

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated September 14, 2015, which denied the appellant's request that she be found eligible for disability assistance from the date of her 18th birthday in March 2015 in accordance with subsection 23(1.1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the appellant's application was not completed until June 2015 so that she did not become eligible to receive disability assistance until July 2015 in accordance with subsection 23(1) of the EAPWDR.

PART D – Relevant Legislation

The relevant legislation is subsections 23(1) and (1.1) of the EAPWDR.

PART E – Summary of Facts

The appellant is a person with disabilities who turned 18 years old in March 2015.

The ministry acknowledged receipt of the appellant's application for disability assistance on April 15, 2015 but it was incomplete as it lacked a signature. The ministry acknowledged receipt of a completed application from the appellant on June 2, 2015. The appellant was approved for disability assistance on June 23, 2015 with assistance beginning in July 2015.

At the hearing the appellant's father, representing the appellant, recounted his experience in making the application for disability assistance as follows:

In October 2014 the appellant's family attended a meeting at the appellant's school at which the matter of the transition of children with disabilities to eligibility to receive disability assistance was discussed. At that meeting the appellant's family received information regarding transition as well as an information and application package. There were two important items communicated at that meeting. First, that if a completed application is received by the ministry before the applicant turns 18, eligibility is from the date of the applicant's 18th birthday, but otherwise from the first day of the month following the month in which a completed application is received. Second, that an applicant should start the application process about six months before their 18th birthday.

The appellant's family discovered that the application process has a number of steps, requires considerable information gathering and is completed partially online, partially through submitted documents. As directed, the appellant's family accessed the ministry's website to make the initial application and began collecting information and completing forms. On a number of occasions the family contacted the ministry through a toll-free number to ask for assistance and advice. On one of these occasions, likely sometime in late October or early November 2014, with the appellant's application nearly complete, the appellant's father called the toll-free number and as part of that conversation was told that it was too soon to submit the application and that he should wait until January 2015 to do so.

This was incorrect advice.

Following the receipt of this advice, the appellant's father submitted the application sometime in early January 2015 by registered mail. Upon submitting the application he received an email telling him that the ministry would be in contact with him. After he was not contacted for some time, the appellant's father once again called the ministry's toll-free number and was told that someone would get back to him in about 10 days. When his call was returned it was from a ministry worker at the appellant's local ministry office by whom he was told that his application had been received in early January but not "logged" until February 10th. He was also told that his application would take "a few months" to complete and that, consequently, his daughter would not be eligible for disability assistance until June or July 2015 rather than in March 2015.

Over the next 3-1/2 months the ministry did nothing with the appellant's application. The appellant's father contacted the ministry on a number of occasions to ascertain the status of the application. A

worker reviewed the application on May 22, 2015 and contacted the appellant's father regarding missing documents. He advised that those "missing" documents had been submitted in early January with the application by registered mail. Subsequently, the ministry "found" the "missing documents on May 25. One of the documents was lacking a signature. The ministry informed the appellant's father of this on May 28 and he submitted a signed version on May 29.

One month later, on June 23, 2015, the ministry designated the appellant as a person with disabilities with eligibility beginning July 1, 2015.

Following this decision the appellant spoke to the supervisor at the local ministry office explaining the advice that he had received on the telephone as the reason for the delay. The supervisor advised him that he was given wrong information and that he should submit a letter to the office explaining the situation and asking for a reconsideration of the decision.

The appellant's father spoke of the hardship caused to the family of a disabled child on not receiving disability assistance for over 3 months to which they would otherwise be entitled.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated September 14, 2015, which denied the appellant's request that she be found eligible for disability assistance from the date of her 18th birthday in March 2015 in accordance with subsection 23(1.1) of the EAPWDR because the appellant's application was not completed until June 2015 so that she did not become eligible to receive disability assistance until July 2015 in accordance with subsection 23(1) of the EAPWDR.

The relevant legislation is subsections 23(1) and (1.1) of the 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.

The appellant's father's position is that the delay in submitting the application to the ministry, and so the delay in the appellant's eligibility for disability assistance by more than 3 months, is solely because of the advice he received from the ministry over the phone in October or November 2014 to delay submitting his daughter's application until January 2015.

The ministry's position at the hearing was that the legislation is very clear that unless the completed application for disability assistance is received and the minister designates the applicant as a person with disabilities before the applicant's 18th birthday, the applicant becomes eligible for disability assistance only in the month following that designation. As the ministry did not receive the completed application and designate the appellant as a person with disabilities until three months after her 18th birthday this rule applies.

At the hearing the ministry representative expressed regret that the appellant's father had been the subject of "service quality issues", but stated that the ministry is bound by the legislation. When asked if there were no provisions to deal with situations in which an applicant is disadvantaged by a ministry error, the ministry representative indicated that there were "administrative underpayment" provisions but that clear proof of error was required. When further asked why no clear proof exists, the ministry representative stated that the ministry did not record the phone call in question and that no notes were available.

The panel finds that the appellant's father's evidence is credible and that the phone call in question took place and that the incorrect advice was given. The ministry did not dispute this. As well, the

panel finds that the ministry “lost” substantial portions of the the appellant’s application despite the fact that it was sent as a complete package by registered mail. Again, the ministry did not dispute this

Given these facts there is little doubt that the appellant’s application, and so her designation as a person with disabilities, was delayed due to errors committed by and delays caused by the ministry. Therefore, as a direct result of the ministry's errors and delays the appellant did not receive disability assistance to which she would otherwise have been entitled for more than three months.

However, the panel, like the ministry, is bound by the terms of the legislation. Section 23 of the EAPWDR is very clear. Subsection 23(1.1) provides that an applicant is eligible to begin receiving disability assistance on their 18th birthday only if the minister designates them as a person with disabilities before their 18th birthday. In any other case, subsection 23 (1) applies and the applicant becomes eligible to receive disability assistance in the months following their designation as a person with disabilities.

Bound by the legislation, this panel finds in this case that the requirements of subsection 23 (1.1) were not met, whatever the cause. Thus subsection 23 (1) applies and the applicant became eligible to receive disability assistance in the month following her designation as a person with disabilities, that is July 2015. There are no legislative provisions which would allow this panel to rescind the Ministry's decision based on the fact that the disadvantage caused to the appellant was due solely to a ministry error.

Accordingly, the panel concludes that the ministry's determination that the appellant became eligible for disability assistance in July 2015, rather than March 2015, was a reasonable interpretation of the legislation in the circumstances and confirms the ministry's decision.