

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 30, 2021, which denied the appellant's request to change the effective date of eligibility for disability assistance to October 3, 2021, as per section 23 of the Employment and Assistance for Persons with Disabilities Regulation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 23
see attached Schedule of Legislation

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

- On September 27, 2021 the appellant submitted a Person with Disabilities Prescribed Classes application (PWD application).
- On October 1, 2021 the ministry confirmed the appellant was transitioning from the At Home Program – Ministry of Child and Family Development (MCFD).
- On October 3, 2021 the appellant turned 18.
- On October 4, 2021 the ministry approved the appellant's designation as a Person with Disabilities (PWD), effective November 1, 2021.
- The appellant's parents requested that the effective date of eligibility be moved to October 3, 2021, the date of the appellant's 18th birthday.
- The ministry reviewed the request and noted there was a tight turn around on the appellant's application, which was submitted late. The ministry was unable to approve the application until receiving confirmation of the appellant's eligibility from the At Home program.

Person with Disabilities Designation Application – Prescribed Class (signed August 6, 2021)

Request for Reconsideration Summary (November 17, 2021)

The appellant stated he and his parents had submitted an earlier application but when they advised the ministry that he qualified for Community Living BC (CLBC) benefits, they were advised one cannot qualify for both CLBC and PWD benefits. As a result, this earlier application did not proceed.

As well, there have been several miscommunications from the ministry to the appellant and his parents:

1. They were told that At Home benefits end on October 3, 2021 and Medical Service Plan – Province of British Columbia (MSP) starts on that day but later found that At Home benefits continue to October 31, 2021 and MSP starts on November 1, 2021.
2. In trying to obtain the request for reconsideration form, when they called the ministry (after receiving the original package to let the ministry know that there was no form attached) on two separate occasions, they were told that no form was needed - even after the appellant insisted that the request said to complete a form. On a separate occasion, the appellant was told that there was a form attached even though he did not see one and so kept asking for another one. Finally, the appellant was able to get through to someone who took the time to check and found that there was indeed no form attached. The ministry apologized for the omission and sent out a new form.
3. Also, when the initial application was made in August 2021, they were told that the PWD payments were made at the end of each month for the same month. Later, they found that October payments are made in September, November at the end of October, and so on.
4. Earlier, they also had conversations with the ministry as the system would not let them log in.
5. One ministry worker said that PWD benefits begin the month after an 18 birthday and another said they begin the month of.

Additional Information

Appellant

Notice of Appeal (December 14, 2021)

Reasons for Appeal

There is no consideration of the ministry staff providing incorrect and complete information.

At the hearing, the appellant was represented by his mother who stated that as the August 6, 2021 application was not processed, they inquired with other parents and other sources, including the ministry, about next steps, and were told to re-apply. The appellant then submitted the second PWD application (dated September 27, 2021).

The appellant's mother also stated that with both the August 6, 2021 and September 27, 2021 PWD applications, a confirmation of eligibility from the At Home Program was included. In addition, someone from the ministry advised the appellant that he should have qualified when he applied as the ministry already had confirmation from the At Home Program.

Ministry

At the hearing, the ministry relied on its record and also confirmed that there was a letter from the MCFD dated January 2, 2009, attached to the September 27, 2021 PWD application. It was posted on the ministry's file as of September 29, 2021. The ministry sent an email to MCFD to verify the information in the letter and received confirmation on October 1, 2021.

Regarding the August 6, 2021 PWD application, the ministry stated the system automatically closed the application after due dates passed.

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision that denied the appellant's request to change the effective date of eligibility for disability assistance to October 3, 2021, as per section 23 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of the decision.

Appellant Argument

The appellant argues that he and his parents submitted an earlier application and in discussion with ministry staff were told that one cannot qualify for both CLBC benefits and PWD benefits. As a result, the application didn't proceed.

The appellant also states that with both the August 6, 2021 and September 27, 2021 PWD applications, a confirmation of eligibility from At Home was included and so argues that the ministry had the confirmation needed ahead of time.

The appellant argues further that there were several miscommunications from the ministry including: different eligibility start dates, required forms, different payment dates, and problems logging into the system.

Ministry Argument

The ministry argues the effective date of eligibility for PWD designation is the first day of the month following the month of the ministry's decision, which was made on October 4, 2021. Therefore, the designation is effective November 1, 2021.

The ministry also argues that although it received the required confirmation from the MCFD with the September 27, 2021 PWD application (on file from September 29, 2021), it also needed to verify the information.

In addition, the ministry argues that as the disability application was completed promptly and urgently once received, the designation cannot be considered under subsection 23(1.1).

Analysis

Section 23, EAPWDR – effective date of eligibility

Section 23 states the family unit of an applicant for designation as a PWD 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. Section 23(1.1) states the family unit of an applicant who applies for disability assistance while the applicant is 17 and who the minister has determined will be designated as a PWD on the applicant's 18th birthday is eligible for disability assistance on that 18th birthday.

The panel notes ministry records show the appellant turned 18 on October 3, 2021. The panel also notes evidence submitted shows a PWD application was submitted by the appellant on August 6, 2021. Ministry records show the appellant submitted a second PWD application on September 27, 2021. At the hearing, the ministry confirmed that a confirmation letter regarding the At Home Program from the MCFD was submitted with the September 27, 2021 PWD application.

The panel finds as the appellant applied for PWD benefits on August 6, 2021, the ministry had the opportunity to request confirmation regarding the At Home Program from the MCFD weeks ahead of the appellant's 18th birthday. As well, the panel finds even though there had been some miscommunication between the appellant and the ministry, the appellant did provide the required information to the ministry from the MCFD on September 27, 2021, days before his 18th birthday.

The panel notes that the ministry did not make the decision regarding the appellant's eligibility for PWD until October 4, 2021 (the day after the appellant's 18th birthday). However, the panel finds, as the ministry had the required information regarding the appellant's PWD eligibility before his 18th birthday, the decision to not allow eligibility for disability benefits as of October 3, 2021 was unreasonable.

Conclusion

In conclusion, the panel finds the ministry's reconsideration decision, which denied the request to change the effective date of eligibility for disability assistance to October 3, 2021, as per section 23 of the EAPWDR, was not a reasonable application of the legislation in the circumstances of the appellant.

The appellant is successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

Division 5 — Amount and Duration of Disability Assistance

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. [B.C. Reg. 151/2018]

(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) Repealed. [B.C. Reg. 340/2008, s. 2.]

(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.

(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 55.

Appeal Number 2021-0244

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2022/03/21

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/03/21

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2022/03/21