PWD designation last fall, since the appellant's medical situation kept changing as evidenced by the number of times that supplemental medical information was submitted during the period October 2011 to April 2012. The ministry found that it had no discretion to backdate the appellant's eligibility to an earlier date because of the directory nature of s. 23(1) of the EAPWDR which provides that, subject to some exceptions that do not apply to the appellant, an applicant for PWD designation "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 [PWD]".

In the Notice of Appeal the appellant's spouse described the series of miscommunications that had occurred with respect to the appellant's PWD application and maintained that the results of the cognitive assessment last fall made it clear that the appellant was unemployable then. She described the diligent efforts she had made to keep up to date on the appellant's file status and the dismissive responses she received from staff. She wrote that the ministry's inaction had caused a 5 month delay in receiving any assistance.

At the appeal hearing, the appellant's spouse said that he had worked sporadically during his life until his knee was injured on the job 2 years ago. For most of his life he had lived on a First Nations reserve and had been dependent on social assistance provided by the band. She reiterated the evidence of the numerous instances of miscommunication between herself and the ministry and/or Service BC, and said that the local office had been subject to significant staff turnover during the relevant times. The appellant's spouse said it was late October or early November that the appellant submitted the Request for Reconsideration of the PWD denial by mailing it to the address provided with the package. She was adamant that the medical evidence regarding the appellant's cognitive impairment was submitted "last October or November". She said that she and the appellant have had to make a dozen long medical trips recently that have almost bankrupted them, and she described how their financial difficulties - exacerbated by the unnecessary delays caused by ministry errors - have caused immense stress in their relationship.

The panel considered the evidence provided by the appellant's spouse at the hearing as providing additional detail of the appellant's request for an earlier eligibility date for disability assistance. Accordingly, the panel accepted her evidence as being oral 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.

APPEAL #

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in deciding that it could not back date the appellant's disability assistance for several months before June 1, 2012 because it had not determined that the appellant qualified for PWD status until May 15, 2012.

The relevant legislation is as follows:

EAPWDR

23(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.

The appellant's position is that by last fall – by October or November - the ministry had all the information and evidence it needed to declare the appellant eligible for disability assistance. His spouse was adamant that despite the ministry's speculation that the appellant's medical situation had "changed" during the period October 2011 to April 2012, the cognitive impairment that was the primary basis for his PWD designation was established last fall, and both surgeries had been performed by then. If not for the ministry's repeated errors in losing the appellant's reconsideration package and failing to keep the appellant adequately informed of the status of his application - despite his spouse's best efforts to keep informed - his PWD designation would have been approved months sooner. His spouse argued that legislation or no legislation, the appellant feels he is being penalized for ministry staff errors.

The ministry's position is as expressed in the reconsideration decision – that the appellant may not have been eligible for PWD status last fall as supplemental medical information was received after that date. In any event, says the ministry, it has no discretion to backdate the appellant's PWD eligibility and it determined the eligibility date simply by applying the relevant 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 May 15, 2012 and the designation was declared in the ministry's May 15 letter to be effective June 1, 2012. The panel is sympathetic to the appellant's situation and the unnecessary hardship he and his spouse have endured due to the delays caused by miscommunication. However, the panel does not have all of the medical evidence that was before the ministry and cannot speculate as to when the appellant may have or should have been approved for PWD designation. Even if the panel could make that determination, the legislation does not provide any discretion in setting the eligibility date. The ministry has determined the date in the manner the legislation requires it to do. This panel is bound to follow 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.