

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry's) reconsideration decision dated April 11, 2019, which denied the appellant's request for retroactive assistance as the ministry found that the appellant's eligibility for disability assistance commenced on March 1, 2019, 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

PART E – SUMMARY OF FACTS

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Undated written observations of the appellant by her teacher;
- 2) Psychological Assessment Report for the appellant dated January 26, 2015;
- 3) Letter dated April 29, 2015 from a health authority assessment network enclosing a copy of the Psychological Assessment Report to a social worker with the Ministry of Children & Family Development (MCFD);
- 4) Letter date June 2, 2016 from a health authority assessment network, referring to the appellant's diagnoses of Reactive Attachment Disorder, Attention-Deficit Hyperactivity Disorder, Anxiety Disorder Not Otherwise Specified and Learning Disability in Writing and Mathematics;
- 5) Student Services Report dated October 31, 2016 for an Individual Education Plan;
- 6) Clinician Report dated June 19, 2017 regarding the appellant's academic testing;
- 7) Letter dated February 27, 2019 in which the ministry wrote that the appellant had been approved for designation as a PWD [Person With Disabilities] and is effective from March 1, 2019.
- 8) Letter dated March 5, 2019 in which the appellant's father wrote that he received the letter from the ministry approving the appellant's PWD designation. He requested that the eligibility for PWD be retroactively approved to April 2018 [the date the appellant turned 19]. He wrote that the appellant was granted a disability tax credit prior to turning 19 and was designated as a student with disabilities in elementary and high school; and,
- 9) Request for Reconsideration dated April 6, 2019.

In the Request for Reconsideration, the appellant's father wrote:

- He requests a reconsideration of the appellant's effective date, and retroactive benefits, for the PWD designation. The original date was effective February 27, 2019 and he believes that the effective date should be in April 2018, with benefits paid to that date.
- The appellant has been continuously disabled since she was initially designated as a student with disabilities by the integrated team for her school district in approximately 2006. The appellant was subsequently determined to be eligible for the federal disability tax credit in approximately 2008, until she turned 19 years old.
- The appellant was determined to have multiple disabilities by MCFD staff through an assessment in 2015 by the health authority assessment network.
- When the appellant turned 19 years old, she applied for ministry assistance and, only upon acceptance on this program, was she eligible to apply for PWD assistance. The appellant was granted PWD designation on February 27, 2019.
- The reason that the designation took until February 2019 to be completed was the myriad doctor appointments, document gathering, application completion procedures, and ministry administrative delays.
- It took approximately one month to arrange an appointment with the doctor because of the doctor's caseload delays.
- When submitted to the doctor, it was discovered that the ministry did not sign the front

cover of the disability medical form and it had to be returned to the ministry for authorization and then returned to the doctor, causing further delays.

- Once received properly, filling out the disability doctor's form took 2 months; reviewing it and following up with the doctor took another month to clarify the information.
- These delays in having the paperwork correctly and accurately completed should not be a basis to restrict entitlement. The appellant has had these disabilities continuously as evidenced by the timeline and documentation.
- The appellant should not be deprived of much-needed funding and assistance due to administrative and bureaucratic delays that have no impact on her condition.
- The appellant has been disabled from a young age and her function has not changed. The eligible date does not reflect her actual disablement. The documents clearly demonstrate that the appellant's disability pre-date the application for assistance and PWD designation.
- Therefore, PWD benefits should be awarded retroactive to the date that the appellant turned 19 years of age.

Additional information

In the Notice of Appeal dated April 25, 2019, the appellant expressed her disagreement with the ministry reconsideration decision and her father wrote:

- The decision failed to consider the facts of the appellant's situation. The appellant's disability has been continuous since elementary school. Supporting agencies failed to provide accurate information and advice on eligibility.
- There is a factual error in the decision as the appellant turned 19 years old in 2018 and not 2019.
- Throughout the appellant's quest for appropriate assistance, poor advice has been provided by outside agencies and the ministry, who had only a cursory understanding of the appellant's situation with respect to her actual disabilities.
- The appellant was advised on several occasions when she was 17 years old that she was ineligible for assistance until she turned 19 years old.
- Section 23(1.1) of the EAPWDR clearly allows for an earlier application, which would have been made as early as possible.
- The appellant has been disabled since at least age 5, as supported by numerous administrations and agencies in granting special designations and tax exemption status on the basis of profound disability.
- It is inconsistent with the external agency findings and the ministry's own determination to interrupt these benefits for a period of 10 months due to a purely administrative statute when the delay in processing this determination was caused by the agency itself, i.e. inaccurate information provided, and not stamping the disability medical form.
- In the interest of natural justice and to provide an appropriate remedy to this matter, the only logical conclusion is to determine that the appellant's disability effective date is the date she turned 19 years of age in 2018 and to provide retroactive PWD benefits for the period from April 2018 to February 28, 2019.

At the hearing, the appellant and her father, as her representative, stated:

- Most of the points that they want considered are in the letter dated April 25, 2019.
- There is a factual error in the reconsideration decision relating to the year that the

appellant turned 19, stated as "2019" instead of "2018."

- Through their quest to get assistance, they have gotten misleading and wrong information from CLBC and another organization as well as the ministry. They all told the appellant that she could not get disability assistance until she was 19 years old.
- They approached another ministry agency and had received a letter advising that the appellant was not eligible. They thought they had provided a copy of the letter to the ministry.
- There was an assessment of the appellant commenced when she was living in another city in foster care and there were certain parts of the assessment that were not yet completed. The letter dated June 2, 2016 from the health authority assessment network refers to a myriad of conditions with which the appellant has been diagnosed, making it unnecessary to complete the other parts of the assessment.
- The appellant moved to her current community and the previous assessment has not been completed. MCFD allowed the appellant to live with him in July 2015 under a supervision order for a period of time. MCFD did not continue the supervision order later in 2015 because they had no concerns. The appellant's mother has been removed as guardian.
- They attended at CLBC as part of a larger discussion regarding custody of the appellant.
- In 2016, he contacted the ministry contact center and the phone control person said that the appellant could not get assistance until she was 19 years of age. There was no discussion of the provisions of Section 23(1.1) of the EAPWDR, which allow a person to apply when they are 17 years of age. They have been diligent and, if they had been advised by the ministry that this was available, they would have applied right away.
- He has worked for a government agency for over 20 years and he did not know about this provision in the EAPWDR. He knows there is no way the appellant could have advocated for herself with the complicated legislation governing the process. She "would have given up" by now.
- Their attention has been distracted since they have been involved with a custody dispute with the appellant's mother, which resulted in a lengthy trial involving several weeks over the year of 2016. They received lengthy reasons for decision from the court at the end of 2018. The court case is not finished yet and has cost them a lot of money as well.
- The time they spent devoted to custody issues diverted their time from applying for disability assistance earlier and getting services in place.
- The appellant needs daily assistance from him. She has had disabilities from a young age and she has the same challenges today. She was designated with disabilities at school. The school and psychological assessments demonstrate the disabilities the appellant has.
- July 18, 2018 is the day that the appellant got income assistance. They were then given a PWD application form from the ministry that had not been properly stamped. He was able to get the form back from the doctor, have it stamped by the ministry, and return it to the doctor. All of this time delayed the appellant's application. It took a long time to get an appointment with the doctor. None of this delay was caused by anything they did.
- The ministry should recognize that the appellant has been disabled all along.
- They will be proceeding to apply for the Canada disability pension, but that will be their next project.

APPEAL NUMBER

The ministry did not attend the hearing and relied on the reconsideration decision.

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 March 1, 2019, 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 23 of the EAPWDR provides:

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.

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 the ministry approved the appellant's designation as a PWD on February 27, 2019 and, therefore, according to Section 23(1) of the EAPWDR, the designation is effective the first day of March 2019. The ministry acknowledged that there were a variety of factors that resulted in a delay in the appellant submitting her PWD application. The ministry wrote that these delays do not negate the legislative effective date of eligibility.

At the hearing, the appellant's father stated that there is a factual error in the "Summary of Facts" section of the reconsideration decision relating to the year that the appellant turned 19, stated as "2019" instead of "2018." The panel notes that the appellant's year of birth is stated correctly in the body of the reconsideration decision and the incorrect year appears to be a typographical error in the "Summary of Facts" section only.

The appellant's father wrote in the Request for Reconsideration that the appellant has been continuously disabled since she was initially designated as a student with disabilities in approximately 2006, and the appellant was subsequently determined to be eligible for the federal disability tax credit in approximately 2008 and was eligible until she turned 19 years old. The appellant's father acknowledged that the appellant was granted PWD designation on February 27, 2019, and wrote that the reason that the designation took until February 2019 to be completed was the myriad doctor appointments, document gathering, application completion procedures, and ministry administrative delays. When the application form was submitted to the doctor, it was discovered that the ministry did not sign the disability medical form and it had to be returned to the ministry for authorization and then returned to the doctor, causing further delays. The appellant's father argued in the Request for Reconsideration that the documents clearly demonstrate that the appellant's disability pre-date the application for assistance and PWD designation and, therefore, PWD benefits should be awarded retroactive to the date that the appellant turned 19 years of age.

In the Notice of Appeal, the appellant's father wrote that throughout the appellant's quest for appropriate assistance, poor advice has been provided by outside agencies and the ministry, who had only a cursory understanding of the appellant's situation with respect to her actual disabilities. He wrote that the appellant was advised on several occasions when she was 17 years old that she was not eligible for assistance until she turned 19 years old; however, Section 23(1.1) of the EAPWDR clearly allows for an earlier application. At the hearing, the appellant's father argued that they have been diligent throughout and would have made the application as soon as possible if they had known about this provision. He also stated that their attention was distracted in 2016 as they were involved in a custody dispute with the appellant's mother, which resulted in a lengthy trial. The appellant's father stated that the time they spent devoted to custody issues diverted their time from applying for disability assistance earlier and getting services in place. In the Notice of Appeal, the appellant's father argued that, in the interest of natural justice and to provide an appropriate remedy, the only logical conclusion is to determine that the appellant's disability effective date is the date she turned 19 years of age in 2018 and to provide retroactive PWD benefits for the period from April 2018 to February 28, 2019.

In the reconsideration decision, the ministry did not dispute that the appellant had been diagnosed with various medical conditions and did not dispute that she had been designated as a student with disabilities prior to the date of her application for income assistance, in July 2018, or prior to her application for PWD designation, in February 2019. The ministry wrote that the relevant date is not the date the appellant was disabled, but the date the appellant was designated as a PWD under the EAPWDA and the EAPWDR. Although the appellant's father argued that Section 23(1.1) of the EAPWDR applies to the appellant, the panel finds that this provision requires that the family unit of an applicant must apply for disability assistance "while the applicant is 17 years of age," and allows for the applicant to be designated as a person with disabilities on his or her 18th birthday, and not at the age of 19 as requested by the appellant.

The appellant's father acknowledged that they did not apply for disability assistance until February 21, 2019, and he stated that they were grateful that the ministry quickly approved the appellant's designation on February 27, 2019, being only 4 business days after the date of their application. While the appellant's father argued that the only reason they did not apply earlier for disability assistance was due to poor advice given to them from various sources, the panel finds that the ministry reasonably applied Section 23(1) of the EAPWDR to the appellant's circumstances as the appellant's father acknowledged that the application for disability assistance was submitted when the appellant was over 19 years of age and not when she was 17 years of age.

As the appellant was designated by the ministry as a PWD on February 27, 2019, as confirmed by the PWD designation approval letter from the ministry dated February 27, 2019, 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 she was designated, or March 1, 2019, 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, 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.

APPEAL NUMBER

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-05-15

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-05-15

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-05-15