

Appeal Number 2021-0184

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 15, 2021 which held that the appellant is eligible for income assistance for the period from June 8, 2021 to July 6, 2021. However, the appellant is not eligible for backdated assistance for the period of March 2, 2021 to June 7, 2021.

### **Part D – Relevant Legislation**

Employment and Assistance Act (EAA) section 1, 2 and 4  
Employment and Assistance Regulation (EAR) section 26

## Part E – Summary of Facts

On March 2, 2021 the appellant submitted an application for assistance with another person that they both declared as accurate. The application listed them as a couple in a “marriage-like” relationship.

On March 18, 2021 the ministry noted that a telephone interview was completed with the appellant and the other person who the appellant described as her spouse.

- A review of the couple’s income and assets was conducted.
- The ministry advised that the appellant was ineligible for assistance at that time because her spouse’s EI income of \$1664 per month exceeded the rate of income assistance for the appellant’s family unit size.
- The appellant stated she was applying for PWD designation as the EI was anticipated to expire in 6 months; the ministry sent a PWD application to the appellant by mail.

On June 8, 2021 the ministry received a note from the appellant in which she stated:

- “I was advised by a social worker that I had to apply as a couple as I still lived with my ex-partner, so I initially applied with the information of my ex-partner.
- However, since working with my caseworker, I realized that since we effectively separated in December 2020 ... that I have applied incorrectly and have been advised to appeal the initial decision on my file...
- I was advised by my disability caseworker, that I needed to appeal this process and resubmit my last three months of bank documents.
- Due to my disabilities, I have difficulty understanding instructions and forms and so the application process has been very confusing to me...”

On July 7, 2021 the ministry completed a reapplication for assistance with the appellant.

- The ministry determined the appellant was eligible for income assistance.

On July 22, 2021 the appellant requested backdated assistance as a single person from March 2, 2021 when the appellant completed her initial application.

- The ministry denied the request for backdated assistance.

On September 1, 2021 the ministry received the appellant’s request for reconsideration that included the following information:

- While in the hospital the appellant was advised by a social worker that she should apply as a couple if she still lived with her ex even though they were in a platonic, financially separate roommate living situation.
- Upon speaking to her new permanent social worker, she was advised that this previous information was incorrect and thus her initial application contained misinformation.
- She was advised to reapply as a single person by both her social assistance caseworker and her personal social worker.
- Due to her health condition the appellant’s cognitive functioning was not at its best and she struggled to understand and fill out the form.
- She received help from a friend to type out the statement.
- The appellant has been living without necessities of life, borrowing from friends, and falling into debt.

On September 1, 2021 the ministry determined the appellant was eligible for Persons with Disabilities (PWD) Designation. The appellant is currently a recipient of disability assistance.

In her Notice of Appeal the appellant wrote that “a mistake on the form caused by my disabilities allowed for inaccurate information which I’ve since corrected. I will be issuing a further statement.”

At the hearing the appellant stated she had faxed a 2 page document to the Tribunal on the day before the hearing. During a 10 minute recess the panel phoned the Tribunal office and several staff tried to locate this submission but could not find it. The appellant stated she had faxed it to 1-855-814-4117 which she found on the Social Security Website. (The panel notes that this fax number is not assigned to the Employment and Assistance Appeal Tribunal.) The panel chair offered the appellant the option to adjourn the hearing or to continue with the hearing during which the appellant would include her submission in her oral testimony. The appellant stated she wanted the hearing to go ahead and not have it adjourned, and she would present her submission orally as part of her testimony.

The appellant stated that

- she tried to get her application done while she was very unwell and in the hospital.
- She was pressured and had no income.
- There were 3 different social workers there from whom she received advice.
- Her first application was for income assistance.
- She was not allowed to apply for PWD designation earlier.
- On February 10, 2021 the appellant was discharged from the hospital and began her recovery period. She had specialist and doctors’ appointments. She cannot remember whether she was hospitalized during this period.
- In June she talked to her social worker and contacted the ministry to inform them of her mistake.

The ministry explained the reconsideration decision and added that

- even if a person is not eligible for income assistance they must first fill in an intake form before they can proceed with a PWD application.
- The ministry added that after the initial March decision the appellant would have been offered reconsideration which she did not act upon.
- The ministry based their decision on the information the appellant provided at application, at the interview, and in June.

#### Admissibility of new evidence

The panel finds that the information provided by the appellant and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel’s understanding of the circumstances surrounding the appellant’s applications for income assistance. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

## **Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry determination that the appellant is not eligible for backdated assistance for the period of March 2, 2021 to June 7, 2021 is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

### Appellant Position

The appellant argues that she should be eligible for backdated assistance because she was incorrectly advised by a social worker that she had to apply as a couple. However, since working with her social assistance caseworker and her new permanent social worker, the appellant realized that the information on her initial application was incorrect because she had separated from her spouse in December 2020. In addition, the ministry had missed the fact that the appellant had a disability at the time of her March submission. It is not fair to be penalized when one's mind is not clear due to a disability.

The appellant argues further that since on July 7, 2021 she has been approved for income assistance without her former spouse, and she had included him by mistake in her initial application, she should be eligible for assistance as a single person from March 2021 onward, when she completed her initial application. She needs the additional assistance because she experiences financial hardship, has been living without the necessities of life, had to borrow from friends and fell into debt.

### Ministry Position

The ministry determined that the EA Act and Regulation do not contain provisions to retroactively recalculate eligibility after an applicant advises they made an error in their application. Originally the ministry had determined the appellant's eligibility for assistance based on the information she provided in her March 2, 2021 application and interview about her family unit size. As her family unit's net income exceeded the ministry's rate the ministry had determined that the appellant was ineligible for assistance effective March 2, 2021. The appellant did not dispute the ministry's decision at that time.

After the appellant advised of her error regarding her family unit on June 8, 2021 the ministry completed a re-application with the appellant on July 7 - her file had remained open - and it was determined she was eligible for income assistance as a sole applicant. The ministry determined that the date of her eligibility as a sole applicant was June 8, 2021, when she advised the ministry of her error on her initial application. The ministry found that it would not be administratively fair to have July 7, 2021 as the effective date of eligibility.

The ministry concluded that it was unfortunate the appellant was given incorrect information from a social worker advising her to apply with the person she resided together, and acknowledged that the appellant could benefit from backdated assistance. However, the ministry found the effective date of the appellant's eligibility for income assistance is June 8, 2021 in accordance with section 26(1) of the EAR.

### **Panel Decision**

Section 26(1) of the Employment and Assistance (EA) Regulation sets out that a family unit is not eligible for income assistance in respect of a period that occurred before the date the ministry determines the family unit is eligible for the income assistance.

While the appellant argues that she should be eligible for income assistance starting March 2, 2021 because she was eligible at that time as a single person the panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance between March 2 and June 7.

The panel bases its decision of the following facts:

- On March 2, 2021 the appellant had applied together with a spouse and expressly declared the accuracy of that status in her application. As her family unit's net income exceeded the ministry's rate the ministry determined that she was ineligible for assistance effective March 2, 2021. The appellant did not dispute the ministry's decision at that time.
- On June 8, 2021 the appellant informed the ministry that she had made a mistake in her March 2 application; she stated that the person who she had declared to be her spouse was in fact her roommate and caregiver and not her spouse; they had separated in December 2020.
- The ministry completed a re-application with the appellant on July 7, 2021 and determined the appellant to be eligible for income assistance as a single person.
- The ministry determined that the date of her eligibility as a sole applicant was June 8, 2021, when she advised the ministry of her error on her initial application. The ministry found that it would not be administratively fair to have July 7, 2021 as the effective date of eligibility.

The panel finds the ministry was reasonable when it completed a re-application with the appellant on July 7, 2021 because the appellant had been found ineligible on March 2, 2021 and her eligibility had to be re-assessed. The panel finds further that the ministry reasonably determined the start date of the appellant's eligibility to be June 8, 2021, the day she informed the ministry of her different family status.

Furthermore, the panel finds the ministry was reasonable when it denied backdated assistance because section 26(1) of the EAR sets out that a family unit is not eligible for income assistance in respect of a period that occurred before the date the ministry determines the family unit is eligible for the income assistance.

The panel notes that while the ministry may have had the option to choose a different eligibility start date, the panel finds the ministry was reasonable when it determined the eligibility start date to be the day when the appellant informed the ministry of her change in family status.

The panel is sympathetic with the appellant as she potentially missed out on assistance funds, but the legislation is clear in the appellant's circumstances and the panel cannot make changes to the existing legislation. The panel finds the ministry's decision was a reasonable application of the legislation in the appellant's circumstances. The ministry decision is confirmed and the appellant is not successful on appeal.

## Relevant Legislation

### EAA

#### Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

#### Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement 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 income assistance, hardship assistance or supplement under this Act.

#### Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

### EAR

#### Effective date of eligibility

26 (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

(2) A family unit becomes eligible

- (a) for a support allowance under sections 2 and 3 of Schedule A on the income 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 income 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 income assistance under sections 6 to 10 of Schedule A on the income assistance application date.
- (d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (f).]

(2.01) If the minister decides, on a request made under section 17 (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 17 (1) of the Act, and

(b)the applicable of the dates referred to in section 80 of this regulation.

(2.1)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 (2.01).

(3)If a family unit includes a person who qualifies as a person who has persistent multiple barriers to employment, the family unit becomes eligible to receive income 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 in which the minister determines that the person qualifies as a person who has persistent multiple barriers to employment.

(3.01)If the minister decides, on a request made under section 17 (1) of the Act, that a person qualifies as a person who has persistent multiple barriers to employment, the person's family unit becomes eligible to receive income 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 17 (1) of the Act, and

(b)the applicable of the dates referred to in section 80 of this regulation.

(3.1)If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person who has persistent multiple barriers to employment, the person's family unit is eligible to receive income 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 (3.01).

(4)If a family unit that includes a person who qualifies as a person who has persistent multiple barriers to employment does not receive income assistance at the applicable rate under Schedule A 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 under subsection (3) or (3.1), as applicable, for the applicable rate;

(b)12 calendar months before the date of payment.

(5)Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6)Subsection (5) does not apply to assistance in respect of moving costs as defined in section 57.

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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)

Section 24(2)(a)     or Section 24(2)(b)

**Part H – Signatures**

Print Name  
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2021/10/13

Print Name  
Kent Ashby

Signature of Member

Date (Year/Month/Day)

2021/10/13

Print Name  
Tina Ahnert

Signature of Member

Date (Year

2021/10/13