

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated July 9, 2014 which held that the appellant was not eligible for back payment of disability assistance before being designated as a Person with Disabilities. The Ministry held that the appellant was approved for Persons with Disabilities designation (PWD) on March 7, 2014 and became eligible for disability assistance on April 1, 2014 under s. 23(1)(a) of the Employment and Assistance for Persons with Disabilities Regulation. Hence, no disability assistance was payable before that date.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Section 23 -
Effective date of eligibility

PART E – Summary of Facts

A release of Information form for a representative for the appellant was received and noted. Neither the appellant nor the appellant's representative was in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the EAR. The Ministry had requested the presence of an observer for training purposes, but in the absence of the appellant their permission could not be sought, and permission to attend as an observer was denied.

The evidence before the minister at reconsideration was:

- A request for reconsideration dated June 16, 2014 stating that the appellant is a permanent child / adult in care and that the late application was because transitioning from youth to adult and that the transfer should have been done by the ministries that were involved.
- A letter from the appellant's caregiver dated May 13, 2014, providing background to the issue. It stated that:
 - the appellant had been a child with special needs in care with the Ministry of Children and Family Development (MCFD);
 - the appellant turned 19 years old in October 2013 and responsibility for care moved from MCFD to Community Living BC (CLBC)
 - neither the MCFD nor CLBC responsible officials completed a PWD application in anticipation of the appellant's 19th birthday
 - the application for assistance was not completed until January 2014
 - the persons providing shelter and food to the appellant from the appellant's 19th birthday in October 2013 up to April 1 2014 had not been paid for their services.
- The appellant signed part 2 of an Income Assistance application on 31 January 2014.
- The PWD designation was granted on March 7, 2014 effective April 1, 2014.

The reconsideration decision stated that "The Reconsideration Officer explored other resources and Ministry policy based on the circumstance of your case; however there are no exemptions for this type of request."

At the hearing the Ministry representative reiterated the points made in the reconsideration decision, noting that it was unfortunate that application for PWD designation had not been made on or before the appellant's 19th birthday but that the Ministry under its legislation was unable to provide assistance for a period before an applicant had applied for assistance. The Ministry representative acknowledged that it had been the responsibility of another Ministry (MCFD) and of workers/advocates for the appellant to ensure that the application was made on time to ensure a smooth transition from support as a child to support as an adult PWD. The Ministry further stated that there were no concerns or questions regarding the appellant's eligibility for designation as a PWD. The Ministry confirmed that in cases where the Ministry had made an administrative error (such as misplacing an application) they were able to correct this. However, there was no evidence and no claims had been made that an application on behalf of the appellant had been made prior to January 31, 2014. The Ministry also informed the panel that support and shelter allowance for February and March 2014 had subsequently been paid to the appellant under the EAR, as per the reconsideration decision.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment

and Assistance Act as it was in support of the records before the minister at reconsideration because it confirmed and expanded on the dates of application and the provisions of the legislation with respect to early application and the practices of the Ministry in the case of administrative error.

PART F – Reasons for Panel Decision

The issue before the Panel was whether the Ministry's decision to determine the appellant was ineligible for back payment of disability assistance before being designated as a Person with Disabilities was a reasonable application of the legislation or reasonably supported by the evidence.

The EAPWDR, section 23 (1) (a), provides that an applicant is not eligible for assistance until the first day of the month after the month in which the applicant has been designated as a PWD.

Furthermore, section 23 (5) specifies that assistance is not provided for services provided or costs incurred before the calendar month in which assistance is requested. Section 23 (1.1) allows for persons aged 17 to apply for designation as a PWD so that they are eligible for disability assistance from their 18th birthday.

The Ministry argues that:

- The EAPWDR does not permit payment of disability assistance prior to the date on which an applicant becomes eligible – the first day of the month following their designation as a PWD. Because the designation of the appellant as a PWD was made dated March 7, 2014, the first date of eligibility for disability assistance was April 1, 2014. The EAPWDR does not allow for disability assistance to be provided for services or costs incurred before the calendar month in which the PWD designation is effective.
- The appellant did complete an application for income assistance part 2 form on January 31, 2014, and as such is therefore eligible to receive shelter and support assistance for the full months of February and March 2014, prorated support for January 31 2014, and any shelter costs that were unpaid on January 31, 2014.

The appellant argues that an error was made in the appellant's transition from status as a child in care of the MCFD to an adult PWD. An application for PWD designation should have been completed on the appellant's behalf by the responsible child or adult social worker in advance of the appellant's 19th birthday to ensure a smooth transition. This was not completed and the appellant was no longer eligible for support as a child in care from October 2013. The caregivers and home providers for the appellant from November 2013 through to the end of March 2014 have received no payment to cover the cost of shelter and food for the appellant. Since the provincial government is responsible for the error, the Ministry should allow back payments for the 5 months that were missed.

The panel finds that the legislative requirement for eligibility for disability assistance is precise, with assistance starting only on the first day of the month following designation of the applicant as a PWD. The panel also finds that the designation was made on March 7, 2014, being effective on April 1, 2014. The panel notes that the legislation provides for application for designation as a PWD of a child from their 17th birthday, and that it was the responsibility of those responsible for the care and oversight of the appellant, as a child in care of the MCFD up to the appellant's 19th birthday in October 2014, to ensure that all appropriate preparation for the appellant transitioning to care as an adult was made, including applying for disability assistance.

Therefore, the panel comes to the conclusion that the Ministry reasonably determined the appellant was not eligible for disability assistance until April 1, 2014, being the first day of the month after the month in which the minister had designated him as a PWD under s. 23 of the EAPWDR.

Consequently, the panel finds the Ministry's decision was a reasonable application of the applicable

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enactment in the circumstances of the appellant and confirms the decision.