

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 11 December 2019 that denied the appellant's request to back date designation as a person with disabilities (PWD) and the effective date of eligibility for disability assistance. The ministry approved the appellant's eligibility for disability assistance effective 01 December 2019, the date determined by applying section 23(1) of the Employment and Assistance for Persons with Disabilities Regulation, and the appellant's request is to back date eligibility for disability assistance to an unspecified earlier date.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 23.

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

1. From the ministry's files, as reported in the reconsideration decision:
 - 08 May 2019: the front page of an Application for PWD Designation for the appellant was signed and dated by a ministry worker, indicating the application was provided to the appellant on 08 May or later. (The appellant's ministry records do not indicate the exact date he was provided the PWD application.)
 - 08 October 2019: the appellant contacted the Ministry by phone, stating that his doctor opened a new practice and may have lost the PWD application. The ministry worker mailed him another PWD application.
 - 01 November 2019: the ministry received the appellant's PWD application completed by his physician on 16 October 2019.
 - 14 November 2019: the ministry approved the appellant's PWD designation, with an effective date of 01 December 2019.
 - 22 November 2019: the appellant attended a ministry office to request reconsideration regarding the effective date of eligibility for PWD designation. He was provided a Request for Reconsideration form.

2. In his Request for Reconsideration, dated 28 November 2019, the appellant writes:

"When I filled out the application forms for my PWD pension, I immediately dropped them to my doctor [name] in April (or May)/2019. - I was told that they would complete the forms & and send them in. I didn't hear anything for quite a while, then I received a call from [name] at the Ministry asking about my forms. I told her they were supposed to have been sent in (by doctor)? Turns out they weren't. I asked [the doctor] & he said they couldn't locate the forms for a couple of more months. Finally a few weeks ago they found them & I went in & and grabs them [at the clinic] & dropped then immediately to the [ministry office]. This will cost me probably 6-7 months of PWD coverage."

Notice of Appeal

In his Notice of Appeal, dated 16 December 2019, the appellant gives as reasons:

"Unforeseen delays by my doctor/ injury too.

I have had an ongoing concussion since the end of March. Haven't been able to attend to this matter correctly. My PWD application was delayed because of my injuries & doctor's office delay."

Information submitted prior to the hearing

In an email to the Tribunal dated 09 January 2020, the appellant writes:

"I would like to add this note from my family doctor which explains why my application for PWD benefits was delayed. If not for this delay I would have had it in several months earlier. Their office misplaced my forms which I had filled out at my hand. I was also told by my physician (when I dropped them off to him) that he would send them in post haste in May. The clerk at the [City] Ministry branch assured me that if I was approved, the ministry

would back pay me to January 1, 2019. Believing that, I borrowed money to make ends meet to the tune of approximately \$4200 from my mother (actually closer to \$4500). Please consider this letter as proof of the delay not be my fault. Thank you.”

Attached to the email is a hand-written note from a physician dated 09 January 2020 that reads: “Please backdate PWD benefits to March 2019 due to delay in form completion - submitted 2019.”

The hearing

At the hearing, the appellant covered much the same ground as in the Request for Reconsideration, the Notice of Appeal and the appeal submission. He emphasized how his concussion caused memory problems and led to not being able to track the lack of progress of his PWD application. He explained that it wasn't until a ministry worker asked about where the application was that he found out that his doctor had misplaced it while moving offices, causing the delay. He described how one worker in the ministry office had told him not to worry about the delay, because the designation could be back dated, though another worker had said this was not possible. The delay in receiving the increased disability assistance benefits has caused financial hardship, having to borrow money from his mother, but even with that he is finding it difficult to pay for the insulin he requires.

The appellant stressed that he did not want to be a recipient of disability assistance over the long-term: he is confident that he will eventually be able to return to work.

The ministry stood by its position at reconsideration. The ministry representative pointed out that the introductory page of the PWD Application Form gave instructions for completion, including that once the relevant medical professionals complete their section, they should return the Application Form to the applicant. When both the Medical Report and the Assessor Reports have been completed, the applicant should mail the Application Form to the ministry. The ministry representative stated that the ministry does not track the progress of a PWD application, and if an applicant decides to trust a medical professional to mail in the form, that is up to the applicant.

In answer to a question, the appellant stated that, with his concussion, it is unlikely that he read these instructions.

Admissibility of additional information

The panel finds that the additional information provided by the appellant in his submission on appeal, including the doctor's note, is relevant to the decision under appeal, because it tends to substantiate part of the appellant's position relation to his request. The panel therefore admits this evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request to back date PWD designation and the effective date of eligibility for disability assistance. The ministry approved the appellant's eligibility for disability assistance effective 01 December 2019, the date determined by applying section 23(1) of the EAPWDR, and the appellant's request is to back date eligibility for disability assistance to an unspecified earlier date.

More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- that the ministry cannot approve the appellant's request because section 23(1) of the EAPWDR states that the family unit of an applicant for PWD designation or for both that designation and disability assistance 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 relevant legislation is from 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) *[applies to applicants who have not yet reached 18 years of age]*

(3.11) *[sets out the rule for the effective date following a reconsideration decision approving PWD designation]*

(3.2) *[sets out the rule for the effective date following the tribunal rescinding a reconsideration denying PWD designation]*

Analysis**The position of the appellant**

From his testimony at the hearing, the panel understands the appellant's position to be that the ministry's reconsideration decision is unreasonable because it fails to take into account extenuating factors:

- the concussion and resulting memory problems, impairing his ability to track the progress of the PWD application,
- the delay caused by the doctor in misplacing the Application Form, and
- the financial hardship resulting in not being provided increased assistance for several months.

The position of the ministry

The ministry's position, as set out in the reconsideration decision, is that section 23(1) of the

EAPWDR applies in respect to the effective date of disability assistance – the first day of the month after the month in which the minister designates the applicant as a person with disabilities. In making this determination, the ministry noted that:

- It is not responsible for the delay caused by a medical practitioner completing the appellant's PWD application.
- There is no evidence that would indicate or suggest that the ministry received a completed PWD application before 01 November 2019.
- The ministry approved the appellant's PWD designation on 14 November 2019, the same month in which his application was received.
- The first day of the month after November 2019 (the month in which the appellant was approved for PWD designation) is 01 December 2019.

Panel finding

In this appeal, there is no dispute that the ministry received the PWD application on 01 November 2019 and approved the appellant's PWD designation on 14 November 2019. Following the ministry's application of the rule in section 23(1), the appellant's eligibility for disability assistance became effective on the first day of the month following, i.e. 01 December 2019. At issue is the appellant's request to back date eligibility for disability assistance to an unspecified earlier date.

Under the legislation, the effective date of eligibility for disability assistance is not a matter at the minister's discretion. The legislation does not give the minister the option of taking into account extenuating circumstances, as requested by the appellant, and set a date other than that determined by applying the section 23(1) rule. Thus, the minister does not have the discretion to back date the appellant's effective date of disability assistance. Accordingly, the panel finds that the ministry was reasonable in denying the appellant's request to back date PWD designation and the effective date of disability assistance to a date earlier than that given by the application of the section 23(1) rule.

Conclusion

The panel finds that the ministry's reconsideration decision denying the appellant's request to back date PWD designation and eligibility for disability assistance is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.

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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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 January 20

PRINT NAME

Keith Lacroix

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 January 20

PRINT NAME

Charles Schellinck

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 January 20