

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 10, 2018, which held that the appellant is not eligible for retroactive Persons with Disabilities (PWD) benefits for the month of August 2018 pursuant to Section 23(1)(a) of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that since the ministry made its determination that the appellant was eligible for PWD in August 2018, his designation as PWD is effective September 2018; the first day of the month following the month of the ministry’s decision.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

After verifying that the ministry had received the notice of the hearing, the hearing proceeded in the ministry's absence in accordance with section 86(b) of the Employment Assistance Regulation.

The evidence before the ministry at the time of reconsideration consisted of:

1. 5-pages of email communication between the appellant and the ministry office from June 5, 2018 to August 1, 2018.
2. PWD Designation Application – Prescribed Class. This form was signed and dated August 1, 2018. The form indicated that the appellant has been determined to be disabled for the purposes of the Canada Pension Plan (CPP) and is eligible to receive CPP Disability Benefits from Employment and Social Development Canada.
3. Request for Reconsideration (RFR), signed and dated August 28, 2018, which in part stated the following:
 - The appellant is in 2 prescribed classes for the PWD designation (he receives CPP disability benefits since 2013 and Pharmacare Palliative Care benefits since March 2018).
 - A time line of this interactions with the ministry (July 22, 2018 – re-applied for assistance; July 27, 2018 – additional documents requested by the ministry and uploaded to the website the same day; August 1, 2018 – phone call with ministry worker who required 3 additional forms which were uploaded the same day. The forms were the PWD application, SD80 and SD80B; August 10, 2018- the intake worker away on vacation; August 13, 2018 – received email from intake worker to say the PWD application submitted.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated September 18, 2018, which stated in part the following:

- “I feel I am being penalized because the intake worker made no effort to process my case for approval by July 31 [2018]. There would have been business days July 24-31 for the ministry get my PWD designation approved”.

The panel finds that the information contained in the NOA is a part of the appellant's argument.

Evidence Prior to the Hearing

Prior to the hearing, the appellant submitted 1-page of a cellular phone bill with directional arrows pointing to a incoming phone call on July 23.

Evidence at the Hearing

At the hearing, the appellant's advocate reiterated the information contained in the RFR, and added the following:

- The ministry did not make the appellant aware that there was a time constraint with the application in order to be eligible for the month of August 2018.
- The application was completed and submitted by July 23, 2018, the interview was on July 27, 2018 and the final forms were submitted on August 1, 2018. If the ministry had conducted the interview earlier the final forms could have been submitted in the month of July thereby making the appellant eligible for PWD benefits in the month of August 2018.
- Though the ministry had the application on August 1, 2018, the worker did not submit it until August 13, 2018. The application was approved on August 13, 2018 within 1 hour of being submitted. It stands to reason then, that if the ministry did not delay the interview and/or sending out the final forms, the application could have been submitted and approved in the month of July 2018 which would have made the appellant eligible for benefits for August 2018.
- When asked ‘whether or not the appellant made the ministry aware that there was a need for PWD benefits for the month of August 2018’, the appellant's advocate stated that the ministry was aware of the appellant's financial situation and therefore assumed that the ministry was aware that there was a need for PWD benefits for the month of August 2018.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. 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 enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In this case, the panel determined that the 1-page cellular phone bill is not new information and the admission of it does not place the panel in the position of decision-makers of the first instance. Accordingly, the panel determined that the 1-page cellular bill is in support of the information at reconsideration and is therefore admissible under section 22(4) of the EAA.

PART F – REASONS FOR PANEL DECISION

The issue before the panel is the reasonableness of the ministry's reconsideration decision, which held that the appellant is not eligible for retroactive PWD benefits for the month of August 2018 pursuant to Section 23(1)(a) of the EAPWDR.

Section 23 of the 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 disability assistance application date,
- (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, 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 disability assistance application date.

(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

The appellant argued that the ministry had 6 business days to consider and approve his PWD application in the month of July 2018. The ministry delayed his application process thereby effecting his eligibility date. As a result, he is entitled for retroactive PWD benefits for the month of August 2018.

The Ministry's Position

The ministry's argued that the appellant is not eligible for retroactive PWD benefits for the month of August 2018 pursuant to Section 23 (1)(a) of the EAPWDR. Specifically, the ministry argued that since the ministry made its determination that the appellant was eligible for PWD in August 2018, his designation as PWD is effective September 2018; the first day of the month following the month of the ministry's decision.

The Panel's Decision

The panel notes that it does not have the jurisdiction to make a determination on ministry policy or guidelines. The timeframe the ministry uses to process any application it considers is not entrenched in legislation and therefore is not an issue the panel can consider. The issue before the panel is the reasonableness of the ministry's reconsideration decision, which held that the appellant is not eligible for retroactive PWD benefits for the month of August 2018 pursuant to Section 23(1)(a) of the EAPWDR.

Section 23 (1)(a) of the EAPWDR sets out that an individual 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. The appellant's application was approved on August 13, 2018. Furthermore, the appellant's application, in its full and final form, was submitted on August 1, 2018 and the appellant does not dispute this fact. In other words, the appellant's PWD application was submitted and approved in the same month (August 2018), which makes the appellant eligible for PWD benefits September 1, 2018 according to the legislation. The panel finds that the ministry was reasonable in its determination that the appellant is not eligible for retroactive PWD benefits for the month of August 2018 pursuant to section 23(1)(a) of the EAPWDR.

Conclusion

The panel finds that the ministry decision which found that the appellant is ineligible for retroactive PWD benefits for the month of August 2018 pursuant to Section 23 (1)(a) of the EAPWDR was a reasonable application of the applicable legislation and a reasonable interpretation of the evidence. The panel confirms the ministry's decision and the appellant is not successful in the 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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/10/10

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/10/10

PRINT NAME

Rabinder Nijjar

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/10/10