

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 16, 2018 which found that the ministry had no legislative authority to alter the appellant's effective date of eligibility for Persons With Disabilities (PWD) designation. The appellant received his PWD designation on June 23, 2016 and per section 23(1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) the ministry determined that the appellant is not eligible for disability assistance until July 1, 2016, being the first day of the month after the month in which the appellant received PWD designation.

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 23

## **PART E – SUMMARY OF FACTS**

The information before the ministry at reconsideration included the following:

- PWD application comprised of the appellant's Self-Report (SR) dated March 7, 2016, a Physician Report (PR) dated March 23, 2016 completed by the appellant's psychiatrist, an Assessor Report (AR) dated March 24, 2016 completed by a registered psychiatric nurse (RPN)
- Ministry's PWD Approval Decision Summary dated June 23, 2016
- Letter from the ministry to the appellant dated June 23, 2016 advising that the appellant's request for PWD designation was approved
- The appellant's Request for Reconsideration (RFR) and email dated January 31, 2018 with emails between the appellant and the minister dated September 25, 2017 to January 31, 2018

### **Additional information provided**

In his Notice of Appeal (NOA) dated March 6, 2018 the appellant asks that the ministry read his email of March 6, 2018 and other communications before that date. With his NOA, the appellant attached copies of letters and email communications between himself and the ministry between September 25, 2017 and February 1, 2018. The email dated February 1, 2018 contains the appellant's request to the ministry for help with his prior email of October 29, 2017.

Prior to the hearing the appellant provided an email dated March 13, 2018 with copies of the emails submitted with his RFR and NOA (the Submission).

The ministry provided an email dated March 26, 2018 indicating that the ministry's submission will be the reconsideration decision.

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

### **Admissibility of New Information**

The panel has admitted the information in the appellant's Notice of Appeal and the Submission as the information and documentation are duplicates of the information before the ministry at the time of reconsideration. The panel has admitted the new document, being the appellant's email to the ministry dated February 1, 2018 as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information in the email supports the appellant's prior requests for assistance from the ministry.

## **PART F – REASONS FOR PANEL DECISION**

### **Issue on Appeal**

The issue on appeal is whether the ministry's reconsideration decision denying the appellant's request to alter the start date of his PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. In particular, was the ministry reasonable in determining that as the appellant received his PWD designation on June 23, 2016, he was not eligible for disability assistance until July 1, 2016, being the first day of the month after the month in which the appellant received PWD designation?

### **Relevant Legislation**

#### **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.

(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.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from 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.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(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).

(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.]

### **Panel Decision**

The ministry's position is that the appellant applied for and became eligible for regular income assistance benefits on February 23, 2016. The appellant then applied for and was approved for PWD designation on June 23, 2016 and that as per section 23(1) of the EAPWDR his disability assistance became effective on July 1, 2016 being the first of the month following PWD designation approval. The ministry's position is that there are no provisions within the legislation to consider a time period prior to the effective date of eligibility.

The ministry's position is that section 23(1.2) of the EAPWDR is only applicable to individuals who already have established their PWD designation, at a prior time, and are re-applying for disability assistance, so that section of the legislation does not apply to the appellant. In the ministry's email to the appellant dated January 10, 2018, the ministry explains that a person with PWD designation may leave disability assistance for a period of time and then reapply for disability assistance again at a later time. The ministry explains that those individuals are eligible for disability assistance from the date of their form to reapply for disability assistance. The ministry further explains

that an individual who ceases to be eligible for disability assistance does not lose their PWD designation and therefore does not have to reapply for the PWD designation if they require financial assistance in the future.

The appellant's position, as set out in his email to the ministry dated January 31, 2018 is that section 23(1.2) leaves room for interpretation and can be interpreted two ways, either for new applicants or re-applicants, not just one way as interpreted by the ministry for re-applicants. The appellant argues that the ministry does have legislative authority to modify the effective date of eligibility for new applicants like him. The appellant states that in his email dated September 25, 2017 he inquired whether section 23(1.2) was applicable to him so that he would have an earlier eligibility effective date, being February 23, 2016 when he first applied for income assistance, as opposed to June 2016 when his PWD application was approved. In his email dated January 11, 2018 the appellant argues that the legislation is not "...*legally precise enough because it could read with a few new word insertions that "[a] family unit of a new applicant or re-applicant for disability assistance who already has been firstly designated as a PWD then becomes eligible for a support allowance under sections 2 and 3 of Schedule A on the date of the new or re-applicant's submission of the application for disability assistance*".

The appellant argues that the ministry, by using the word "backdated" has preferred to keep the subject focused on EAPWDR section 23(1) and 23(4) rather than 23(1.2). The appellant's position is that the ministry has missed a relevant and pertinent subject which should have been included in the ministry's decision.

The panel finds that the ministry reasonably determined that the appellant became eligible for disability assistance on July 1, 2016 as per section 23(1) of the EAPWDR, as he was approved for PWD designation on June 23, 2016 and the legislation indicates that his disability assistance becomes effective the first of the month following PWD designation approval.

The panel finds that the ministry reasonably determined that EAPWDR section 23(1.2) was not applicable to the appellant and that it applies to individuals who were previously designated with PWD designation and are re-applying for disability assistance. The wording of EAPWDR section 23(1)(a) clearly provides the date that an applicant becomes eligible for disability assistance, being the first day of the month after the month in which the minister designates the applicant as PWD. EAPWDR section 23(1.2) however, states that a "...*family unit of an applicant for disability assistance who has been designated as a PWD becomes eligible for...*" and the use of the phrase "has been designated" is written in the past tense indicating the legislative intent to refer to past PWD designated applicants who are applying for disability assistance, not applicants who are applying for PWD designation.

Although the appellant argues that the ministry's reference to EAPWDR section 23(4) was an effort to focus the issue away from his applicability determination, the panel finds that the ministry was in fact reviewing all of the legislation in an effort to explain to the appellant why EAPWDR section 23(1) was the correct legislation to apply in his circumstances. As the appellant was questioning the date that he became eligible to receive disability assistance and as section 23(4) contemplates circumstances in which the ministry may backdate disability assistance payments, the panel finds that the ministry was reasonable in referring to that section. The panel finds that the ministry, in using the word "backdated" was not trying to avoid the appellant's question of whether EAPWDR section 23(1.2) was applicable given that the appellant was seeking to have his disability assistance take effect prior to the date determined by EAPWDR section 23(1), being July 1, 2016. The panel finds that the reconsideration decision clearly explains why EAPWDR section 23(1) is the applicable legislation and that the ministry did not miss any relevant considerations.

The panel finds that the ministry reasonably determined that the ministry does not have the legislative authority to alter the date of the appellant's effective date of PWD designation.

### Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request to alter his PWD designation effective date, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant's appeal, therefore, is not successful.