

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated April 28, 2015, in which the Ministry denied the Appellant's request to backdate the effective date of his eligibility for disability assistance. The Ministry found that it had no legislative authority to backdate the Appellant's application for disability assistance pursuant to section 23(1.2)(c) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

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

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A copy of the Appellant's Application for Disability Assistance, signed Feb. 16, 2015.
- A copy of an invoice for March, 2015 from a residential care facility in the amount of \$4,217.37.
- A copy of an invoice for April, 2015 from a residential care facility in the amount of \$5,075.87
- A statement of account from a pharmacy dated 31 March 2015 in the amount of \$34.24.
- A statement of account from a pharmacy dated 28 February 2015 in the amount of \$24.64.
- The Appellant's Request for Reconsideration signed April 20, 2015 in which he requested a review of the decision regarding disability benefits and asked the Ministry to back date their financial responsibility to November 2014.

The Appellant submitted his Notice of Appeal to the Tribunal signed May 7, 2015 with an attached addendum. The addendum outlines the Appellant's move to a care facility and his understanding of who would bear the cost of his care. The Panel admitted this addendum as part of the Appellant's argument.

The Appellant resides in a long term care facility and is unable to speak. His sister, who was appointed as his Committee in 2013, attended the hearing as his advocate. A copy of the Court Order was provided to the Panel.

The Appellant's advocate stated that his disability is due to a stroke he suffered in February, 2013 when he was outside of Canada. When he returned to Canada, he was treated in hospital, then in a rehabilitation facility. He was discharged in December, 2013 to live with his sister. In February, 2014 a home support worker was provided for one hour per day, which was increased to four hours per day, three times per week. In March, 2014, the Appellant was moved back to his own home, and his home care was increased to full time by November, 2014. In November, 2014, the Appellant was notified that a bed had been found for him in a long term care facility and he was moved there. The advocate stated that she was not informed that the Appellant would have to pay for the cost of his stay at the care facility, and assumed that because the home care was provided by the Ministry of Health at no cost, his costs at the care facility would be provided at no cost as well. The advocate stated that five applications for assistance were made. She further stated that the Ministry advised that the Appellant's cash assets of \$20,000 should be placed in a trust, but the money was needed to pay his debts and there is a cost to set up a trust fund and administer it.

In reply to questions from the Panel, the advocate stated that five applications for assistance were made because of the trust fund issue. The advocate stated that she was directed to the Ministry's website, and then gathered all of the required documentation, but because of his cash assets, the entire process stopped. The application was approved in February, 2015 after the Appellant's cash assets were depleted. He is not eligible for Canada Pension Plan benefits and has no income. The advocate stated that the Ministry of Health said it was too expensive to keep the Appellant in his home, so he thought they would pay for the care facility costs. The advocate stated that she did not understand the process and no one told her that moving into a care facility would be at the Appellant's expense. If they had known that, the Appellant would have remained at his sisters' home until he was approved for disability assistance. They did not know which ministry was responsible for what payment.

The Ministry responded that the Appellant's on-line application for disability assistance was received on January 8, 2015, a telephone interview was held on February 6, and Part 2 of the application was signed on February 16, 2015. The Appellant was found eligible for disability assistance effective February 16. The Ministry is currently paying a per diem to the care facility plus a \$95.00 per month comfort allowance to the Appellant. The Ministry stated that the effective date of the Appellant's disability assistance is set by legislation,

Section 23(1.2)(c), EAPWDR, as the date on which Part 2 of the application was signed.. With respect to the Appellant's previous applications for disability assistance, the Ministry stated that it found an application submitted on November 14, 2013. An interview was conducted and proof of assets was requested. The file was considered abandoned and was closed in February 2014 because the requested information was not received.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision dated April 28, 2015, in which the Ministry denied the Appellant's request to backdate the effective date of his eligibility for disability assistance. The Ministry found that it had no legislative authority to backdate the Appellant's application for disability assistance pursuant to section 23(1.2)(c) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Legislation

EAPWDR

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.
- (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) Subject to subsections (3.01) and (3.1), 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.]
- (3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of
- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

- (b) the applicable of the dates referred to in section 72 of this regulation.
- (3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).
- (3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes 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 month containing the earlier of
 - (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
 - (b) the applicable of the dates referred to in section 72 of this regulation.
- (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 month containing the earlier of the dates referred to in subsection (3.11).
- (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.

The Appellant's position is that he should have been informed when he was moved to a long term care facility that he would be responsible for paying the cost. The Appellant's advocate argued that they were not aware of each ministry's responsibility and that the Appellant applied several times for disability assistance and provided all of the requested documentation before he was approved; therefore the Ministry should pay for his care at the long term care facility from the date he was placed there.

The Ministry's position is that the Appellant's earlier application for disability assistance was not approved because he failed to provide all of the necessary documentation, and the effective date of his disability assistance payments is the date of Part 2 of his application, February 16, 2015 in accordance with section 23(1.2)(c) of the EAPWDR.

The Panel notes that no evidence was provided to show that an application for disability assistance by the Appellant was approved before February 16, 2015. Section 23(1.2)(c) of the EAPWDR states an applicant for disability assistance who has been designated as a person with disabilities receiving special care becomes eligible for assistance "on the date of the applicant's application for disability assistance (part 2) form", in the Appellant's case, February 16, 2015. There is no provision to backdate the effective date of eligibility.

The Panel therefore finds that the Ministry's decision to deny the Appellant's request to backdate the effective date of his eligibility for disability assistance is reasonably supported by the evidence. The Panel confirms the Ministry's reconsideration decision.