

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 21 October 2016 that denied the appellant's request for backdated disability assistance for July and August 2016. The ministry determined that the effective date of eligibility was 12 September 2016 pursuant to sections 4.2 and 23 of the Employment and Assistance for Persons with Disabilities Regulation, and therefore the ministry was unable to approve the appellant's request for backdated assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 3 and 16.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 4.1, 4.2 and 23.

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

1. The following chronology, as detailed in the ministry section of the Request for Reconsideration with supporting documentation and summarized in the reconsideration decision:
 - November 2015: The appellant moved from another province to BC.
 - 30 November 2015: The appellant completed her application for income assistance. The ministry determined that she was ineligible for income assistance due to supplying insufficient proof of identification. However, she was provided with hardship assistance pending her providing the required identification.
 - At that time she had supplied a social insurance number (no verification) and a copy of her learner's license from the other province. It was noted that the ministry still required a copy of her SIN card and birth certificate.
 - April 2016: The appellant's application for PWD designation was approved; however, she continued to receive hardship assistance pending the required identification.
 - June 2016: The ministry end-dated the appellant's hardship assistance and therefore effective July 2016, as her identification had not yet been submitted, her hardship assistance automatically ended.
 - 19 August 2016: As the appellant had not contacted the ministry nor received any assistance for 2 months, her file automatically closed. As this was before September cheque issue, this cancelled her MSP coverage.
 - 12 September 2016: Following numerous interactions between the appellant and/or her mother and ministry workers both in person at the office and over the phone, the appellant's eligibility was re-established effective that date as the ministry had received all required identification documents, namely a copy of her SIN card, BC Services Card and passport. The appellant was provided disability assistance for September as per section 23(1.2) of the EAPWDR.
2. The appellant's Request for Reconsideration dated 06 October 2016. In an attached letter, the appellant writes that:
 - Prior to June 2016 she was receiving regular disability support payments every month. Without any notice, phone call or letter from the ministry, payments were stopped in June and the medical coverage she needed was stopped as well, effective 01 September 2016. She had to borrow money from her friends to pay for required prescription medication and for her living expenses over the past months. She intends to pay them back when she receives the retroactive disability payments owed to her.
 - Over the past few months, she and her parents have endured a great deal of hardship attempting to inquire into and correct the situation. They have seen documents that they submitted and faxed vanish.
 - She and her parents visited the ministry office many times in person to attempt to provide anything that was needed. Her parents had been helping her, as often she is too weak to walk very far due to her illness. They were given reasons that they felt were to brush them off, such as missing SIN number, waiting and checking doctor's letters and other things. Every application she submitted had her SIN and she provided a copy of her card on numerous occasions. In many cases when she spoke with different people she

was given a different answer

- After continuing to escalate these countless visits by her and her parents to the ministry office asking for reinstatement of payments and medical coverage, at last this was approved in mid-September 2016.
- At each of the visits they asked for help in completing forms and inquiring as to next steps, and in many cases they were treated rudely. This has been a very disappointing and frustrating endeavor and it is been very difficult for her parents as well. Her friends are asking for the money back that she has been borrowing to support herself and pay for her prescription medication.

The appellant's Notice of Appeal is dated 26 October 2016. Under Reasons for Appeal she writes:

"1) On hardship assistance since Nov. 2016. Application submitted for disability assistance.

Was informed process takes 3-4 months.

2) Disability assistance payments started April 2016, stopped in May 2016. Reason given was SIN missing. It was provided in Nov. 2015."

The hearing

At the hearing, the appellant explained that she has an incurable medical condition, with 25% lung capacity. Before moving to BC for health reasons relating to this condition, she had received disability assistance for nine years in another province. She was well treated by the ministry in the other province, and any time she required help with something she could call a social worker who would quickly address her needs. In fact, at her request, her former social worker had transmitted her complete file to the BC ministry. By comparison, since moving to BC, her experience with the ministry has been frustrating and disappointing.

She stated that when she originally applied for income assistance in November 2015, she provided the ministry with a copy of her SIN card. She showed the panel a photocopy of a SIN card, and two pieces of photo ID, dated 23 November 2015, with an "App #" and the first name of a ministry worker. This was attached to an "Application Check-list." She stated that she had faxed this photocopy to the ministry in late November 2015.

The appellant stated that the first time that she knew about being provided hardship assistance instead of income/disability assistance was when she read the ministry section of the Request for Reconsideration. She stated that she was never contacted about any deficiencies in meeting the identification or SIN verification requirements for eligibility for assistance. She also described how, after she began to receive higher amounts of what she thought was disability assistance, she was asked to provide a letter from her doctor substantiating her PWD designation. She explained that the frequent visits to crowded ministry offices needed to deal with ministry workers to restore her MSP coverage and discontinued disability assistance posed a life-threatening health risk because of the danger of infection in such surroundings. Moreover, in these interactions, ministry workers were often rude and insensitive to her situation.

The appellant's mother stated that, because of the difficulties that her daughter had experienced in having her situation with the ministry sorted out, she and her husband moved from the other province

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to help her deal with the ministry, leaving behind in the other province the appellant's siblings and an elderly grand-mother.

The ministry stood by its position at reconsideration.

The ministry representative stated that she had reviewed the appellant's file in detail and while the appellant had provided the social insurance number, she could find no reference to the appellant providing the ministry with the actual SIN card, a copy of it, or any verification of her SIN number, such as a document from the Government of Canada with her SIN number (for example, a CRA tax assessment). There is no record in the ministry's files of receiving the photocopy mentioned by the appellant.

The ministry representative noted that in her review of the appellant's file, she had found unexplained and inexcusable irregularities in the way the ministry managed the appellant's file. These include:

- On application, the appellant was in fact provided income assistance. A couple of weeks later this was changed to hardship assistance – this is a departure from the normal sequence, when hardship assistance is provided first because of a deficiency relating to identification requirement, then regularized to income assistance when these requirements are met.
- The ministry sent a letter to the appellant of the change to hardship assistance, but the ministry representative noted some confusion in the file as to the appellant's address, with the letter possibly being sent to the wrong address.
- While doctor's letters are frequently required to support a request for a supplement, such a letter is never required to substantiate PWD designation once approved.
- Normally, when a client is provided hardship assistance because identification has not been fully established, the situation is reviewed with the client by a supervisor on a month-to-month basis or at least after the first three months. This did not happen with the appellant.
- The ministry would normally notify a client about missing information, such as that required for SIN verification. This did not happen in this case.

The ministry representative, in summarizing these irregularities, acknowledged the ministry's management of the appellant's file was "a mess," and was not typical of how the ministry addresses the needs of its clients. The ministry representative suggested that if the appellant wished to lodge a complaint on how her file was managed, it should be directed to the ministry's Service Quality Manager.

The ministry representative noted that the decision under appeal relates to backdating of disability assistance. While the legislation does not provide for such backdating before eligibility is established, the ministry may consider making up for "underpayments" in circumstances where there has been an administrative error in relation to providing assistance. The ministry representative suggested that if the appellant and the ministry could find evidence that the appellant had in fact provided the required SIN verification before her hardship assistance had been discontinued, the ministry could consider providing the appellant with an "underpayment."

Admissibility of new information

The panel accepts as argument the information provided at the hearing by the appellant, her mother, and the ministry representative.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for backdated disability assistance for July and August 2016. In particular, the issue is whether, as the ministry determined that the effective date of eligibility for disability assistance was 12 September 2016 pursuant to sections 4.2 and 23 of EAPWDR, the decision to not approve backdated assistance was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the *EAPWDA*:

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

And from the EAPWDR:

Application for disability assistance — stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit for disability assistance is fulfilling the requirements of subsection (2).

(2) The applicants for disability assistance in a family unit

- (a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application
 - (i) the social insurance number of each applicant in the family unit who is a person described in section 6 2) [*citizenship requirements*], and
 - (ii) the information, authorizations, verifications and declarations specified by the minister, as required in the application for disability assistance (part 1) form, and

Application for disability assistance — stage 2

4.2 (3) On completion of the first stage process provided for in section 4.1, the applicants for disability assistance in the family unit must complete and submit to the minister an application for disability assistance (part 2) form and must include as part of the application

- (a) proof of the identity of the persons in the family unit and of their eligibility under the Act,
- (c) the information, authorizations, declarations and verifications specified by the minister as required in the application for

disability assistance (part 2) form.

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.

(1.2) 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.

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(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.

[am. B.C. Regs. 340/2008, s. 2; 264/2013, s. 2.]

Applicants who do not meet requirement for social insurance number or proof of identity

37 The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because of the failure to provide a social insurance number or proof of identity required under section 4.1 (2) (a) (i) or 4.2 (3) (a) if

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the social insurance number or proof of identity.

Positions of the Parties

The appellant's position

The appellant's position as explained at the hearing is that, considering her medical condition, it was unreasonable for the ministry to discontinue her assistance for July and August and part of September 2016. She learned about why the ministry took this action only after she found that her MSP coverage was terminated effective 31 August 2016. She finds it difficult to understand why the ministry took this action as she had thought that she had fully met the ministry identification requirements when she initially applied for assistance in November 2015, and the ministry had not told her otherwise. She submits that it is only reasonable that under the circumstances she should be provided with the assistance to which she is entitled.

The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that the ministry is unable to approve assistance prior to the month the ministry establishes eligibility.

The reconsideration decision explains that the family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for support allowance on the date of the applicant's submission of the Application for Disability Assistance form, and for shelter allowance on the first day of a calendar month that includes the date of the applicants submission of the Application for Disability Assistance (Part 2) form, but only for that portion of the shelter costs that remain unpaid on the date of that submission.

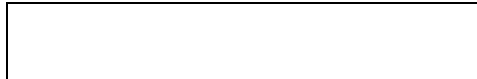
As the appellant's file closed in August 2016, she was required to reapply for assistance. She did not sign Part 2 of her reapplication until 13 September 2016. As her file closed prior to her complying with the ID requirements, and sufficient verification was not received until September 2016, eligibility was not re-established until September 2016; therefore the ministry is unable to approve her request for backdated assistance. While the appellant reports that she provided a copy of her SIN card on numerous occasions, there is no record on her file of her ever supplying the ministry any other identification documents other than her learner's driver's license. There is also no record of any contact between her and the ministry in the months of June, July or August. On application, the ministry requires the social insurance number (verified) and two pieces of identification (one picture ID). These were not supplied until September 2016, after her reapplication and therefore she did not meet the ID requirements until September 2016.

Panel decision

The issue in this appeal is the backdating of disability assistance prior to when eligibility for disability assistance is established. The panel does not have jurisdiction to revisit the ministry's decision of December 2015 that determined that the appellant would be provided hardship assistance instead of income/disability assistance (because identification has not been fully established), as this decision is not the subject of the reconsideration decision. Further, the panel cannot address the decision by the ministry to discontinue the appellant's hardship assistance as of July 2016, as under section 16 of the *EAPWDA*, there is no right to reconsideration for a decision that results in a discontinuance of hardship assistance, and therefore no right of appeal.

When the appellant's hardship assistance was discontinued as of July 2016, she became ineligible for assistance until her eligibility was re-established. Upon her providing the required identification documentation and completing the required forms, the ministry was satisfied that she became eligible for disability assistance effective 12 September 2016.

Under section 3 of the *EAPWDA*, a family unit is eligible for disability assistance if each person in the family unit on whose account disability assistance is provided satisfies the initial (including identification requirements) and continuing conditions of eligibility established under the Act, and the family unit has not been declared ineligible for assistance. There is no provision for backdating assistance. As the appellant became eligible for assistance effective 12 September 2016 and was ineligible for July and August and up to 11 September 2016, the panel finds that the ministry was reasonable in not approving backdated assistance prior to when eligibility was established.



Conclusion

The panel finds that the ministry's decision that denied the appellant's request for backdated disability assistance is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.

The appellant's appeal of this reconsideration decision is thus not successful.