

APPEAL NUMBER
2020-00241

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated October 6, 2020 which found that the Appellant was not eligible to receive disability assistance as a person with disabilities (PWD) until the first day of October 2020, pursuant to Section 23(1) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1, 3 and 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 23(1)

Employment and Assistance Regulation (EAR) Sections 85(2) and 86(b)

PART E – SUMMARY OF FACTS

According to the information in the Reconsideration Decision (RD):

- The Appellant is a sole recipient of disability assistance who had been receiving income assistance since September 2019; and,
- The Ministry received the Appellant's PWD application on September 8, 2020 and determined that the Appellant was eligible for a PWD designation on September 9, 2020, with disability benefits available effective October 1, 2020.

The evidence before the Ministry at the time of reconsideration also included a Request for Reconsideration (RFR), signed by the Appellant and dated September 25, 2020, in which the Appellant states that they are asking that their PWD designation be back-dated to March 2020 because "*barriers due to COVID-19 made it extremely challenging to see a supportive doctor and to complete the application in a timely manner*". The Appellant also states that they have been living with a disability since long before March 2020 but they are asking for disability assistance from the March 2020 date as they "*feel it is reasonable given the global circumstances*", adding "*not only do I feel that I deserve the additional income from the past 7 months, it would also support me in obtaining comfortable and safe housing*".

In Section 2 of the RFR (Decision to be Reconsidered), the Ministry writes "*(The Appellant) indicated that (they) do not agree with the effective date as (they) submitted (their) application in July.*"

Also included with the RFR were:

- A letter of support from the Appellant's family physician stating that the Appellant has been disabled since prior to March 2020; and,
- A letter of support from a social worker advocating for back-dating the Appellant's disability assistance benefits to March 2020.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA) dated October 20, 2020, the Appellant states that they disagree with the Ministry's RD because it "*disregards (their) application*". The NOA also states that the Appellant intends to submit additional supporting documentation.

The Panel considered the written information in the NOA to be argument. No additional written information was provided by either party subsequent to the RD.

The Appellant did not attend the hearing. After confirming that the Appellant was notified of the time and date of the hearing at least two days in advance, the Panel proceeded with the hearing pursuant EAR Sections 85(2) and 86(b).

At the hearing the Ministry relied on the RD. In response to a question from the Panel the Ministry confirmed that the Appellant started receiving income assistance in September 2019. In response to another question from the Panel the Ministry said that PWD applications normally take 6 to 8 weeks to adjudicate.

The Panel also questioned the Ministry about the discrepancy in the Ministry's written information concerning the date that the Appellant submitted their PWD application. (In the RFR the Ministry writes that the Appellant indicated the time of submission as July, whereas in the RD the Ministry said that the application was submitted on September 8, 2020.) While it could not comment on the statement in the RFR attributed to the Appellant indicating that their application was submitted in July 2020, the Ministry said that its records show that the application was received on September 8, 2020 and adjudicated on a priority basis within one business day, resulting in the Appellant's PWD designation being granted on September 9, 2020.

In response to another question from the Panel the Ministry confirmed that it has no discretion or flexibility in determining the effective date of disability assistance.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's reconsideration decision, which found that the Appellant did not become eligible to receive disability assistance as a PWD pursuant to Section 23(1) of the EAPWDR until the first day of October 2020, was reasonably supported by the evidence or was a reasonable application of the EAPWDA in the circumstances of the Appellant.

The relevant legislation is provided in Schedule A.

Positions of the Parties

The Appellant's Position is that their disability assistance should be backdated to March 2020 because they have been disabled since before that date, the COVID pandemic has made it extremely challenging for them to complete the application in a timely manner, and that back-dating disability assistance would make it easier for them to obtain comfortable and safe housing.

The Ministry's position is that the legislation does not allow for discretion in determining the effective date of eligibility for disability assistance. In addition, the Ministry notes that there is no indication that the Appellant's PWD application was submitted prior to September 8, 2020.

Panel Findings

Section 23(1) of the EAR says that, with a few exceptions, the family unit of a PWD applicant is not eligible for disability assistance until the first day of the month after the month in which the Ministry designates the applicant as a PWD. Where there are exceptions a different starting date will sometimes apply. The exceptions are as follows:

- Where the applicant is under the age of 18 when they apply for disability assistance;
- Where an applicant has asked the Ministry to reconsider a decision to refuse to provide disability assistance to the applicant, to discontinue providing disability assistance, or to reduce the amount of disability assistance provided; or
- Where the applicant has asked the Employment and Assistance Appeal Tribunal (EAAT) to determine whether a Ministry's decision not to designate the applicant as a PWD was reasonable and as a result determines that the Ministry's decision was unreasonable and overturns the Ministry's decision.

All of the available evidence shows that the Appellant was over the age of 18 when they applied for the PWD designation and that the Appellant received the PWD designation in September 2020 without the Appellant having to ask the Ministry to reconsider a denial of the PWD designation or for the EAAT to determine whether the Ministry's decision was unreasonable. Therefore the Panel finds that none of the above exceptions apply and that the date specified in EAR Section 23(1), i.e. the first day of the month following the month in which the Ministry designated the Appellant as a PWD, is the date that the Appellant should start receiving disability assistance.

As all of the available information shows that the Ministry approved the Appellant's application for a PWD designation in September 2020 and none of the legislated exceptions apply, the Panel finds that the

Appellant was entitled to start receiving disability assistance effective October 1, 2020, as determined by the Ministry.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not entitled to receive disability assistance until the first day of October, was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

SCHEDULE A - LEGISLATION

Section 1 of the EAPWDA defines “disability assistance” as follows:

Interpretation

1 (1) In this Act: ...

"disability assistance" means an amount for shelter and support provided under section 5
[disability assistance and supplements]

Sections 3 and 5 of the EAPWDA provide that the Ministry may provide disability assistance as follows:

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance ... if

- (a) each person in the family unit on whose account the disability assistance ... is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance ... under this Act.

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance ... to or for a family unit that is eligible for it.

The effective date of eligibility for a person designated as a PWD as set out in Subsections 23(1), 23(1.1), 23(3.11) and 23(3.2) of the EAPWDR is as follows:

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 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 ...

(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) ...

Section 16 (1) of the EAPWDA does not apply in this case for the reasons provided in the Panel's decision. It is included here because it is referred to in EAPWDR 23(3.11) above. It states as follows:

Reconsideration and appeal rights

16 (1) ... a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide disability assistance ... to or for someone in the person's family unit;

(b) a decision that results in a discontinuance of disability assistance ... to or for someone in the person's family unit;

(c) a decision that results in a reduction of disability assistance ... to or for someone in the person's family unit;

(d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit ...

Section 72 of the EAPWDR does not apply in this case because EAPWDR 23(3.11) does not apply. It is included here for reference because it is referred to in EAPWDR 23(3.11) above. It states as follows:

Time limit for reconsidering decision

72 The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71

(1) *[how a request to reconsider a decision is made]*,

(a) within 10 business days after receiving the request, or

(b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

The EAR provides as follows:

Time period for scheduling and conducting hearing

85(2) The chair of the tribunal must notify the parties of the date, time and place of a hearing ... at least 2 business days before the hearing is to commence.

Procedures

86 The practices and procedures of a panel include the following: ...

(b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing ...

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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

PRINTNAME

Simon Clews

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2020/11/25

PRINTNAME

Jan Broocke

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2020/11/25

PRINTNAME

David Handelman

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2020/11/25