

APPEAL NUMBER

**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 June 3, 2019, in which the ministry determined that, in accordance with section 26 of the Employment and Assistance Regulation (EAR), the appellant was not eligible for income assistance backdated from January 24, 2019, the date on which he became eligible.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act (EAA)* – section 4  
EAR - sections 4, 4.1, and 26

## **PART E – SUMMARY OF FACTS**

With the consent of the appellant, an observer from the appellant's advocacy agency and an observer from ministry attended the hearing.

### *Information before the ministry at reconsideration*

January 24, 2019 - the appellant applied for income assistance through the ministry's online portal.

February 8, 2019 - the ministry determined that the appellant was eligible for income assistance and issued support and shelter for the period January 24-31, 2019, as well as February 2019 income assistance.

February 12, 2019 – the appellant requested that income assistance be backdated to August 2018 when his medical Employment Insurance (EI) ended. The request was denied and the appellant requested to speak with a ministry supervisor.

February 26, 2019 – a ministry supervisor spoke with the appellant and advised that the ministry is unable to provide income assistance for a period that occurred before eligibility for income assistance was determined. The appellant requested reconsideration of the ministry's decision to deny backdated income assistance.

March 12, 2019 – on the advice of his advocate, the appellant requested a call from a ministry service quality manager.

April 3, 2019 – a ministry quality service manager spoke with the appellant and advised that the appellant would need to follow through with the reconsideration process. The appellant and the manager discussed the difficulty the appellant has had with navigating the ministry because of the appellant's brain injury resulting in the ministry adding an alert on the appellant's file to notify ministry staff of the appellant's disabilities so that they can be accommodated during future interactions.

June 3, 2019 – the appellant provided his reconsideration submission which included:

- The appellant's Persons with Disabilities (PWD) Application;
- An April 30, 2019, letter from a counselor whom the appellant began seeing in August 2018 [at the hearing the appellant clarified that he began seeing the counsellor in June 2018];
- A screenshot identifying six phone calls made on July 31, 2018, four of which are identified as "PWD Disability";
- A letter written by the general practitioner who completed part of the PWD application, stating that the appellant was unable to navigate the ministry's phone line or on-line system because of his head injury and cognitive dysfunction;
- A June 3, 2019, 4-page submission from the appellant's advocate comprised of argument respecting the application of the British Columbian Human Rights Code (the Code) and the ministry's Duty to Accommodate policy as well as background information describing the appellant's circumstances and disability (noting that the appellant was designated as a PWD by the ministry in April 2019). The advocate notes that the appellant was advised by an EI worker to inquire about income assistance. The appellant is unsure but believes that this EI worker provided the ministry's general inquiry telephone number by which the appellant attempted to contact the ministry several times at the end of July 2018 but was unable to navigate the phone system because of his cognitive impairments. The advocate references information in the PWD application and the letters from the counsellor and general practitioner describing the appellant's mental health and notes that the appellant reports that he was able to complete the application for income assistance because he had the help of someone he knows.

Information provided on appeal

The appellant's Notice of Appeal (NOA) dated May 14, 2019, which did not include new evidence.

The day prior to the hearing, the appellant's advocate submitted an 8-page submission comprised of argument, which the advocate reviewed at the hearing.

At the hearing, the appellant described the circumstances of his attempt to access ministry services by telephone in July 2018. He explained that after being fired from his employment he was on medical leave and began working with a therapist in the summer of 2018. In July, a friend suggested that the appellant apply for social assistance. The appellant called the ministry's 1-866 number and understood from the message that he must already have assistance in order to access this phone service. This made him scared and he hung up after dialing the 1-866 number and never considered calling again. After experiencing concussions in August, he was hardly out of bed until December 2018, though he tried to access ministry services online but the screen was "swimming" and he had headaches because of the concussions. In December 2018 he went to a larger city with a friend and at that time the friend completed the online application for income assistance for the appellant.

The panel determined that the information provided by the appellant at the hearing either reiterated or provided further detail in support of information before the ministry at reconsideration and therefore admitted the additional information in accordance with section 22(4) of the Employment and Assistance Act.

At the hearing, the ministry explained the reconsideration decision but did not provide additional evidence.

The arguments of both parties are set out in Part F of this decision.

**PART F – REASONS FOR PANEL DECISION****Issue on Appeal**

The issue on appeal is whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not eligible for income assistance effective August 2018 because the legislation does not allow for the provision of income assistance prior to January 24, 2019, when his application for income assistance was submitted to the ministry?

**Relevant Legislation****EAA****Income assistance and supplements**

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

**EAR****Part 2 – Eligibility for Income Assistance****Part 2: Division 1 Applications and Applicant Requirements****Process for assessment of eligibility for income assistance**

4 (1) The eligibility of a family unit for income assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.

(2) Despite subsection (1), the eligibility of a family unit for income assistance may, at the minister's discretion, be assessed on the basis of the process set out in section 4.21, if income assistance or disability assistance has been provided to or for a person in the family unit in at least one of the 3 calendar months immediately preceding the calendar month for which the eligibility of that family unit is being assessed.

**Application for income assistance — stage 1**

**4.1** (1) The first stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for income assistance is fulfilling the requirements of subsection (2) of this section.

(2) The applicants for income assistance in a family unit

(a) must complete and submit to the minister an application for income assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 7 (2), and

(ii) the information, authorizations, declarations and verifications specified by the minister, as required in the application for income assistance (part 1) form, and .....

**Part 2: Division 5 Amount and Duration of Income Assistance****Effective date of eligibility**

**26** (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the income 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 income 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 income assistance under sections 6 to 10 of Schedule A on the income assistance application date.

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (f).]

(2.01) If the minister decides, on a request made under section 17 (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 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation.

(2.1) 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 (2.01).

(3) If a family unit includes a person who qualifies as a person who has persistent multiple barriers to employment, the family unit becomes eligible to receive income 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 in which the minister determines that the person qualifies as a person who has persistent multiple barriers to employment.

(3.01) If the minister decides, on a request made under section 17 (1) of the Act, that a person qualifies as a person who has persistent multiple barriers to employment, the person's family unit becomes eligible to receive income 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 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person who has persistent multiple barriers to employment, the person's family unit is eligible to receive income 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 (3.01).

(4) If a family unit that includes a person who qualifies as a person who has persistent multiple barriers to employment does not receive income assistance at the applicable rate under Schedule A 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 under subsection (3) or (3.1), as applicable, for the applicable rate;

(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.

EAA

**Application of *Administrative Tribunals Act***

19.1 The following provisions of the [Administrative Tribunals Act](#) apply to the tribunal:

.....

(f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];....

***Administrative Tribunals Act (ATA)***

**Tribunal without jurisdiction to apply the *Human Rights Code***

46.3 (1) The tribunal does not have jurisdiction to apply the [Human Rights Code](#).

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

**Panel Decision**

**Appellant's Argument**

The appellant's position as advanced in his advocate's appeal submission is twofold:

- (1) that the reconsideration decision was not reasonably supported by the evidence because the ministry failed to consider the evidence in its entirety – specifically, the evidence demonstrating the appellant's inability to apply for income assistance, which also "constitutes a neglect to comply with the ministry's statutory responsibility to provide assistance for British Columbians in need"; and,
- (2) that the reconsideration decision is not a reasonable application of section 4 of the EAA or section 26 of the EAR because the ministry did not interpret the legislation in accordance with case law and section 8 of the BC Interpretation Act, which require the legislation to be construed as being remedial and interpreted in a large and liberal manner to give effect to the benevolent purpose of the legislation. Specifically, the phrase "income assistance application date" in section 26 of the EAR should be interpreted as "the date the appellant attempted to submit an application for income assistance but was prevented from doing so." In failing to do this, the reconsideration officer failed to consider the principles of statutory interpretation and use the discretion available to the ministry. Further, having failed to consider the modern approach to statutory interpretation, the ministry should exercise its authority to provide income

assistance to eligible British Columbians under section 4 of the EAA, thereby ensuring that the EAA fulfils its objective and that the ministry achieves its purpose.

The panel notes that the advocate had advanced argument respecting the Human Rights Code at reconsideration which was not pursued on appeal, in apparent recognition of the Tribunal's lack of jurisdiction in such matters [section 19.1 EAA and section 46.3 ATA].

### Ministry Argument

The ministry's position is that while it is empathetic to the appellant's circumstances, the legislation does not allow for discretion when determining the effective date of eligibility. The ministry also notes that it was unable to determine eligibility until it received the relevant documentation. Furthermore, in the absence of contact from the appellant or someone on his behalf prior to January 24, 2019, the ministry could not anticipate the appellant's application for income assistance and had no way of knowing that his disabilities required accommodation.

### Panel Analysis

The panel is limited to determining whether the ministry reasonably applied the evidence when determining the effective date of eligibility in accordance with section 26 of the EAR, which also gives rise to determining whether the ministry's interpretation of section 26 of the EAR was reasonable.

Section 26 of the EAR sets out the how the effective date of eligibility for both income assistance and supplements is determined. Subsection (1) states that a family unit [the appellant is a one-person family unit] is not eligible for a period that occurred before the date the minister determines the family unit eligible. Some exceptions are set out in subsections (2), (2.01), (2.1), (3.01) and (3.1). The only exceptions that apply in the appellant's circumstances are those in (2) because the others deal with either the qualification at reconsideration or on appeal for supplements or persons with persistent multiple barriers status.

Subsection (2) allows for the support allowance component of "income assistance" to be provided "on the income assistance application date [emphasis added] and for a shelter allowance (for shelter costs that remain unpaid) to be paid on the first day of the calendar month that includes the income assistance application date [emphasis added]. That is, income assistance [support and shelter allowances] may be provided prior to the date on which the application was reviewed and an applicant is determined eligible. In this case, the appellant's application for income assistance was received on January 24, 2019, and he was provided income assistance as of this date based on the ministry's interpretation that "the assistance application date" is the date on which the income assistance application is received.

The panel concludes that the ministry's interpretation of the phrase "income assistance application date" in section 26 of the EAR as meaning the date that an applicant submits an application for income assistance reflects the ordinary meaning of that phrase and is a reasonable interpretation of the legislation. In reaching this conclusion, the panel also notes that while section 4 of the EAA gives the ministry the authority to provide income assistance, that authority is "subject to the regulations" and does not give the ministry unbridled discretion to provide assistance. To the contrary, the regulations set out a specific process by which a person **must** apply for income assistance for the process of assessing eligibility with sections 4(1) and 4.1 of Part 2: Division 1 "Applications and Applicant Requirements" of the EAR setting out the requirements for new applicants [under



section 4(2) a different form is required for applicants who have previously received assistance in certain circumstances].

Section 4(1) states that the eligibility of a family unit for income assistance “must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.” Section 4.1 makes it clear that the first stage of the process for assessing eligibility is fulfilling the requirements of subsection (2) – “The applicants for income assistance in a family unit (a) **must** [emphasis added] complete and submit to the minister an application for income assistance (part 1) form.....” and provide specified information. Interpreting the phrase “income assistance application date” as written in section 26(2) of Part 2: Division 5 of the EAR as including when an attempt to apply for income assistance is made by virtue of incomplete phone calls to the ministry is not compatible with sections 4(1) and 4.1 of the EAR. The legislative provisions of Part 2 of the EAR setting out the process by which eligibility is assessed and the determination of the effective date of eligibility cannot be read in isolation.

For the above reasons, the panel concludes that the ministry’s interpretation of sections 4 of the EAA and section 26(2) of the EAR was reasonable and that as the appellant’s application for income assistance was not received until January 24, 2019, the ministry was reasonable in determining that the appellant was not eligible for income assistance prior to that date.

#### Conclusion

The panel concludes that the ministry’s reconsideration decision is reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The reconsideration decision is confirmed and the appellant is not successful on 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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/18

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/18

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/18