

APPEAL NUMBER
2021-00003

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (ministry) reconsideration decision dated December 16, 2020, in which the ministry found the appellant was not eligible for backdated disability assistance (DA) from May 2020 to October 2020 because:

- 1) the appellant had unearned income for the period May 1, 2020 to October 1, 2020 from Employment Insurance (EI)/Canada Emergency Response Benefit (CERB) and Canada Pension Plan (CPP) in excess of the DA rate as set out in section 9(2) of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR);
- 2) the appellant was not eligible for Persons with Disabilities (PWD) designation until May 1, 2020 in accordance with section 23(3.11) of the EAPWDR; and
- 3) there was no exemption for the EI/CERB because the appellant was not eligible for DA on April 2, 2020 as set out in section 2.01 of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment Assistance for Persons with Disabilities Regulation sections 2.01, 9(2), 23(3.11), 72

PART E – SUMMARY OF FACTS

Background Information

- The appellant is a recipient of disability assistance since November 2020, with PWD designation effective May 1, 2020.
- On January 29, 2020 the appellant applied for assistance, indicating they wanted to apply for PWD designation.
- On February 11, 2020 the ministry determined the appellant was not eligible for income assistance because their income from Employment Insurance (EI) and Canada Pension Plan (CPP) was higher than the rate of assistance. The appellant was provided with an application for PWD.
- On February 26, 2020 the ministry received the appellant's PWD application.
- On March 20, 2020 the ministry denied the application for PWD.
- On March 27, 2020 the appellant submitted a requested for reconsideration, writing about their disability and how it affects their daily life, and requested an extension. The extension was approved until April 28, 2020.
- On April 17, 2020 a physician wrote a letter in support of the PWD designation.
- On April 30, 2020 the ministry approved the appellant's PWD designation, effective May 1, 2020.
- On May 7, 2020 the ministry determined the appellant's income from EI/CERB was more than the DA rates and that EI/CERB income was not exempt because the appellant was not eligible for DA on April 2, 2020.
- On November 25, 2020 the appellant's eligibility was reassessed because the EI/CERB income had ended and the ministry determined that the appellant was eligible for DA effective November 2020.
- On December 10, 2020 the appellant requested a request for reconsideration (RFR) writing:
 - PWD was applied for on February 26, 2020, denied March 4, 2020 and a request for a reconsideration was made on March 27, which was well before April 2, 2020;
 - the information provided at reconsideration was only a clarification of their disabilities and that the severity, duration and impacts of the symptoms were not well documented by their doctor;
 - if the doctor had been more specific about the severity of the condition that the PWD designation would have been made prior to April 2, 2020 and the federal benefits they received would have been exempt;
 - if they had been approved for PWD when first applied they would have been eligible since May 2020

Information provided on appeal and admissibility

On the Notice of Appeal (NOA) form dated January 5, 2021 the appellant reiterated what they had written in their RFR of December 10, 2020 and noted that the ministry decision to deny PWD designation was an error and subsequently corrected on reconsideration. The appellant is requesting that this tribunal give them PWD status for when it was first applied for. This was when they became eligible and would allow DA from May 2020 to September 2020 be granted and all CERB payments be exempt.

At the hearing the appellant reiterated what they had written in their RFR and NOA emphasizing that the ministry had made an error back in March when they initially determined the appellant was not eligible for PWD designation. The appellant stated they only provided clarification of their medical condition at reconsideration, that there had been no change, and the ministry should have backdated their PWD designation to the initial denial date of March 2020. This means they would have been on assistance prior to April 2, 2020. The appellant indicated they had received very little information about what PWD designation entitles them to and it was only the good work of a ministry worker that allowed them to receive their first cheque prior to December 2020.

At the hearing the ministry reviewed the reconsideration decision of December 16, 2020 and clarified that the ministry is the payor of last resort. Anyone who was not on assistance prior to April 2, 2020 is considered an applicant and would have EI/CERB income deducted. The ministry noted that only persons in receipt of assistance prior to April 2, 2020 would be eligible for the EI/CERB exemption. The ministry pointed out the appellant wrote in their RFR pertaining to the PWD designation that their doctor had not given enough information on the PWD application, and at reconsideration a letter from the doctor was provided that confirmed the severity of the medical condition. This confirmation from a physician resulted in the reconsideration decision dated April 30, 2020, approving PWD designation and, pursuant to section 23(3.11) of the EAPWDR, resulted in the effective date being May 1, 2020.

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Neither party provided additional documents or oral evidence that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*. The ministry relied on the reconsideration decision and both parties provided argument at the hearing. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant was not eligible for backdated DA for May 2020 to October 2020 because:

- 1) the appellant had unearned income for the period May 1, 2020 to October 1, 2020 from EI/CERB and CPP in excess of the DA rate as set out in section 9(2) of the EAPWDR;
- 2) the appellant was not eligible for PWD designation until May 1, 2020 in accordance with section 23(3.11) of the EAPWDR; and
- 3) there was no exemption for the EI/CERB because the appellant was not eligible for DA on April 2, 2020 as set out in section 2.01 of the EAPWDR

was reasonably supported by evidence or a reasonable application of the legislation?

Appellant's Position

The appellant's position is because they initially applied for PWD in February 2020, and an error was made in determining them not eligible back in March 2020, the subsequent approval made at reconsideration in April 2020 should have been backdated to March 2020. This would mean they would have had their EI/CERB income exempt and been eligible for cheques from May to October of 2020 instead of from November 2020.

Ministry's Position

The ministry's position is that PWD designation was made at reconsideration on April 30, 2020. Therefore, pursuant to section 23(3.11) of the EAPWDR the effective date is the first day of the month following the decision, which would be May 1, 2020. The ministry argues because the appellant was not in receipt of assistance effective April 2, 2020 their EI/CERB income was not exempt, pursuant to section 2.01 EAPWDR. Further, pursuant to section 9(2) of the EAPWDR, because their income from May 2020 to October 2020 was higher than DA rates they were not eligible for disability assistance until their EI/CERB income had expired.

Panel Decision

There are a number of legislative references that have been used in this decision to determine whether the appellant's EI/CERB income being higher than the legislated rates meant there was no eligibility for DA or whether that income was exempt. The appellant's effective date of PWD designation also is being questioned. The panel will review each section of the legislation separately.

Effective date of PWD designation

Section 23(3.11) of the EAPWDR sets out that the effective date of PWD designation is based on when the decision has been approved at reconsideration. That date is the first day of the month after the decision has been made.

The appellant was initially denied PWD designation on March 20, 2020 and then requested a reconsideration of the decision (RFR). The panel notes the appellant indicated in that RFR that the doctor had not provided enough information so an additional letter from the doctor was submitted. The appellant argues there was no change in their medical condition and they had provided enough information in their PWD booklet, which was not taken into consideration by the ministry. The panel cannot make a determination about whether the original decision to deny PWD designation was correct. The decision to deny PWD designation was reviewed by the ministry at reconsideration on April 30, 2020. The ministry subsequently approved PWD designation based upon the additional information provided by the physician, effective May 1, 2020. The time frame for appealing the effective date of the PWD designation was within 20 business days of that decision. Therefore, because section 23(3.11) specifically sets the effective date as being the first day of the month following the decision, the panel finds the ministry was reasonable to determine that May 1, 2020 is the effective date of PWD designation.

Modifications in relation to COVID-19 emergency (EI/CERB income)

Section 2.01 of the EAPWDR allows the ministry to exempt EI/CERB income provided the family unit was eligible for DA on April 2, 2020.

The panel found no evidence in the appeal record to indicate the appellant was in receipt of assistance prior to April 2, 2020 and the effective date of PWD designation has been determined to be May 1, 2020. Because the appellant was not eligible for DA prior to April 2, 2020 the panel considers the ministry was reasonable to determine the appellant's EI/CERB income was not exempt from the net income calculation.

Section 9 (2) of the EAPWDR states a family unit is not eligible for DA if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A

In the appellant's circumstance they had EI/CERB income of \$1368 and CPP income of \$585.31, which was higher than the legislated rates. The panel notes the appellant did not dispute the amount of income they were receiving from May 2020 to October 2020. The panel finds the ministry was reasonable to determine the appellant was not eligible for DA because their EI/CERB income was higher than the DA rates. Once the EI/CERB ran out, the ministry determined the appellant was eligible for DA effective November 2020.

Conclusion

For the reasons noted above, the panel finds the ministry's reconsideration decision that EI/CERB income was not exempt because the appellant was not eligible for DA until May 1, 2020 and therefore not eligible for backdated DA from May 2020 to October 2020 was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Modifications in relation to COVID-19 emergency

2.01 (1) This section applies in relation to the provision of assistance for a calendar month after April, 2020 and before September, 2021 to or for

(a) a family unit that

(i) was eligible on April 2, 2020, or includes a person who was in a family unit that was eligible on April 2, 2020, for disability assistance or hardship assistance, or

(ii) includes a person with disabilities who was a person with disabilities on April 2, 2020, or

(b) a family unit that is described in section 2.1 (1) (a) of the Employment and Assistance Regulation.

.....

(3) Section 1 (a) of Schedule B is to be read as though it also provided that the following are exempt from income when calculating the net income of a family unit for the purposes of section 24 (b) of this regulation:

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(a.1) a benefit under the *Canada Recovery Benefits Act*;

(b) employment insurance;

(c) pandemic pay.

Limits on income

9 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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.

(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.

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.

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/01/28

PRINT NAME

Robert (Bob) Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/28

PRINT NAME

Jan Broocke

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/28