

PART C – Decision under Appeal

This is an appeal of the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 15 May 2015, in which the ministry determined that the appellant was not eligible for backdated payment of disability assistance before the first day of the month after the month in which the minister designated her as a person with disabilities under s. 23 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The designation was approved on 9 March 2015 and the ministry determined she would be eligible for benefits on 1 April 2015.

PART D – Relevant Legislation

EAPWDR, s. 23.

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with s. 22(3)(b) of the Employment and Assistance Act.

The following evidence was before the ministry at the time of reconsideration:

- On 9 March 2015 the ministry determined the appellant was eligible for a Persons with Disabilities (PWD) designation.
- On 16 March 2015, the ministry informed the appellant by letter dated 9 March 2015 that she was approved as a PWD designation, that the effective date of eligibility would be 1 April 2015, that she needed to contact her local ministry office to complete application requirements and that disability assistance was dependent on financial and other eligibility criteria being met.
- On 1 April 2015 the appellant's PWD designation came into effect.
- On 30 April 2015, the appellant contacted the ministry requesting backdated payment of her disabilities benefits from before 1 April 2015, without specifying what earlier date that would be.
- In her Request for Reconsideration dated 14 May 2015, the appellant stated that the ministry had received a doctor's note dated 23 July 2014 when her file was created in August 2014 and at the time she stated the ministry was aware of her child's disabilities. She stated that given the doctor's letter, her benefits should be back paid as of 12 August 2014. With her Request for Reconsideration, the appellant provided the following documents:
 - A note from the appellant's physician dated 23 July 2014 and signed by the physician that indicated that the appellant required long term medical disability.
 - A prescription from the appellant's physician dated 23 July 2014 for two medications.
 - Two prescriptions dated 4 October 2014 for the appellant for a total of \$52.29 with a handwritten note to the effect that they should have been covered.
 - A 3-page letter dated 28 January 2015 from the Canada Revenue Agency (CRA) indicating that the appellant's child was then eligible for the disability tax credit (DTC) for the 2009 – 2022 tax years and that the appellant may claim the disability amount on her income tax and benefit returns for these years.
 - A document titled "Confirmation of Application Received by Health Assistance Branch" indicated that the appellant's application was received on 28 January 2015.
 - A 5-page letter dated 17 February 2015 by a developmental pediatrician that identified medical issues about the appellant's child and recommendations. With the letter there is a 7-page Occupational Therapy Assessment Report.
 - A 4-page report also dated 17 February 2015 titled "Multidisciplinary Summary" by the developmental pediatrician, which summarized the group assessment and a strategy for the appellant's child.
 - A 5-page Speech-Language Pathology Assessment Report dated 31 March 2015 by a medical practitioner certified in speech-language pathology.
- A 3-page PWD Application "Applicant Information" completed and signed by the appellant on 23 October 2014.
- An 8-page Physician Report as part of a PWD application for the appellant dated 23 January 2015 and signed by a physician, general practitioner (GP).
- An 11-page Assessor Report, also part of a PWD application for the appellant, dated the same day and signed by the same GP.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for backdated payment of disability assistance before the first day of the month after the month in which the minister designated her as a person with disabilities under s. 23 of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence.

S. 23 of the EAPWDR states:

- 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...
- (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...
- (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 section 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.

The appellant stated that the CRA approved her son for DTC from 2009 on and the letter she received from the ministry indicated that she was confirmed a PWD designation for a family unit with 2 adults with PWD status effective 1 April 2015 but that the ministry failed to pay the amount for 2 adult with PWD designation. She also argued that s. 23(1.2) of the EAPWDR allowed the ministry to backdate disability assistance to August 2014 when her file was opened.

The panel notes the appellant mentioned a letter approving PWD designation for two adults but the only relevant letter considered by the reconsideration officer was the letter dated 9 March 2015, sent later that month and only stated that the ministry had approved the appellant's designation as a PWD. Further, the medical documents indicate the appellant's son was born in 2004 and thus is not an adult.

While the appellant also argues s. 23(1.2) EAPWDA allows the ministry to back date eligibility assistance, this section only applies to the family unit of an applicant for disability assistance who has

been designated as a person with disabilities. The EAPWDA defines “applicant” as the person in a family unit who applies under the EAPWDA for disability assistance ... on behalf of the family unit, and includes (a) a person’s spouse, if the spouse is a dependent, and (b) the person’s adult dependants. It does not include a dependent child. S. 1 of the EAPWDA defines “Child” as an unmarried person under 19 years of age and the appellant’s child is 11 years.

The panel notes that the amount of disability assistance was not the issue under appeal. The issue under appeal was the ministry’s decision that the appellant was not eligible for backdated payment of disability assistance. S. 24 of the EAA limits the jurisdiction of the panel to a determination on the decision being appealed.

The ministry determined in its reconsideration decision that the legislation provides that an applicant for PWD 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, which in this case is 1 April 2015 because the appellant was designated as a PWD on 9 March 2015.

The appellant argued in her written submissions that she believed her disabilities benefits should have started on 12 August 2014 when her file was opened at the ministry’s office, based on her physician’s note dated 23 July 2014 that she required long term disability. She argued that the ministry did not act fairly with her, not providing her with a disability application until October 2014 and that her previous phone calls to get that form were not acted upon.

Panel decision:

While there is evidence that the appellant and her child suffered from medical issues for some time, the date of onset of the appellant’s illness, the dates of the doctors’ letters, the date the appellant’s file was created or the date of the PWD application are not relevant to determine the eligibility for a PWD designation. Eligibility for disability assistance is based on the date when the person is actually designated as a PWD. Section 23 (1) of the EAPWDR states that 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.

The appellant was designated as a person with disabilities in March 2015 and thus in accordance with s. 23(1) EAPWDR was eligible the first day of the next month, 1 April 2015.

The panel notes that the application for PWD designation was completed on or about 23 January 2015 before it was sent to the ministry. While the appellant argued that the ministry failed to provide her with the appropriate forms to make her application for PWD and did not provide a fair, effective and respectful service, the legislation only allows backdated payments under s. 23(4) EAPWDR 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 appellant does not dispute that she received disability assistance as per 1 April 2015 in accordance with subsection 23 (1).

Given those circumstances, the panel finds that based on s. 23(1) and (4) of the EAPWDR the ministry reasonably determined it had no discretion to make any backdated payments before 1 April 2015, as requested by the appellant. Therefore, the panel finds the ministry's decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.