

**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 July 10, 2018, which determined that the appellant’s eligibility for disability assistance could not be backdated to September 2015 because section 23(1)a) of the Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”) states that an applicant is not eligible for disability assistance until the first day of the month after the month in which the minister designated the applicant as a person with disabilities (PWD).

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”), section 23

## **PART E – SUMMARY OF FACTS**

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Act.

### *Information provided on appeal*

Submitted with the appellant's July 27, 2018 Notice of Appeal (NOA) is a two page document in which the appellant both reiterates previous information and provides additional details respecting the advocacy agency's involvement with the appellant's application for PWD designation. The appellant also sent an August 2, 2018 email to the tribunal respecting the qualifications of tribunal members and past ministry decisions; the email did not include evidence relevant to this appeal.

At the hearing, the ministry provided further clarification of the timeline of events outlined in the reconsideration decision. The ministry did not object to the admission of the appellant's July 27, 2018 submission.

The panel admitted the information in the appellant's NOA submission and the ministry's oral testimony under section 22(4) of the Employment and Assistance Act on the basis that the information either reiterated or substantiated information available at reconsideration and was therefore in support of the information before the ministry at reconsideration.

### *Chronology of information in the appeal record (appeal submissions reflected as noted)*

By letter dated July 16, 2012, the ministry advises the appellant that due to his inappropriate behaviour, he is not to attend any offices of the ministry and that his ministry file has been transferred to an advocacy agency that will administer the appellant's assistance and deal with any issues he has concerning ministry services and programs. The appellant disputes the date of this letter which references the ministry by a previous name, Ministry of Employment and Income Assistance, arguing that it has been backdated. At the hearing, the ministry confirmed that the appellant's ministry file originally opened in 1991 and based on this information, the panel finds that it is likely that this letter addresses circumstances long before the appellant's more recent applications for ministry assistance.

The appellant reports that following a workplace injury in 2015, he received Employment Insurance (EI) benefits. This is confirmed by an April 14, 2016 letter from the Employment Insurance Commission stating that the appellant received the maximum 15 weeks of sickness benefits from October 4, 2015 through January 16, 2016. Ministry records indicate that the appellant attempted to apply for income assistance in February 2016, which the ministry notes was after the appellant's EI benefits were exhausted. The appellant's letter submitted at reconsideration and a copy of the first page of an Application for Income Assistance (Part 1) bearing a fax confirmation date of February 29, 2016, confirms this timeframe. At the hearing, the ministry explained that while it usually closes a file after 2 months if there is no activity, the appellant's file was left open to allow additional time for the submission of requested information, likely in recognition that communication takes longer with third party administered files. Subsequently, the appellant's file was closed and then re-opened on August 5, 2016. In his reconsideration letter, the appellant states that his application for assistance in February 2016 was denied on the basis of excess income/assets and that the ministry should have proceeded with the appellant's PWD designation application at this time.

On September 16, 2016 the appellant emails the ministry requesting that forms for appeal or a new application be faxed to the appellant. Ministry records indicate that a service request respecting the appellant's desire to apply for PWD designation was created on October 18, 2016. Included in the appeal record is a copy of a Persons With Disabilities Designation Application Introduction, which is the first page of the ministry's PWD Application. This document bears the signature of a ministry signing authority who has indicated that he or she signed the document on October 24, 2016. While, as noted above, the appellant disputes the date of the 2012 letter respecting the transfer of his file to an advocacy agency, it is not in dispute that at the time the appellant requested and was provided with the PWD Application in October 2016, his ministry file was administered through a third party, the advocacy agency to whom the ministry provided the PWD Application. At the hearing, the ministry explained that when clients are not permitted to attend ministry offices, the ministry will provide a third party administrator so that there is a means for communication; clients are, however, able to choose another organization or individual as the third party administrator.

In his written submissions, the appellant writes that the advocacy agency staff failed to contact the appellant's physician as requested by the appellant and failed to relay ministry requests for additional information to the appellant which caused delays in processing his PWD application. It appears that the appellant's complaints about the advocacy agency relate to both the application for assistance in February 2016 and the subsequent application for PWD designation.

Information from the advocacy agency respecting the completion of the appellant's PWD application includes an undated letter from the advocacy agency to the appellant's physician stating that, at the appellant's request, the advocacy agency will fax Section 2 of the PWD Application to the physician for completion and that Section 3 will be completed by a social worker working with the advocacy agency. Section 2 was completed by the physician and dated December 15, 2016. Subsequently, as described in a letter dated January 9, 2017, the advocacy agency states that it was unable to accommodate the appellant's request for a special ergonomic chair and provides its account of what transpired when the appellant attended its office for completion of Section 3 of the PWD Application, resulting in the appellant being banned from the agency's office. The advocacy agency also indicates that the appellant requested that the advocacy agency fax the PWD Application to the physician for completion of Section 3. A letter from the appellant to his physician faxed on January 8, 2017, discusses arrangements for the appellant to attend the physician's office for completion of Section 3 of the PWD Application and includes the appellant's description of what occurred at the advocacy agency, including that the appellant was injured. Following is a letter dated January 12, 2017, in which the advocacy agency advises the appellant that due to an incident earlier that month, the advocacy agency was ending its service delivery to the appellant and that it had faxed Section 3 of the PWD Application to the appellant's physician's office for completion.

On April 10, 2017, the Persons with Disabilities Application Introduction that was originally signed and dated by a ministry signing authority on October 24, 2016, was received by the ministry's Health Assistance Branch (HAB) as evidenced by the date stamp of HAB. Presumably, given that the appellant was notified of his PWD designation approximately 6 weeks later by letter dated May 19, 2017, the balance of the PWD Application [Section 2 – Medical Report dated December 15, 2016; Section 3 – Assessor Report dated February 1, 2017; Section 1- signed by appellant on December 1, 2016]) was also received by HAB on April 10, 2017. At the hearing, the ministry confirmed that the entire completed PWD Application was received by HAB on April 10, 2017. In his appeal submission, the appellant states that after several months of misrepresentation by the advocacy agency, with the assistance of a ministry worker the completed PWD Application was submitted via the ministry's virtual intake system.

By letter dated May 19, 2017, the appellant was informed that the ministry approved his designation as a PWD,

effective from June 1, 2017 and that he was to contact the ministry if he wished to receive disability assistance. The appellant was found eligible for disability assistance starting June 1, 2017.

On June 7, 2018, the appellant requested that his disability assistance payments be backdated to September 2015 which is when he became disabled. The appellant's request was denied on June 7, 2018 and again at reconsideration.

The panel notes that the appeal record includes additional information relating to the appellant's medical condition that does not directly relate to the subject matter of the appeal as well as information relating to other matters with the ministry.

## PART F – REASONS FOR PANEL DECISION

### Issue on Appeal

The issue on appeal is whether the ministry's decision that the appellant's eligibility for disability assistance cannot be backdated to September 2015 because section 23 of the Regulation only allows for the provision of disability assistance beginning in the month following the month a person is designated as a PWD is reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

### Applicable Legislation

#### 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.

**Panel Decision**

The appellant argues that the processing of his PWD Application and his subsequent designation as a PWD was delayed due to the ministry's failure to move forward with the PWD designation process when the appellant was found ineligible for income assistance due to his income/asset level and due to the incompetence and misrepresentation by the advocacy agency to whom the appellant was referred by the ministry. Based on these circumstances, the appellant argues that his eligibility for disability assistance should be backdated to September 2015 which is when he became disabled.

The ministry's position is that the legislation only allows for the provision of disability assistance from the first day of the month following the month in which the minister designates a person as a PWD. Noting that the ministry cannot anticipate when a completed PWD Application will be submitted, the ministry concludes that as it received the completed PWD Application on April 10, 2017 and the appellant was designated as a PWD on May 19, 2017, the appellant was found eligible for disability assistance on June 1, 2017.

Section 23(1) of the Regulation provides that, with the exception of circumstances relating to the application for disability assistance for an applicant who is 17 years of age or PWD designations approved at reconsideration or on appeal to the tribunal, eligibility for disability assistance does not begin "until the first day of the month after the month in which the minister designates the applicant as a person with disabilities." In this case, the appellant is not 17 years of age and was approved for designation following the ministry's receipt of the appellant's PWD Application, meaning that there was no denial to be reconsidered or appealed. Accordingly, the panel concludes that, the ministry has reasonably determined that the effective date of eligibility for the appellant is June 1, 2017, which is the first day of the month after the month (May 2017) in which the appellant was designated as a PWD.

It is clear that there are a number of delays from when the appellant applied for assistance in February 2016 to May 2017 when he was designated as PWD, including the period from February 1, 2017 when the last part of the PWD Application was completed by the appellant's physician until April 10, 2017 when the PWD Application was received by the ministry, a time period during which the appellant was no longer represented by the advocacy agency. However, there is conflicting information and where the responsibility for the delays rests cannot be determined. Furthermore, even if it was determined that responsibility for the delays rests with someone other than the appellant, the legislation does not allow for backdating eligibility for disability assistance.

Therefore, the panel concludes that the ministry's reconsideration decision, which determined that in accordance with section 23(1) of the Regulation the appellant was not eligible for backdated disability assistance, was a reasonable application of the applicable enactment and therefore confirms the 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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/08/20

PRINT NAME

Pat Munroe

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/08/20

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/08/20