

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 10, 2016 which determined, pursuant to Section 23(1) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), the appellant was eligible for disability assistance on April 1, 2016, being the date that is the first day of the month after the month in which the ministry designated the applicant as a person with disabilities (PWD).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 23

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the appellant's Request for Reconsideration dated March 8, 2016.

In the Request for Reconsideration, the appellant wrote that:

- He waited 4 ½ months from the time his application was received by the ministry.
- It took 2 months for him to accumulate all the documentation to fill out the application, which totals up to 6 ½ months.
- His application was apparently approved on the very first day of March. He found out that he has to wait another full 30 days before it is activated, which adds up to 7 ½ months.
- He believes he should be compensated for March 2016; otherwise, it is a full month from approval to activation.
- He suspects that his application was approved in the days before March 1, 2016 and forward-dated to March 1, 2016 to delay his disability assistance for one full month more.

The ministry relied on the reconsideration decision, which included the following information:

- The appellant has been a recipient of assistance since January 2015.
- The appellant's completed application for Persons With Disabilities (PWD) was received by the ministry on October 28, 2015.
- Assessment of the appellant's application for PWD designation was completed on March 1, 2016 and the effective date was set for April 1, 2016.
- The ministry sent a letter to the appellant on March 1, 2016 advising of the ministry's decision.

Additional information

In his Notice of Appeal dated March 17, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that the letter of approval for his application was sent to him on March 1, 2016. He has questions about what day the approval was actually granted and whether the mailing was delayed.

At the hearing, the appellant stated that:

- On a Freedom of Information (FOI) request, he received only a copy of the letter from the ministry advising him of the approval of his Persons With Disabilities (PWD) application; there were no notes made by the adjudicator provided in response to his request.
- He started his application last July 2015 and it took two months to gather the information from his team of four different doctors.
- He submitted his application to the ministry on October 28, 2015 and it took 4 ½ months to get a reply from the ministry.
- He was approved from PWD designation but he is concerned that the letter was mailed on the same day that his application was approved, on March 1, 2016. Also the letter states that the effective date is "30 days after" the decision was made but that is not consistent with Section 23(1) of the EAPWDR.
- Although February 29, 2016 falls on a Monday, his application was not approved until Tuesday, March 1, 2016, which denied him an extra month of disability assistance and \$300. It may not seem like much, but this amount of money makes a huge difference to him.

At the hearing, and in answer to questions from the appellant, the ministry stated that:

- There is no indication of a reason for the appellant's application to have been delayed.

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- The Health Assistance Branch (HAB) of the ministry processes the PWD applications for the entire province and the adjudicators are busy and also put in extra time to work through the volume of applications. The HAB has a backlog that it is trying to work through to get the applications processed as quickly as possible.
 - The processing time for each application varies since some will be straightforward and others may require contacting the medical professional for clarification, searching for information or looking up references, and this all takes the adjudicator longer.
 - The letter is automatically generated by the adjudicator who makes the decision. The letter is mailed out to the applicant the day that the decision is made on the application.
 - The applications are processed as they are received and the only priority that is given is for those applicants who have been diagnosed with a terminal illness.
 - The FOI process is separate from the ministry and typically they will provide information that pertains to the person making the request only. If the application was relatively straightforward, there may not be many associated notes.

Admissibility of Additional Information

The panel admitted both the appellant's and the ministry's testimony as reiterating and clarifying the circumstances of the appellant's PWD application and being in support of information that was before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act (EAA)*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which determined that, pursuant to Section 23(1) of the EAPWDR, the appellant was eligible for disability assistance on April 1, 2016, being the date that is the first day of the month after the month in which the ministry designated the applicant as a person with disabilities (PWD), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 23 of the EAPWDR provides in part:

23(1) Subject to subsection (1.1), 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. . . .

Appellant's position

The appellant's position, as set out at the hearing and in his Request for Reconsideration, is that he suspects that his application was approved by the ministry in the days before March 1, 2016 and forward-dated to March 1, 2016 to delay his disability assistance for one full month. The appellant argued that he has suffered enough without being penalized one extra month since he waited 4 ½ months from the time his application was received by the ministry, it took 2 months for him to accumulate all the documentation to fill out the application, which totals up to 6 ½ months. The appellant argued that he should be compensated for March 2016 also as it is otherwise a full month from approval to activation and the extra \$300 makes a huge difference for him.

Ministry's position

The ministry's position is that the appellant's PWD application was approved on March 1, 2016 and, therefore, he is not eligible for disability assistance until April 1, 2016 pursuant to Section 23(1)(a) of the EAPWDR. The ministry acknowledged the appellant's frustration, but stated that the HAB generally processes the applications as they are received, with a priority only for those applicants

who are terminally ill, and there is no indication of a reason for the ministry to have delayed the appellant's application.

Panel decision

Section 23(1) of the EAPWDR stipulates that the family unit of an applicant for designation as a PWD is not eligible for disability assistance until the first day of the month after the month in which the ministry designates the applicant as a PWD. Although the appellant questioned whether his application for PWD designation may have been approved by the ministry prior to the date of his approval letter of March 1, 2016, there was no evidence provided to establish that his was the case. The appellant acknowledged that the letter from the ministry advising of the approval of his PWD designation was dated March 1, 2016 and the ministry confirmed that the normal process is for the letters to be automatically generated by the adjudicator on the day that the decision is made. Accordingly, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance until April 1, 2016, which is the first day of the month after March 2016, being the month in which the ministry designated the appellant as a PWD.

Conclusion

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the ministry's decision pursuant to Section 24(1)(b) and 24(2)(a) of the *EAA*.