

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 26, 2018 which found that the appellant is not eligible for a backdated transportation supplement. The ministry determined that a transportation supplement may be provided under section 54.2 of the Employment and Assistance for Persons with Disabilities Regulation to a person who is eligible for disability assistance. The ministry found that the appellant became eligible for disability assistance effective November 1, 2017 and therefore was not eligible for a transportation supplement until that date.

### **PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 1, 3, 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 23(1), 54.2

## **PART E – SUMMARY OF FACTS**

Information before the minister at reconsideration included:

- A letter to the appellant from the ministry dated June 8, 2018 advising him of their decision.
- The appellant's Request for Reconsideration dated June 12, 2018.

The appellant included with his Notice of Appeal to the Tribunal a copy of a letter to him from the ministry dated April 17, 2018, advising him of their decision to approve his request for backdated income assistance from May, 2016 to April, 2017. The Panel accepted this information as part of the appellant's argument.

At the hearing, the appellant referred to his appeal regarding the effective date of his PWD designation, bearing in mind that a supplement cannot be provided to an applicant who is not eligible for it. The appellant stated that his original application for income assistance had been mishandled by the ministry, causing a delay in approval from May, 2016 to February, 2017. He was further delayed in applying for PWD designation until it was approved effective November 1, 2017, when he then became eligible for a transportation supplement. The appellant stated that he clearly indicated when he applied for income assistance that he intended to apply for PWD designation, but he was incorrectly informed by a ministry worker that he must first be approved for income assistance, then apply for PWD designation. He stated that if there had not been an unreasonable delay of his approval for income assistance, he would have submitted an application for PWD designation earlier. He is asking for a corrected date of eligibility.

The ministry responded that the appellant became eligible for a transportation supplement after he was approved for PWD designation, November 1, 2017. There is no provision in the legislation for backdated approval. The ministry agreed that the information that an applicant must be approved for income assistance prior to applying for PWD designation was wrong; however, a person is not eligible for a disability supplement until they are eligible for disability assistance.

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

The issue in this appeal is the reasonableness of the ministry's decision to deny the appellant's application for a backdated transportation supplement. The ministry determined that the appellant was not eligible for a transportation supplement until he was determined to be eligible for disability assistance, therefore he was not eligible for a transportation supplement until that date.

### **Legislation**

*EAPWDA*

### **Interpretation**

**1** (1) In this Act:

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

### **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.

### **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.

*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.

#### **Persons with disabilities transportation supplement**

**54.2** (1) The minister may provide a transportation supplement to or for a family unit that is eligible for disability assistance or hardship assistance for a calendar month, in respect of each recipient who is designated as a person with disabilities in the family unit, in one of the following forms:

- (a) in money, in the amount of \$52;
- (b) in kind, in the form of a pass, deemed to have a value of \$52 for the purposes of this regulation, for the personal use of the person with disabilities on a public passenger transportation system in
  - (i) a transit service area established under section 25 of the *British Columbia Transit Act*, or
  - (ii) a transportation service region as defined in the *South Coast British Columbia Transportation Authority Act*.

(2) If a recipient who is provided a supplement under either paragraph (a) or (b) of subsection (1) gives the minister notice that the recipient wishes to receive the other form of supplement provided under that subsection, the minister may provide that other form of supplement for a subsequent month.

(3) An annual pass, as defined in section 51 (2) [*spouse bus pass supplement*], is deemed to be a supplement provided in kind under subsection (1) (b) of this section if the annual pass was provided to or for a recipient who is designated as a person with disabilities and who was previously provided the annual pass for personal use

- (a) as the spouse of a person with disabilities under section 51 (1), or
- (b) under section 66 (1) [*bus pass supplement*] of the Employment and Assistance Regulation.

The appellant's position is that he would have been eligible for PWD designation and supplements if his original application for income assistance had not been cancelled wrongfully by the ministry. He recognizes that approval for a supplement depends on eligibility as a PWD; therefore he argued that the effective date of his PWD designation and subsequent eligibility for the transportation supplement be amended.

The ministry's position is that the appellant became eligible for disability assistance effective November 1, 2017 and he became eligible for a transportation supplement on that date. There is no provision for backdating PWD designation and therefore no provision for a backdated transportation supplement.

### **Panel Decision**

The Panel accepts the appellant's oral evidence concerning the delays in having his application for income assistance approved and his arguments with respect to his intention to apply for PWD designation at an earlier date. The legislation, section 23(2) of the EAPWDR, states that a person is not eligible for disability assistance or a supplement in respect to a period before the minister determines the family unit is eligible for it. In this instance, the appellant became eligible for disability assistance on November 1, 2017, and was eligible for a transportation supplement as of that date. There is no provision in the legislation for backdating eligibility for a supplement. The Panel finds that the ministry reasonably determined the appellant was not eligible for a transportation supplement prior to November 1, 2017. The Panel confirms the ministry decision.

The appellant is not successful on appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 JUL 17

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 JUL 17

PRINT NAME

Adam Rollins

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 JUL 24