

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated July 28, 2017 which found that the Appellant did not become eligible to receive disability assistance as a person with disabilities (PWD) until the first day of April 2017, pursuant to Section 23(1) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1 and 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Subsections 23(1), 23(1.1), 23(3.11) and (3.2)

PART E – SUMMARY OF FACTS

The Appellant received income assistance as a sole recipient in February and March 2017 and has been receiving disability assistance as a PWD since April 1, 2017.

The evidence before the Ministry at the time of reconsideration included a Request for Reconsideration (RFR) signed by the Appellant and dated June 28, 2017, in which she states that she disagrees with the Ministry's decision and requests a 20 business day extension to gather her supporting information. The Ministry subsequently granted the Appellant an extension which allowed the Appellant to submit information to the Ministry by July 28, 2017.

An adjournment was granted on August 29, 2017, at the Appellant's request, because she had not been able to secure an advocate and because she had requested some documents from an unidentified source and had been told that it could take up to 30 business days for those documents to be provided.

A second adjournment was granted on October 16, 2017, again at the Appellant's request, because she needed more time to review and organize a large volume of documents that she had received from the Province of British Columbia's Information Access Operations (IAO) in response to a Freedom of Information (FOI) request that the Appellant had made.

A third adjournment was granted on November 10, 2017, again at the Appellant's request, because she still needed additional time to organize the documents she had received from the IAO in response to her FOI request.

A fourth adjournment was granted on December 12, 2017, again at the Appellant's request, because she had had to undergo a very painful treatment from which she was recovering and which had left her unable to sit for a prolonged period of time and because her computer was broken, forcing her to try to gain access to another computer to recreate and organize documents received in response to the aforementioned FOI request.

Additional Information

In her Notice of Appeal (NOA) dated August 10, 2017, the Appellant stated that she had several grounds for appeal. However, in the NOA the Appellant did not provide any reasons for her appeal of the Ministry's Reconsideration Decision, which found that a 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. The NOA did include arguments relating to why the Appellant felt that she should be granted an extension of the deadline for filing an NOA.

At the hearing the Appellant introduced 47 pages of additional information comprising:

1. Twenty-four pages providing reasons why the Applicant felt that the Ministry should have provided her with disability assistance from the first of the month following the month in which she submitted her PWD application (i.e. February 1, 2017 based on her application being submitted on January 9, 2017); and
2. Twenty-three pages of various documents from the Ministry's records obtained under an FOI request relating to the Appellant, including:
 - A two page Request for Access to Information Form,
 - A copy of the March 7, 2017 letter from the Ministry to the Appellant advising her that the Ministry had approved her designation as a PWD,
 - The first two pages of the Appellant's PWD Application Form,
 - 9 pages of typed notes from the Ministry's files in the Applicant's name detailing written and verbal

communication between the Appellant and the Ministry between November 6, 2016 and August 21, 2017,

- The first page of part 2 of the Appellant's Application for Income Assistance Form,
- Several pages from part 1 of the Appellant's Application for Income Assistance Form, including an Information / Documentation Checklist, and
- The Appellant's NOA Form.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that, when making a decision, panels may take into account the information and records that were before the Ministry when the decision being appealed was made and oral and written testimony in support of the information and records before the Ministry when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of an appellant.

The Ministry did not object to the introduction of the additional written information presented by the Appellant at the hearing.

The Panel considered the information in the NOA to be argument relating to her request for an extension of the original deadline for filing an appeal. The Panel could not find any new evidence contained in the twenty-four page written submission providing reasons why the Applicant felt that the Ministry should have provided her with disability assistance from the first of the month following the month in which she submitted her PWD application, and therefore considered the information in that document to be argument, which is summarized in more detail in the "Position of the Parties" section of Part F below.

The Panel considered the twenty-three pages of various documents from the Ministry's records to be records that were before the Minister when the decision being appealed was made, and therefore, the Panel admitted this additional evidence in accordance with Section 22(4)(a) of the EAA.

At the hearing, the Appellant stated that she believes that her benefits should have begun from the date that her PWD application was received by the Ministry. She pointed out that the term "designate" is not defined in the EAPWDA. The Appellant also stated that the Ministry's decision not to grant her assistance in February and March 2017 has caused her a lot of anxiety and financial hardship.

The Ministry stated that the legislation does not permit it to exercise any discretion in this regard. The Ministry did acknowledge that the Appellant has other options in seeking a decision in her favour, and explained the process for making a complaint to the Ministry, how it would be dealt with in the Ministry, and the role of advocates in the Appellant's community and the provincial Ombudsperson. The Ministry offered to speak further with the Appellant and provide her with additional assistance in pursuing those other options.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's Reconsideration Decision, which found that the Appellant did not become eligible to receive disability assistance as PWD pursuant to Section 23(1) of the EAPWDR until the first day of April 2017, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

Section 1 of the EAPWDA defines "disability assistance" as follows:

Interpretation

1 (1) In this Act: ...

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*]

Section 5 of the EAPWDA provides that the Ministry may provide disability assistance as follows:

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

The effective date of eligibility for a person designated as a PWD as set out in Subsections 23(1), 23(1.1), 23(3.11), and 23(3.2) of the EAPWDR as follows:

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 ...

(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 ...

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11) ...

* * *

Positions of the Parties

The Appellant's Position

The Appellant's position is that disability assistance should be effective on the date that a successful applicant's submission is received by the Ministry, and that it is unreasonable for the Ministry to consider an applicant who meets the criteria for designation as a PWD not to be eligible for disability assistance until the month following the date on which the Ministry gets around to completing its review of an application. If the Ministry accepts an application for a PWD designation it is acknowledging that the applicant was disabled on the date of his or her submission, regardless of whether the Ministry has "got processing times under control". In this instance, the Appellant argued that she should have received her PWD designation on January 9, 2017 or shortly thereafter, and should have received disability assistance effective February 1, 2017.

The Ministry's Position

The Ministry's position is that the legislation does not allow the Ministry any discretion in determining the effective date of eligibility for disability assistance. The language in Section 23 of the EAPWDR is clear: the Ministry is only empowered to provide assistance from the first day of the month following the month in which it designates an applicant as a PWD. In accordance with Section 23(1), as the Ministry confirmed the Appellant's PWD designation on March 7, 2017, she was not eligible to receive disability assistance until the first day of the following month.

Panel Findings

The evidence shows that the Ministry received the Appellant's application for designation as a PWD on January 9, 2017. Following the ministry's review of the Appellant's application and supporting documentation, the Minister designated the Appellant as a PWD on March 7, 2017, having been satisfied that the eligibility requirements as set out in the EAPWDA had been met.

The Panel notes that the EAPWDR defines "disability assistance" to include both the shelter and support allowances prescribed in Schedule A of the EMPWDR. The Panel also notes that Section 23(1) states that the family unit of an applicant for both designation as a PWD and for disability assistance 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. In this case, as the Minister designated the Appellant as a PWD on March 7, 2017, the first day of the month after the month in which the Ministry designated the Appellant

as a PWD is April 1, 2017. The Panel further notes that there are three exceptions to 23(1), specifically:

- For a 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 PWD on his or her 18th birthday, in which case the applicant is eligible for disability assistance on his or her 18th birthday [Subsection 23 (1.1)];
- In situations where the Ministry initially determined that an applicant was not eligible for the PWD designation but reverses that decision on reconsideration, in which case the applicant is eligible for disability assistance on the earlier of the date that the Ministry made the Reconsideration Decision and the date that the Ministry mailed a written communication of that Reconsideration Decision to the applicant [23(3.1)]; and,
- In situations where the Employment and Assistance Appeal Tribunal overturns a Ministry's Reconsideration Decision where the Ministry found the applicant ineligible for the PWD designation, in which case the applicant is eligible for disability assistance on the earlier of the date that the Ministry had made the Reconsideration Decision prior to the applicant's appeal and the date that the Ministry had mailed a written communication of that Reconsideration Decision to the applicant [23(3.2)]

The panel finds that none of the three specific exemptions applies in this case as the Appellant is not 18 years of age and the Ministry found that the Appellant met the criteria for a PWD designation when it made its initial decision on March 7, 2017.

Conclusion

The Panel finds that the Ministry's determination that the Appellant did not become eligible to receive disability assistance until the first day of April 2017 was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the Appellant pursuant to Section 24(1) of the EAA.

The Panel therefore confirms the Ministry's decision. The Appellant is not successful in her appeal.