

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated June 18, 2019, which held that the appellant is not eligible for retroactive Persons with Disabilities (PWD) benefits dating back to May 2016 pursuant to Section 23(1)(a) of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that since the appellant submitted his PWD application on May 1, 2019 and the ministry made its determination that the appellant was eligible for PWD in May 14, 2019, his designation as PWD is effective June 2019; 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

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

1. PWD application: the self report dated April 4, 2019; the medical report completed by a physician specializing in mental health dated April 8, 2019; the assessor report completed by a social worker dated April 18, 2019.
2. The PWD application was submitted with the following supporting documentation:
 - Discharge summary dated December 3, 2009.
 - 2-page report from a physiotherapist dated October 26, 2010.
3. Request for Reconsideration (RFR), signed and dated June 7, 2019, which, in part, stated the following:
 - PWD designation should be back dated to May 2016.
 - In 2016, in attempt to complete the PWD application, the appellant met with several doctors who advised him that they do not get paid enough to complete the application and that he could not secure a family doctor due to his complicated medical history.
 - Without a doctor he was unable to complete the PWD application.
 - He advised the ministry of the inability to secure a doctor on several occasions.
 - In late 2018 the ministry referred him to a mental health liaison.
 - His current disabilities are the same as they were in 2016.
 - In 2016, he provided the ministry with medical documentation and this same documentation was submitted again in 2019 with his PWD application. Therefore he would have been eligible for PWD designation in 2016, but due to the lack of support and guidance from the ministry he was unable to pursue the application until late 2018.
 - His rights as a person with disabilities were denied due to the bureaucracy of the system.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated June 19, 2019, in which the appellant asked for an explanation as to why his appeal was denied at reconsideration. The appellant argued that he has “been disabled for ten years and it was the unjust bureaucracy of the system that failed” him.

Evidence at the Hearing

The following occurred at the hearing:

- During the introductions the panel chair (Chair), who attended the hearing via teleconference, was repeatedly interrupted by the appellant, who became combative until he was informed that the hearing could not begin until the introductions were complete.
- When the appellant was asked if he received his Tribunal appeal package he stated that he had not.
- Each item in the appeal package was described to the appellant and his advocate (who is his mental health liaison) stated that the appellant had an opportunity to review all of the information described to him but the format was different (the material was not bound together and the documents were not paginated).
- In the interest of fairness, the appellant was asked if he wished to continue even though he had access to all of the same information. He stated that he wanted an adjournment.
- The Chair called the Tribunal office to confirm whether or not the appeal package was sent. The Tribunal co-ordinator confirmed that per the advocate's instructions the appeal package was emailed to the advocate.
- Upon returning to the hearing, the Chair who was still on speaker phone and could hear the

discussions, was informed by a panel member that the appellant agreed to continue with the hearing if when referring to specific documents the title of the document be referred to rather than page numbers. The Chair received verbal agreement from the appellant and the hearing continued.

- The Chair point out that since the appeal package was delivered to the appellant there is no basis for an adjournment.
- The advocate apologised for the confusion and stated that she should have realized that the appellant would want a physical copy of the appeal package. However she noted that the appellant did have all the documents on hand in the hearing but they were not bound together.
- At 10:26am to 10:29am a short recess was called to allow time for the appellant to use the restroom as his medical condition did not allow him to go without the use of the restroom for long.
- Upon the appellant's return, the Chair emphasized the relevant legislation in this case (section 23 of the EAPWDR). At this point the appellant became aggravated and combative. He insisted on having the appeal package in the same format as the panel. He stated that he should be given the opportunity to write in the package and highlight relevant points. He stated that the process was unjust.
- The Chair reminded the appellant that he was provided with the appeal package in the format that the advocate, who is his representative, requested. However, in the spirit of fairness the panel would once again consider an adjournment. It was explained that the Chair will first ask the ministry whether or not it objects to an adjournment and then the panel will deliberate the issue. During the deliberation, the Chair will consult the Tribunal office for guidance on law and policy.
- The ministry objected to an adjournment citing that the appellant has in hand all of the appeal documents and that the advocate confirmed that the appellant has had an opportunity to review the information.
- Upon hearing the ministry's objection the appellant became highly agitated, talked over the chair and panel members and was hostile. The Chair informed the appellant that a decision regarding adjournment was not yet final and that the process was not complete. The appellant was verbally abusive towards the Chair.
- The appellant walked out of the hearing room at 10:41am.
- At this time, a panel member reviewed the information that the advocate had on hand in the hearing. The panel member confirmed that the appellant had all of the documents that were in the appeal package at the hearing.
- The appellant vehemently insisted that the advocate also leave the room.
- The panel member left the meeting room to discuss with the appellant his concerns with to goal that he would return to the hearing to allow the process to continue.
- The appellant returned at 10:51am. He continued to be combative and left the hearing at 10:52am. His advocate left at this time too.

The panel notes that it must hold in the highest regard the process of fairness. In doing so, the panel must follow the practices and procedures as they are established by the Tribunal Chair. In all cases, in order for an adjournment to be granted the panel must obtain the submission of the ministry. Although the ministry has the right to object to granting an adjournment, the decision is ultimately the panel's to make. In all cases, the panel must deliberate in private and come to the decision to either grant or deny an adjournment. In this case, the appellant did not allow time for deliberations to commence, as he walked out of the hearing upon hearing the ministry's objection to an adjournment.

For the following reasons, the panel did not grant an adjournment in this case:

- The appellant received his Tribunal appeal package in the manner requested by his representative, who in this case was the advocate.
- The package contents were read out to the appellant and advocate. The advocate confirmed that

the appellant had an opportunity to review all of the material contained in the appeal package and the appellant did not dispute this.

- The appellant had previously accepted reading the title of the document as a way of proceeding with the hearing which was adequate. This was only necessary when referring to specific documents in the appeal package.
- The panel member confirmed that the appellant and his advocate had on hand all of the documents contained within the appeal package at the hearing.

At the hearing, the ministry relied on its reconsideration decision, and added the following:

- The ministry noted that the advocate and the appellant had in hand at the hearing all of the information included in the appeal package but the information was not bound in a booklet.
- The appellant applied for employment assistance (EA) benefits in May 2016, which is the first step to obtaining PWD designation but at this time he did not submit any medical reports or documentations but was given a PWD application.
- By July 2016 a ministry supervisor had to get involved on the appellant's file due to his inappropriate behaviour towards the ministry staff.
- In July 2016, the appellant's local MLA was involved in the case as well. The MLA was informed of the process and asked to convey to the appellant that all recipients of benefits are considered employable until such time that they are deemed eligible for PWD designation. As such, all recipients receive the employable rate for benefits and no extra. The MLA was also advised of the appellant's behaviour towards the staff was abusive and inappropriate. The MLA suggested that the appellant return to his home province where he already had PWD benefits.
- In August 2016 *another* PWD application was given to the appellant to complete.
- In January 2017 the appellant's file was closed and therefore the PWD application process was also closed.
- The appellant reapplied for EA benefits in July 2017 and another PWD application was given to the appellant. With each PWD application given, it is standard practice to also provide information about local advocates and community groups who can help with the process.
- In July 2017 the appellant submitted some medical reports and documentation, but did not in 2016. However, at this time (July 2017), the appellant did not submit a complete PWD application and therefore the ministry could not make a determination about PWD designation.
- The ministry noted that an application is essential to the PWD designation process because it is not enough to have a disability. The ministry must also be satisfied that the disability impairs the appellant's physical and/or mental functioning and impairs the ability to perform daily living activities either continuously or periodically for extended periods. The medical reports submitted by the appellant in July 2017 did not satisfy this test.
- In December 2018 the appellant was referred to a mental health liaison.
- When questioned, the ministry stated that the appellant was not referred to a mental health liaison in 2016 because there was high turnover for this position and no one was available to take on the appellant's case.

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 dating back to May 2016 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 he was successful in his bid for PWD designation in May 2019 due to the assistance he received with the PWD application process from a mental health liaison. Since his medical and physical condition are the same today as they were in 2016 and since he submitted to the ministry, the same personal medical documentation in 2019 as he did in 2016, he would have been eligible for PWD designation in May of 2016. The appellant argued that he is eligible for PWD designation dating to May 2016 because the ministry failed to assist him with his application process in 2016 by not referring him to a mental health liaison then as it did recently.

The Ministry's Position

The ministry's argued that the appellant is not eligible for retroactive PWD benefits dating back to May 2016 pursuant to Section 23 (1)(a) of the EAPWDR. Specifically, the ministry argued that since the appellant submitted a completed PWD application on May 1, 2019 and that the ministry made its determination that the appellant was eligible for PWD on May 14 2019, his designation as PWD is effective June 2019; the first day of the month following the month of the ministry's decision.

The Panel's Decision

Though the panel is empathetic about the appellant's struggles in securing assistance to complete his PWD application, the panel notes that it does not have the jurisdiction to make a determination on ministry policy or guidelines. The supports and resources based on those policies or guidelines that the ministry offers or suggests to those seeking benefits are not entrenched in legislation and therefore are 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 dating back to May 2016 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, in its full and final form, was submitted on May 1, 2019 and the appellant does not dispute this fact. The appellant's application was approved on May 14, 2019. In other words, the appellant's PWD application was submitted and approved in the same month (May 2019), which makes the appellant eligible for PWD benefits June 1, 2019 according to the legislation. The panel also finds that in order to determine that the requirements of section 2 of the EAPWDA have been met, the ministry must have information regarding physical and/or mental functioning and how the appellant's daily living activities are impacted by his physical and/or mental conditions. The panel finds that this information was provided on May 1, 2019 and not before that date. The panel finds that the ministry was reasonable in its determination that the appellant is not eligible for retroactive PWD benefits dating back to May 2016 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 dating back to May 2016 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.

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/11

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/11

PRINT NAME

Vivienne Chin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/11