

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 12, 2015 which denied the appellant Persons With Disabilities (“PWD”) benefits prior to January 1, 2015 pursuant to section 23(1) of the *Employment and Assistance for Persons with Disabilities Regulation* and on the basis that she was not designated by the minister as a PWD until December 9, 2014.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 23

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment Assistance Act*.

The evidence before the ministry at the time of the Reconsideration Decision included the following:

1. The appellant's Request for Reconsideration dated February 11, 2015 consisting of two pages of written submissions ("the RFR Submissions");
2. A letter from the appellant addressed to the ministry dated December 1, 2014 attaching one page of written submissions;
3. A letter dated December 9, 2014 from the ministry to the appellant confirming approval of PWD designation and attaching ministry PWD Approval Designation Summary;
4. An email dated November 27, 2014 from a ministry case worker to another ministry employee querying the status of the appellant's PWD application; and
5. A copy of the appellant's PWD application dated November 29, 2014 by the appellant but noted "original application signed in February 2014" and dated December 19, 2013 by the ministry; and
6. A note from the appellant's physician dated November 28, 2014 regarding her medical condition in relation to her PWD application.

The Reconsideration Decision indicates that on December 18, 2013, the appellant requested an application for PWD designation from the ministry while re-applying for disability assistance from Medical Services Only ("MSO") which she and her husband began receiving in 2011.

The appellant attended a ministry office on February 27, 2014 and delivered a completed PWD application form which a ministry worker witnessed and mailed to the Health Assistance Branch ("HAB") for adjudication. At the same time, the ministry created a service request on the appellant's electronic file for the HAB. The HAB noted that no PWD application was attached to the service request and requested that be done.

On April 16, 2014, the appellant called the ministry to enquire as to the status of her PWD application and was advised by a ministry worker that her application could not be located on her electronic file but that it had been mailed to the HAB as reflected in the ministry's notes from February 27, 2014.

The appellant's husband was determined to be eligible for disability assistance beginning in May 2014.

The appellant contacted the ministry on November 27, 2014 to enquire why her earned income had been deducted from her assistance and she then learned that her PWD application had not been received by the HAB. On December 2, 2014, the ministry scanned the appellant's November 29, 2014 PWD application form which was then attached to a service request to the HAB and on December 9, 2014 the HAB determined that the appellant was eligible for PWD status with an effective date of January 1, 2015.

In her RFR Submissions, the appellant indicated that she had been advised in February 2014 that her PWD application had been correctly sent and received and that at the end of April, she was informed by telephone that her application had been approved and that her maximum monthly income could be \$1,600.00. The appellant states further that when she called the local ministry office at the end of November she was advised that she had not received the PWD designation which resulted in her having to make adjustments to her work claims causing financial strain to her household and loss of income.

The ministry relied on the Reconsideration Decision and provided no further evidence.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's Reconsideration Decision, which denied the appellant Persons With Disabilities ("PWD") benefits prior to January 1, 2015 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 5 of the *EAPWDA* provides that the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Section 23(1) of the *EAPWDR* sets out the manner in which the effective date of eligibility for disability assistance is determined as follows:

Effective date of eligibility

23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), 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.

Positions of the Parties

In her RFR Submissions, the appellant argues that she was told by the ministry in February 2014 that her PWD application was correctly sent and received and that she was further advised by the ministry in April 2014 that her application had been approved. The appellant argued that as her application had been approved in December 2014, it would have been approved in February 2014 had it not been lost and therefore her benefits should be backdated to February 2014.

In her Notice of Appeal dated March 2, 2015, the appellant states that she is requesting reimbursement for January - \$128.07 and that she is eligible to earn \$1,600.00 per month. In a subsequent Notice of Appeal dated March 17, 2015, the appellant states that she is requesting reimbursement for the months of January, February, March and April and that she is eligible to earn \$1,600.00 per month. Attached to this second Notice of Appeal is a Ministry Confirmation of Assistance form setting out the appellant's estimated assistance for April 2015 as well as the previous assistance issued to her husband for the month of March 2015. A second form setting out the previous assistance issued to the appellant's husband is also attached.

The ministry argues that section 23(1) of the *EAPWDR* provides that the appellant is not eligible to receive disability benefits until the first day of the month after the month in which the appellant was designated by the minister as a PWD. In this case, the ministry takes the position that as the appellant was designated as a PWD on December 9, 2014, her eligibility for disability benefits commences on January 1, 2015 and as it cannot speculate as to what prior date she may have been designated if the application had been received earlier, there is no provision in the legislation to allow it to issue retroactive or backdated benefits to her.

Analysis

Section 23(1)(a) of the *EAPWDR* is clear that a person who is designated as a PWD is eligible to begin receiving disability benefits on first day of the month after the month in which the minister designates the applicant as a person with disabilities. The language in the legislation is mandatory in nature and does not provide discretion for the minister to provide benefits retroactively.

In the present case, the panel is unable to speculate as to the circumstances surrounding the appellant's contention that her original PWD application was lost and then approved in April 2014. The panel is similarly

unable to substitute an eligibility date based on the circumstances as described by the appellant. The evidence indicates that the appellant was designated as a PWD on December 9, 2014 and the panel finds that the ministry was reasonable in its determination that she was eligible to begin receiving disability benefits on January 1, 2015

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's Reconsideration Decision which determined that the appellant was not eligible to receive PWD benefits retroactive to January 1, 2015 was a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.