

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated December 19 2019 in which the ministry found that the appellant was not eligible for a change to the effective date of Persons with Disabilities ("PWD") designation under section 23(1) of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). The ministry determined pursuant to the Regulation that disability assistance ("DA") begins the first day of the month after the month in which the minister designates the applicant as a PWD.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 23

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that:

- On October 17, 2019, the appellant submitted a PWD application which the ministry approved, designating the appellant as a PWD on October 24, 2019.
- On November 18, 2018 [sic 2019] the appellant contacted the ministry to request a change to the effective date of PWD designation, in particular, that the date of the designation be changed to June 29, 2019 (the date that the appellant began the application process).
- On October 20, 2019 [sic November 20, 2019] the ministry denied the appellant's request to backdate the PWD designation.
- On November 22, 2019, the appellant submitted a Request for Reconsideration ("RFR") and on December 19, 2019 the ministry completed the review of the RFR.

2. Hospital records from March 9 -11 2019, indicating the appellant suffered a stroke on March 8, 2019.

3. A letter from a neurologist dated August 15, 2019, describing the appellant's stroke symptoms, and related medical investigations.

4. A *Cat Scan* (CT - head) report dated September 8, 2019 related to the appellant's stroke.

5. Laboratory test results dated March 12, 2019 related to the appellant's stroke.

6. An RFR signed by the appellant on November 22, 2019 with a request to expedite "due to hardship." The appellant provides argument in a hand-written submission that includes a timeline of events. The timeline is fully detailed in the appellant's later submission of December 3, 2019 (summarized below). The appellant indicates that July 15, 2019 is the date they "started trying to apply for PWD."

7. The PWD application completed by the appellant on August 24, 2019 (self-report) and by the appellant's general practitioner ("GP") on October 6, 2019 (Medical Report and Assessor Report) describing the appellant's impairments as the result of a stroke suffered on March 8, 2019.

8. A typed submission from the appellant dated December 3, 2019. The appellant provides argument for the reconsideration and sets out the following circumstances:

- On March 8, 2019, the appellant suffered a stroke which rendered the appellant disabled. The appellant was hospitalized until May 12, 2019, and while hospitalized was told to apply for medical Employment Insurance ("medical EI") followed by an application for Canada Pension Plan disability benefits ("CPP disability").
- On May 6, 2019, the appellant completed and submitted the CPP application with help from the hospital social worker.
- On June 29, 2019, the appellant's medical EI "ran out" and the appellant was told by CPP customer service that a decision could take up to 6 months from the date the application was submitted. The appellant "claimed hardship" and asked the CPP agent to "please speed the process up."
- In the middle of July 2019, the appellant received a phone call from a CPP agent and was told that they needed more time to make a formal decision but "unofficially, over the phone, told me to start applying for PWD." The agent indicated the CPP disability application would be denied because the appellant was trying to get better and eventually return to work. On September 12, 2019, the appellant received a letter declining the CPP application.
- On July 15, 2019, the appellant attended the ministry office in person to inquire about applying for PWD. The appellant was told it would be necessary to apply for "regular welfare" first and the application could be made on-line. The appellant was unhappy with the requirement to apply for regular welfare and asked to discuss the process. The ministry said that someone would call the appellant and explained that the regular welfare application would need to be completed in full (with all required documentation supplied) before the appellant could "click submit." The appellant states that it was a lengthy process that took over two weeks to complete and "then it took another week for someone to finally call me."

- On August 1, 2019, the appellant was finally able to “hit submit on the regular welfare application.”
- On August 28, 2019, the appellant was approved for income assistance (“IA”) and was given a PWD application.
- On August 29, 2019, the appellant gave the application to the GP.
- On October 17, 2019, the appellant got the application back from the GP and submitted it to the ministry office.
- On October 24, 2019, the appellant was approved for PWD and “told that it would start November 1, 2019.” The appellant was issued a top-up cheque for the difference between the regular income assistance (“IA”) rate and the DA rate, approximately \$475.
- The appellant had no wages for July 2019 and received the regular IA rate for August, September, and October 2019.

9. A letter from the ministry dated October 24, 2019, approving the appellant’s PWD application. The letter states that the PWD designation is effective from November 1, 2019.

Additional information

Neither party provided new evidence requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*. Subsequent to the reconsideration decision, the appellant filed a *Notice of Appeal* with a hand-written statement that the panel accepts as argument. The ministry relied on the reconsideration decision to provide argument at the hearing.

Procedural matters

The ministry attended the hearing with an observer for training purposes. The appellant consented to the observer attending the hearing. The appellant left the teleconference prior to the conclusion of the hearing citing frustration with the process.

Oral testimony

Neither the appellant nor the ministry provided new evidence requiring an admissibility determination. The panel accepts both parties’ oral testimony as argument on appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that found the appellant was not eligible for a change to the effective date of PWD designation was reasonably supported by the evidence or a reasonable application of the legislation, specifically section 23 of the EAPWDR. The ministry determined pursuant to the Regulation that DA begins the first day of the month after the month in which the minister designates the applicant as a PWD.

The ministry based the reconsideration decision on the following legislation:

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

(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

(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.

Analysis*Arguments**Appellant*

The appellant expresses frustration with the length of time it took to have the PWD application approved and argues that the slow process was beyond the appellant's control. The appellant argues that "I should have been collecting the PWD rate from the day my EI ran out June 29, 2019." The appellant acknowledges that the PWD decision itself "is correct and in my favour", but is appealing "the money I lost due to the process."

The appellant indicates losing a total of \$2,658.00 for the months of July, August, September, and October due to having no income in July and receiving only the regular IA rate for the next three months. The appellant submits that the ministry should have issued the PWD monthly rate for July (\$1,233.00) when the appellant had no income coming in and \$475 for each of the other three months as the difference between the regular IA rate and the DA rate.

The appellant indicates having to rely on other people to assist with the PWD application process as the appellant was hospitalized due to the stroke and "wasn't really thinking straight." In the RFR submissions and at the hearing, the appellant explained that it took two weeks to figure out the process, then over two weeks to gather all of the documents for the IA application (due to limited mobility from the stroke). Another week passed before the ministry finally called the appellant and issued the PWD forms; then the forms were with the GP for another seven weeks during which time the appellant was only receiving \$750 per month (IA) from the ministry.

The appellant indicates that the ministry said the GP could take a year to fill out the forms and they had "no way to speed up the doctor." The appellant writes that "this whole demeaning process was horrible for me and was without a doubt enough added stress that I found myself contemplating giving up on ever trying to get better." The appellant argues that the lengthy process was also unnecessary because the Province has the appellant's hospital records to confirm the medical condition and it is "ridiculous" to have the "jump through the PWD hoops" and wait eight months from the date of the stroke to finally get DA. At the hearing, the appellant added that the process is in "bad faith"; the ministry does not understand what a disabled person is going through; and people should not have to apply for regular welfare first when they are clearly disabled.

Ministry

The ministry's position is that the reconsideration decision follows the legislative requirements and the ministry does not have the discretion to alter the effective date of PWD designation. The ministry argues that the effective date for DA is November 1, 2019 because the appellant's PWD designation was approved on October 24, 2019.

At the hearing, the ministry explained that the legislation governing the appellant's circumstances has always been that the DA rate begins the month following approval of the PWD application. The ministry stated that the legislation has not been changed in thirty years and could only be changed through an act of parliament.

The ministry explained that the reason a person has to apply for regular assistance first is because the person must meet the financial eligibility requirement for IA in order to be considered for PWD designation. The ministry acknowledges that there is a built-in assumption in the system that everyone who applies for IA is employable even though that is not always the case when the person is suffering from a medical condition. The ministry explained that it is "not allowed to give out the disability booklet" until the person is found financially eligible for IA. The ministry added that the person is not entitled to more than \$760 per month (the IA rate for support and shelter combined) until they submit the PWD application and it is approved in their favour.

The ministry acknowledged the appellant's frustration and distress with the process and explained that the ministry has no ability to advocate on the appellant's behalf or contact the GP to request completion of the medical reports. The ministry explained that the hospital social worker will generally navigate the person through the process and the ministry "does try to refer people to advocacy agencies for support." The ministry further explained that PWD applications are adjudicated by the Health Assistance Branch and time is also needed for that process.

Panel's decision

The panel has considered the submissions of both parties in their entirety and finds that the ministry's decision that found the appellant was not eligible for a change to the effective date of PWD designation is a reasonable application of the legislation in the circumstances of the appellant. Section 23 of the EAPWDR sets out the effective date for designation as a PWD and receipt of DA. Under subsection 23(1)(a), a person is not eligible for DA until the first day of the month after the month in which the minister designates the applicant as a PWD.

The appellant was designated as a PWD on October 24, 2019 and was therefore eligible for DA as of November 1, 2019. The appellant argues that the PWD rate of assistance should begin when the medical EI payments ended (June 29, 2019) but the ministry could not issue the PWD rate at that time because the appellant was not designated as a PWD until October 24, 2019.

The appellant submits that they "lost \$2,658.00 for the months of July, August, September, and October due to having no income in July and receiving only the regular IA rate for the next three months, but under the Regulation there is no entitlement to the DA rate of assistance until the month following the date that the PWD application is approved. The panel acknowledges the appellant's frustration with the timeline for the application but finds pursuant to the Regulation that the ministry was reasonable in issuing the PWD rate beginning in November 2019.

The panel notes that section 23(1) of the EAPWDR permits exceptions to the effective date of eligibility for DA. The exceptions are referenced as sections 23(1.1), (3.11) and (3.2) but none of them apply in the circumstances of the appellant. Section 23(1.1) applies to applicants under the age of 18; and sections 23(3.11) and 23(3.2) apply to a reconsideration or appeal of a refused PWD application. In the present case, the appellant is over 18, and the ministry found the appellant eligible for the PWD designation. The appellant indicates the appeal is based on dissatisfaction with the PWD application process and not on the PWD designation.

The panel notes that the only provision under section 23 of the EAPWDR that deals with backdating of DA is subsection 23(4) which authorizes the minister to backdate the DA payment in circumstances where a person who has been designated as a PWD does not receive DA from the date the family unit became eligible for it. The appellant's circumstances are distinguishable on the basis that the record indicates the appellant received DA beginning in November 2019, the first month of eligibility.

Conclusion

The panel considered the submissions in their entirety and finds that the ministry's reconsideration decision that found the appellant was not eligible for a change to the effective date of PWD designation is a reasonable application of the legislation. Section 23 of the EAPWDR specifically states that a person is not eligible for DA until the first day of the month after the month in which the minister designates the applicant as a PWD. The panel finds that the ministry was reasonable in concluding that the first month the appellant was eligible for DA was November 2019 based on the appellant being designated as a PWD in October.

The panel considered the exceptions to the eligibility date set out in section 23 of the EAPWDR and determined that none of the exceptions that would authorize the minister to backdate the DA allowance, apply in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful on 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-01-21

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-01-26

PRINT NAME

Rabinder (Rob) Nijjar

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-01-21