

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry's) reconsideration decision dated October 10, 2018, which denied the appellant's request for retroactive assistance as the ministry found that the appellant's eligibility for disability assistance commenced on December 1, 2017, the first day of the month after the month in which the ministry designated the appellant as a Persons With Disabilities (PWD), pursuant to Section 23(1)(a) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 23
Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 3

PART E – SUMMARY OF FACTS

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation. In the absence of consent from the appellant, a proposed ministry observer did not attend the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated November 14, 2016 and September 12, 2017, a medical report (MR) dated September 14, 2017 completed by a medical professional who is a specialist in mental health, who had known the appellant for 4 months, and an assessor report (AR) completed by the same professional and dated September 20, 2017;
- 2) PWD Designation Approval Decision Summary dated November 30, 2017; and,
- 3) Request for Reconsideration dated October 2, 2018.

In his Request for Reconsideration, the appellant wrote:

- He submitted a complete PWD application to his doctor on June 7, 2016 and if the doctor had submitted the application to the ministry that month, he would have been eligible for disability payments in July/August 2016;
- He would not have suffered threat of poverty, duress, etc. for more than a year further that it took for the second application to be submitted by a new doctor;
- He wonders why the first doctor did not submit the application. He would like a hearing with the doctor's subpoenaed testimony.

Additional information

In his Notice of Appeal dated October 18, 2018, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that if it were not for the doctor failing to submit the first PWD application, which the appellant gave to him on June 7, 2016, he would have been eligible for PWD assistance in July or August of 2016. The appellant attached a copy of the first page of the Reconsideration decision and made a handwritten notation in the Summary of Facts that in December 2015 the ministry provided him with an earlier application for PWD.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry also clarified that:

- After the ministry provided the appellant with the PWD application, it is out of the ministry's hands as the appellant was provided with a self-stamped envelope to have the completed application returned directly to the ministry's Health Assistance Branch (HAB).
- When the ministry reviewed the appellant's file "in depth" in October 2016, a check of the status with HAB would have also been conducted. The ministry determined at this time that no application had been received by the ministry.
- The designation as a PWD occurs when the adjudicator makes the decision to approve the application, which occurred on November 30, 2017 according to the Summary page.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision, which denied the appellant's request for retroactive assistance as the ministry found that the appellant's eligibility for disability assistance commenced on December 1, 2017, the first day of the month after the month in which the ministry designated the appellant as a PWD pursuant to Section 23(1)(a) of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 3 of the EAPWDA provides:

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.

Provisions of the EAPWDR provide:

Effective date of eligibility

23(1) Subject to subsection (1.1), 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. . . .

Panel decision

Section 23(1) of the EAPWDR stipulates that a family unit of an applicant for designation as a PWD is not eligible for disability assistance until the first day of the month after the month in which the ministry designates the applicant as a PWD and, on that date, the family unit becomes eligible for that portion of that month's shelter costs that remains unpaid on that date. The ministry wrote in the reconsideration decision that an application for PWD designation was provided to the appellant in July 2016 and the appellant advised the ministry in October 2016 that his doctor's office told him that they had returned the completed application to the ministry. The ministry stated at the hearing that it was at this time that the ministry reviewed the appellant's file "in depth." The ministry also checked the status with HAB, as this is the return address provided on the self-addressed envelope provided with the application. The ministry

wrote that, after this review of the appellant's file, the ministry determined that there was no record of the ministry having received a completed PWD application on behalf of the appellant.

The appellant wrote in his Request for Reconsideration that he submitted the PWD application to his doctor on June 7, 2016 and if the doctor had submitted the application to the ministry that month, he would have been eligible for disability payments in July/August 2016. The appellant did not provide a copy of the previous PWD application that his doctor advised him had been completed, nor was a letter or other communication provided from his doctor to verify the date and ministry location to which the application was submitted. In the absence of further evidence, the panel finds that the ministry reasonably considered that a PWD application, completed by a medical professional in September 2017, was the only completed PWD application received by the ministry on behalf of the appellant, and was not received until September 29, 2017.

The ministry wrote in the reconsideration decision that following a review of this completed application, the ministry approved the appellant's application for PWD designation on November 30, 2017. As the appellant was designated by the ministry as a PWD in November 2017, as confirmed by the PWD Designation Approval Decision Summary dated November 30, 2017, the panel finds that the ministry reasonably considered that the appellant was not eligible for disability assistance until the first day of the month after the month in which he was designated, or December 1, 2017, pursuant to Section 23(1)(a) of the EAPWDR.

Conclusion

The panel finds that the ministry reconsideration decision, which denied the appellant's request for retroactive assistance as the ministry found that the appellant's eligibility for disability assistance commenced on December 1, 2017, the first day of the month after the month in which the ministry designated the appellant as a PWD, pursuant to Section 23(1)(a) of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances.

The panel confirms the ministry's decision. Therefore, the appellant's appeal is not successful.

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

On behalf of Pat Munroe

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/08/20

Wesley Nelson

SIGNATURE OF MEMBE

DATE (YEAR/MONTH/DAY)

2018/08/20