

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 29 June 2017 that denied the appellant's request for backdated disability assistance. The ministry determined that it is unable to provide backdated assistance for the calendar months prior to when the appellant re-established his eligibility for disability assistance in May 2017, as under section 23(5) of the Employment and Assistance for Persons with Disabilities Regulation 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.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 4, 4.1, 4.2, 4.4, and 23(5).

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

1. The appellant's assistance file opened in September 2010. He was approved for persons with disabilities designation effective July 2011. He received disability assistance from July 2011 to February 2014. As of March 2014 he was no longer eligible for disability assistance due to an annual CPP disability pension (CPPD) increase that brought his monthly CPP income up to \$909.28, an amount that exceeded his disability assistance rate of \$906.42. As the appellant ceased to be eligible for disability assistance as a result of receiving CPP income, he was eligible for medical services only (MSO) and his file was switched to MSO.
2. From the ministry section of the appellant's Request for Reconsideration:
 - On 01 May 2017, the appellant contacted the Ministry to request disability assistance because there had been a rate increase and his CPPD was now less than the current disability assistance rate. An appointment was booked for the following day.
 - On 02 May 2017, the appellant discussed the application process with a ministry worker. He stated that he was only recently informed of the disability assistance rate increase and requested retroactive payment for any funds he would have been eligible to receive based on his CPP benefits. He was asked to submit various documents, and was advised that, once eligibility was determined, his request would be reviewed.
 - On 12 May 2017 the appellant attended the ministry office and submitted the requested documents, also signing the Employment and Assistance Review form.
 - On 17 May 2017 the appellant's eligibility for assistance was determined and he was issued disability assistance for May 2017. This amounted to \$83.55, after deducting the CPP benefits.
 - On 23 May 2017 the appellant contacted the Ministry and stated that he had not been informed of the increases in disability assistance rates and that he should be eligible for a top-up from when the rates were increased. His request was denied.
3. The appellant submitted his Request for Reconsideration on 16 June 2017. Under Reasons, the appellant writes:

"I was not advised of the PWD rate increases in September 2016 and April 2017, nor was I advise that I needed to send in monthly reports in order to qualify for a PWD top-up to my CPP disability benefits. I am enclosing my income tax information back to 2010 and I want the ministry to review this to determine if I should have been eligible for a PWD top-up at any time back to July 2011 when I was first eligible for PWD. I want to be paid retroactively for any amount that I should have been eligible for."
4. In the reconsideration decision, the ministry provided the following background:
 - CPP benefits are adjusted annually. The appellant's CPPD was \$925.65 effective January 2015, \$936.76 effective January 2016 and \$949.87 effective January 2017.
 - There was no increase in disability assistance rates until September 2016. Effective 01 September 2016 the support rate increased by \$25 to \$556.42 and disability assistance recipients were eligible for a free annual bus pass or \$52 per month in transportation support in lieu of an annual bus pass. The total disability assistance for a sole recipient for support, shelter, and transportation support was then \$983.42. Effective 01 April 2017, the support rate increased again by \$50, bringing the total disability assistance for a sole recipient for support, shelter, and transportation support to \$1033.42.

The appellant's Notice of Appeal is dated 07 July 2017. Under Reasons, the appellant writes, "Submission to follow."

The hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

In a submission for the written hearing dated 21 July 2017, the appellant reviews the chronology of receiving disability assistance until March 2014, when he became eligible for CPPD and he became an MSO client of the ministry. He continues:

“In Sept 2016 the PWD rates increased and had I been notified I could have reestablished my eligibility for PWD benefits and received a top up to my CPPD \$36.13 per month. The PWD rates increased again in April 2017 and I would have been eligible for a further \$50 per month top up

I did not know that the rates have increased until May 2017 when my roommate told me.

I am a client of the ministry and they failed to inform me of the steps I needed to take to access the PWD increases. The loss to me from Sept 2016 to April 2017 is \$302.91.

I am appealing this because I believe that the ministry acted unfairly by not advising me to contact them to reestablish my PWD benefits. I believe there are other people in this situation with also lost benefits that they should have been entitled to.”

In an email to the Tribunal, the ministry stated that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of additional information

The panel accepts the appellant's submission as argument.

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. More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- That the ministry is unable to provide backdated assistance for the calendar months prior to when the appellant re-established his eligibility for disability assistance in May 2017, as under section 23.5 of the Employment and Assistance for Persons with Disabilities Regulation 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 applicable legislation is from the EAPWDR:

Process for assessment of eligibility for disability assistance

- 4 The eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2, unless the eligibility of the family unit is re-established in accordance with the process set out in section 4.4.

Re-establishment of eligibility for disability assistance

- 4.4 (1) The minister may re-establish eligibility for disability assistance in accordance with subsection (2) if disability assistance has been provided to or for a family unit in a calendar year, but the family unit becomes ineligible under section 9 *[limits on income]* during that calendar year because the qualifying income of the family unit determined under section 3 of Schedule B equals or exceeds the amount of disability assistance determined under Schedule A that applies to a family unit matching that family unit.
- (2) The eligibility of the family unit referred to in subsection (1) for disability assistance may be re-established based on monthly reports submitted under section 29.1 *[voluntary reporting]* during the period of ineligibility for disability assistance during the calendar year in which the family unit becomes ineligible.
- (3) If monthly reports under section 29.1 have not been submitted in respect of a family unit referred to in subsection (1), the 2-stage process set out in sections 4.1 and 4.2 applies to the family unit for the re-establishment of eligibility.

Effective date of eligibility *[applicable sub-sections]*

- 23 (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
- (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.

Analysis

In the reconsideration decision, the ministry determined that the appellant's request for backdated assistance is denied. In making this determination, the ministry noted that the appellant had been declared ineligible for disability assistance effective March 2014 as he no longer met the conditions of eligibility because of his CPPD. However, he did meet the conditions for MSO because he left disability assistance because of CPP income.

The ministry acknowledged that as of September 2016 the maximum disability assistance rate for support, shelter, and transportation support was above the appellant's CPPD. The ministry stated that there is no requirement for the ministry to update past recipients of disability assistance about any possible legislative changes that may affect them and as such persons eligible for MSO are required to request and complete a full eligibility review if they wish to reapply for assistance. The ministry noted that all ministry changes are available to the public online, referring to a link to the ministry's website homepage.

The ministry referred to EAPWDR section 4.4 [*Re-establishment of eligibility for disability assistance*], noting that this section did not come into effect until September 2016 when the rates changed. The ministry held that this section is not applicable to the appellant as his disability assistance file was closed in 2014. As such, the appellant was required to complete a reapplication if he was interested in reapplying for assistance.

The ministry next referred to EAPWDR section 23(5), which states that a family unit is not eligible for any assistance in respect of a service provided or cost incurred before the calendar month in which the assistance is requested. The ministry held that, as the appellant contacted the ministry on 01 May 2017 to request disability assistance, the ministry is unable to provide him with any backdated assistance for the calendar months prior to May 2017. As a result, the ministry is unable to approve the appellant's request for backdated assistance.

The panel notes that the appellant was eligible for MSO since March 2014. He became eligible for MSO because he was designated as a person with disabilities and ceased to be eligible for disability assistance as a result of receiving CPP income. As the ministry argued, he remained ineligible for disability assistance up to the point when he re-established eligibility for disability assistance by completing the required forms and submitting the necessary information in May 2017, as required under EAPWDR section 4. As the ministry pointed out, the legislation also makes clear that under section 23(5), a family unit is not eligible for any assistance in respect of a service provided or cost incurred before the calendar month in which the assistance is requested. It follows that as he had not re-established eligibility for disability assistance until May 2017, the panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance for the preceding months.

In his submission on appeal, the appellant argues that the ministry acted unfairly by not advising him, as an MSO client, to contact the ministry to re-establish his eligibility for disability assistance when the disability assistance rates increased in September 2016.

The panel's jurisdiction is strictly limited to deciding if the ministry's reconsideration decision is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The panel's jurisdiction does not extend to the ministry's administration of its employment and assistance program, including its communications/notification policies and practices, except as may be provided in legislation. The panel has reviewed the applicable legislation and can find no reference to any obligation of the ministry to notify its clients individually of changes to disability assistance rates. The panel cannot base its decision on what the appellant argues is "fair". The panel decision must be based on the legislation.

Conclusion

Based on the foregoing, the panel finds that the ministry decision to deny 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. This appeal is thus not successful.