

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 backdated disability assistance for the period August 1, 2016 to October 31, 2017. The ministry determined that the appellant was found eligible for disability assistance effective November 1, 2017 and that there is no provision to provide disability assistance to a family unit before an applicant has been designated as a Person with Disabilities in accordance with 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 1,2, 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 23(1)

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter to the appellant from the ministry dated June 11, 2018 advising him of the decision that he is not eligible for back pay of disability assistance.
- A letter to the ministry from the appellant dated May 12, 2018.
- The appellant's Request for Reconsideration, dated June 12, 2018.
- A letter from a physician dated June 18, 2003 concerning the appellant's medical condition.
- Copies of radiology consultation reports dated 2005 and 2006.
- A copy of an Ontario Social Benefits Tribunal decision dated July 14, 2008.
- A copy of an Ontario Social Benefits Tribunal decision dated March 8, 2006.
- A copy of a hospital clinic report dated September 14, 2011.
- A copy of an electrodiagnostic consultation report dated October 19, 2011.
- A copy of a diagnostic imaging report dated October 21, 2011.
- A letter "To whom it may concern" from a physician dated July 23, 2015.
- A consultation report from a hospital department of medical imaging dated October 16, 2015.
- A Results Review Report from Vancouver Coastal Health dated "20May16".
- A letter "To whom it may concern" from a foot specialist dated September 21, 2016.
- A copy of a letter from Canada Revenue Agency to the appellant dated October 14, 2016 re his eligibility for the disability tax credit.
- A copy of an MRI report dated February 2, 2017.
- A letter from the appellant to the ministry dated June 7, 2017.
- The appellant's Persons with Disabilities Designation Application, stamped as received August 10, 2017.

The appellant included with his Notice of Appeal to the Tribunal copies of a letter from the ministry dated April 17, 2018 advising him that his request for back dated income assistance from May, 2016 to April 2017 was approved. This information was accepted by the Panel as part of the appellant's argument.

At the hearing, the appellant stated that he made it clear in 2016 that he intended to apply for Persons with Disabilities (PWD) designation, but due to the delay in his approval for income assistance, he was not able to apply. He stated that he asked and was informed by the ministry that he first must be approved for income assistance, then apply for PWD designation. The appellant stated that his application for income assistance was cancelled wrongfully, then reinstated in November, 2017, and he received income assistance payments for the period starting with his original application date of May, 2016. As a result, he was not given an opportunity to apply for PWD designation until after that date. He is asking for retroactive disability assistance benefits plus 6% interest, calculated monthly, for the period of August 1, 2016 to October 31, 2017.

The ministry responded by referring to the Reconsideration Decision, which states that the appellant was designated as a Person with Disabilities effective November, 2017, and there is no provision for retroactive payments or interest. The ministry stated that an application for PWD designation was mailed to the appellant in May, 2017, however the appellant could have obtained an application from any ministry office or through an advocate. There is no requirement that an applicant first be approved for income assistance in order to apply for PWD designation, and any information to the contrary was in error. The ministry acknowledged that there was some miscommunication with respect to the appellant's original application for income assistance, which resulted in a delay of eight months, and the appellant's application was approved from the date he submitted Part 2 of the application form, May, 2016. The ministry stated that the decision to deny the appellant's request for backdated disability assistance was based on the legislation, and there is no authority to backdate.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision to deny the appellant's request for backdated disability assistance for the period August 1, 2016 to October 31, 2017. The ministry determined that the appellant was found eligible for disability assistance effective November 1, 2017 and that there is no provision to provide disability assistance to a family unit before an applicant has been designated as a Person with Disabilities in accordance with section 23(1) of the Employment and Assistance for Persons with Disabilities Regulation.

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.

The appellant's position is that he should have been allowed to apply for PWD designation in May, 2016, but he was told that he must first be approved for income assistance. As a result of ministry delays, he was not approved for income assistance until April, 2018, when he was approved for backdated assistance from May, 2016. The

appellant argued that he should have been permitted to apply for PWD designation in May, 2016 and had the ministry not made errors, he would have done so. He argued that he made his intention to apply for PWD designation clear, and had he not been denied the opportunity, he would have been able to apply earlier.

The ministry's position is that under EAPWDR section 23(1), disability assistance takes effect the first day of the month after the month in which a person is designated as a PWD. In this instance, the appellant was designated as a person with disabilities on October 2, 2017, and he became eligible for disability assistance the first day of the following month, November 1, 2017. The ministry noted that there is no provision for back payment, and other than the provisions of section 23(4), there is no provision for backdated payment.

Panel Decision

The Panel accepts the appellant's oral evidence with respect to his conversations with the ministry which led him to believe that he must first qualify for income assistance before applying for PWD designation. The Panel notes that the appellant was in fact approved for PWD designation when he applied. The timeline and subsequent eligibility of the appellant are not in dispute. The issue is whether the ministry reasonably applied the legislation, which states that an applicant for PWD designation is not eligible for disability assistance until after he has been designated as a person with disabilities. The Panel notes that an application for PWD designation is "tested" in the sense that an application must be made in the prescribed manner, then reviewed, then approved or denied. The ministry does not have the option to approve PWD designation before an application has been made. The ministry has acknowledged that the appellant's application for income assistance should have been approved earlier, and took steps to backdate the appellant's payments.

There is no provision in the applicable legislation to either backdate approval of an application for PWD designation before it was received, nor to provide retroactive payments for a period prior to designation as a PWD. The Panel finds that the ministry reasonably applied the applicable legislation. 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 17