

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 27, 2020 which held that the appellant is not eligible for payment of retroactive Persons with Disabilities (PWD) disability assistance, pursuant to Section 23(1) (a) of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR). Specifically the ministry determined that because the ministry designated the appellant as a PWD on April 21, 2020, the appellant's eligibility for disability assistance is effective May 1, 2020, which, under the EAPWDR, is the first day of the month following the month in which the ministry designated the appellant as a PWD.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2.1 (e) and 23
Employment and Assistance Act (EAA) – section 24 (1) and (2)

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

- appellant's application for PWD Designation – Prescribed Class dated March 27, 2020;
- ministry's letter dated April 21, 2020, advising that the appellant was eligible for PWD designation effective May 1, 2020;
- appellant's request for reconsideration submitted to the Ministry on May 13, 2020;
- January 10, 2017 letter from the Canada Pension Plan (CPP) approving the appellant's application for CPP disability benefits with payment retroactive to November 2015;
- statement of CPP disability benefits for the year 2019;
- appellant's credit card statement dated May 20, 2020 showing an outstanding balance of \$696.48.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant is not eligible for retroactive payment of disability assistance pursuant to Section 23(1) (a) of the EAPWDR. Specifically the ministry determined that because the ministry designated the appellant as a PWD on April 21, 2020 the appellant's eligibility for disability assistance is May 1, 2020, which, under the EAPWDR, is the first day of the month following the month in which the ministry designated the appellant as a PWD.

Relevant legislation:

EAPWDA:

Decision of panel

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

EAPWDR:

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

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 the applicant's 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.

(3.01) 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.

Appellant's Position

The appellant argues that EAPWDR Section 23 (1) is harsh and unreasonable in delaying eligibility for disability assistance to the first day of the month after the month in which the ministry designates the applicant as a PWD. The appellant submits that provincial PWD benefits should be calculated retroactively as was the case when the appellant became eligible for federal CPP disability benefits, or at least retroactive to the date on which the ministry designated the appellant as a PWD. The appellant describes the financial hardship he faced because "the first few months of disability are very hard emotionally, mentally and financially."

The Ministry's Position

The ministry relies on EAPWDR Section 23 (1)(a) which states that an applicant 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 PWD. Because the appellant was designated a PWD on April 21, 2020, the ministry argues that eligibility for disability assistance does not begin until May 1, 2020.

Panel Decision

Date of Eligibility

The jurisdiction of this appeal tribunal is limited to determining whether the reconsideration decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in [the appellant's] circumstances (*Employment and Assistance Act, S. 24 (1)*). The tribunal does not have the jurisdiction to change the applicable legislation.

Subsection (1) (a) of EAPWDR Section 23 clearly states that the family unit of an applicant is not eligible for disability assistance until the first day of the month after the month in which the applicant is designated as a PWD. The legislation allows for certain exceptions to this rule. These exceptions are found in subsections (1.1), (3.11) and (3.2) of Section 23. Subsection (1.1) applies to persons who are 17 years of age at the time of application. Subsection (3.11) applies to a person who has initially been denied PWD designation but is successful upon reconsideration. Subsection (3.2) applies when the Employment and Assistance Appeal Tribunal rescinds a ministry decision which determined that a person does not qualify for PWD designation.

None of these exceptions is applicable to the appellant's circumstances because the evidence indicates the appellant was not 17 years of age at the time of the application; was designated as a PWD by the ministry prior to the reconsideration; and has not had a decision on PWD eligibility rescinded by the Tribunal. The panel therefore finds that the ministry reasonably determined that pursuant to subsection (1) (1) of EAPWDR Section 23 the appellant is not eligible for retroactive disability assistance.

Application of CPP Retroactive Benefits Rules

In the reconsideration decision the ministry noted that eligibility for CPP disability payments does not automatically establish eligibility for PWD benefits. CPP disability is governed by federal legislation, whereas the EAPWDA and EAPWDR are provincial enactments that apply to PWD benefits. These are two separate programs, each with its own eligibility criteria. The appellant was entitled to apply for PWD designation as a member of a "prescribed class" as set out in EAPWDR Section 2.1 (e) because the appellant is considered to be disabled under CPP legislation. All of the EAPWDR provisions for PWD benefits apply in that circumstance, including the date upon which eligibility for disability allowance is deemed to commence. The panel therefore finds that the ministry reasonably determined that eligibility for retroactive CPP disability payments does not make the appellant eligible for retroactive disability assistance under the EAPWDR.

Conclusion

The panel finds that the ministry reasonably determined that the appellant is not eligible for retroactive PWD disability assistance and confirms the reconsideration decision. The appellant is not successful in this appeal.

APPEAL NUMBER 2020-00152

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

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Jul/08

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Jul/08

PRINT NAME

Margaret Koren

DATE (YEAR/MONTH/DAY)

2020/Jul/08