

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated December 7, 2021, in which the ministry denied the request by the appellant in August 2021 to backdate disability assistance to include his dependent child from March 3, 2020 to July 31, 2021.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) section 1(1)
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) section 23(4) and Schedule A, sections 1(1), 2(1) - (4) and 4(2)

Part E – Summary of Facts

A video-conference hearing was set for February 28, 2022. The appellant was unable to attend, for reasons beyond his control, and the panel adjourned the hearing at the request of the appellant's advocate.

The hearing was re-scheduled and took place by video-conference on March 16, 2022. The appellant attended with an advocate and a translator.

Evidence Before the Ministry at the Reconsideration:

The appellant, his spouse and 3 children are in receipt of disability benefits under the EAPWDA. The appellant was designated a person with disabilities on April 12, 2018.

Neither the appellant nor his spouse speaks English fluently. The appellant has cancer and has struggled with the effects of his illness and numerous related medical appointments over the past few years.

The appellant's third child was born in March 2020, just as the Covid 19 pandemic began and government and other offices closed to in-person appointments. Shortly after the birth, the spouse's settlement worker arranged for registration of the birth and applied for various provincial and federal government benefits for them, including Medical Services Plan and Canada Child Benefit.

Between March 2020 and August 2021, the appellant's family unit received a monthly shelter allowance of \$635 per month, which was the amount of their monthly rent. They received a monthly support allowance of \$1,947, which was the disability assistance rate for two applicants/recipients and one or more dependent children when both applicants/recipients are persons with disabilities.

The appellant did not send monthly reports to the ministry, nor did he advise the ministry of the birth of his third child. On August 6, 2021, the appellant asked to have the third child added to his file as a dependent child. He told the ministry that he believed a settlement worker had notified the ministry of the child's birth, and he had not known that the settlement worker had not done so. The appellant gave the ministry a copy of the child's birth certificate and the hospital's baby identification bracelet.

On August 12, 2021, the appellant gave the ministry a letter from the housing association to show that the appellant's rent had increased from \$635 to \$680 on August 1, 2021.

The ministry added the third child to the applicant's file on August 25, 2021, and increased the monthly shelter allowance to \$680 as of August 1, 2021.

Additional Evidence:

At the hearing, the appellant stated that he had asked the settlement worker repeatedly if they had reported the child's birth to the ministry, and the settlement worker assured him that they had. He does not have a computer or internet access to report information to the ministry himself. He did not pay attention to the amounts being deposited to his bank account each month but relied on the settlement worker, who told him that increased monthly income would be added to his account.

In August 2021 the BC Housing manager told him that his rent had been based on a 4-person family, and their rent would increase because they were actually a family of 5. The manager told him that the rent increased because the family's income increased with the additional child. They gave the appellant a new rental agreement for the higher rent effective August 1, 2021 and told him to take it to the ministry so his monthly shelter allowance would be increased.

The appellant took the new rental agreement to the ministry, and at that point, learned for the first time that the ministry had not been told about the birth of the third child.

The appellant said the ministry did not require him to send monthly reports because he had opted to receive support payments by automatic deposit when he first began receiving disability assistance.

The appellant said that the ministry told him that they did not know exactly how much extra support he would receive. He believed it would be around \$250 per month in additional disability assistance because of the birth of the third child.

The appellant's spouse stated that the appellant had been very thorough in his efforts to make sure that all necessary applications and paperwork had been completed by the settlement worker. The settlement worker told them many times that everything necessary had been done.

The panel determined that the additional evidence was admissible under s.22(4) of the Employment and Assistance Act because it provides further details about the appellant's communication with the ministry about the addition of the third child to his file and his request for increased disability benefits.

Part F – Reasons for Panel Decision

The issue is whether the ministry was reasonable in denying the request by the appellant in August 2021 for backdated disability assistance to include his dependent child from March 3, 2020 to July 31, 2021.

Legislation:

Schedule A of the EAPWDR sets out disability assistance rates for eligible recipients under the EAPWDA. Under section 1(1) of Schedule A, disability assistance is the sum of the monthly support allowance and the shelter allowance.

For the appellant's family unit, the monthly support allowance in August 2021 was \$1,947, with a legislated rate increase to \$1,953.50 in October 2021. The monthly shelter allowance was the family's actual shelter cost, up to a maximum of \$715 for a family of 4, or \$765 for a family of 5.

Section 2(2) of Schedule A of the EAPWDR does provide for an additional "BC child adjustment amount" for each dependent child in the family unit, but the supplement is offset by the amount of the Canada Child benefit and other supplements. If a family unit was eligible for the Canada Child benefit, there would not be an additional amount payable by the ministry.

Under section 23(4) of the EAPWDR, the ministry may backdate payment of disability assistance for "the family unit that includes an applicant who has been designated as a person with disabilities who does not receive disability assistance from the date the family unit became eligible for it."

Section 1(1) of the EAPWDA defines "applicant" and "recipient":

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

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit.

Appellant's Position:

The appellant says that he relied on the settlement worker to make all government benefit applications and notifications that were necessary after the birth of his third child. He was diligent and persistent in asking if these things had been done and he accepted the settlement worker's assurance that they had notified the ministry. If there was a failure to report the new

member of his family, it was not his fault, and his family should not have to suffer the consequences.

Based on statements from the ministry as well as the housing manager and the disability advocate, the appellant had believed that he would receive as much as \$250 additional monthly support allowance, not only increased shelter allowance, with the addition of the third child.

The appellant maintained that, if his family was eligible for additional disability assistance when the third child was born, the ministry has discretion under section 23(4) of the EAPWDR to backdate his disability allowances to March 2020.

Ministry's Position:

The ministry explained that the appellant's rent did not increase between March 2020 and July 2021, so adding the third child to the appellant's file in March 2020 would not have made a difference to the amount of the monthly shelter allowance the appellant received.

The monthly support allowance for the appellant's family unit, made up of two applicants and one or more dependent children, would also not have changed if the third child had been added in March 2020. The ministry said that there is no increased support amount for additional children.

Section 23(4) of the EAPWDR, which gives the minister discretion to backdate payment of disability assistance in some circumstances, only applies to an "applicant" as defined in the EAPWDA. The appellant is not an "applicant", he is a "recipient" of disability assistance as defined in the EAPWDA because he had persons with disabilities designation and has been receiving disability assistance since May 2018. Therefore, section 23(4) does not apply to the appellant's circumstances and the minister has no discretion to backdate disability assistance for the appellant. It is the recipient's responsibility to report any changes in the family unit to the ministry directly, and the ministry explains this requirement to everyone who receives assistance. The ministry cannot add a dependent to a file until it has determined that the dependent meets the eligibility requirements in the EAPWDA and EAPWDR. The ministry could not make that determination until the appellant reported the child's birth and gave the birth certificate to the ministry on August 6, 2021.

Panel Decision:

The appellant has brought this appeal in the belief that his family would be entitled to an increased support allowance with the addition of a third child. He held this belief because of statements from the ministry, the housing manager and a disability advocate (not the advocate who appeared at the hearing) that his disability allowance would increase with the registration of the additional child. The panel notes the statement in the original ministry decision that on September 8, 2020, "the worker advised that your monthly allowance would increase once your child is added to your file." The panel also notes the statement in a letter from the disability advocate that "he is requesting backdated payment amounts for the months that would have been granted an increase support amount [sic] due to the increase of his family size."

It appears that the first time the appellant has been told directly that the amount of the monthly support allowance does not increase with the birth of the third child, is when the ministry responded to a question from the panel at the hearing. (The panel notes that, while section 2(2) of Schedule A of the EAPWDR does provide for an additional "BC Child adjustment amount" for each dependent child, the Canada Child Benefit is deducted from that amount, for a net zero increase. Therefore, the support amount paid by the ministry does not change.)

It may be that the ministry and the appellant were speaking at cross-purposes, as the original ministry decision states that the appellant was requesting a retroactive shelter payment in August 2021. The maximum amount of the shelter allowance does increase according to the number of people in the family unit. However, once it was determined that the appellant did not have increased shelter costs before August 2021, the process continued as if the only issue was whether the ministry would backdate the file, not whether backdating would have served any practical purpose for the appellant.

Section 23(4) of the EAPWDR provides that the minister may backdate payment if "a family unit that includes an applicant who has been designated a person with disabilities does not receive disability assistance from the date the family unit became eligible for it." In the reconsideration decision the ministry focuses on whether the appellant is an "applicant" or a "recipient" of disability assistance, arguing that there is only discretion to backdate payments for an "applicant," not for a "recipient."

However, the panel finds that, as there were no payments to backdate in the appellant's circumstances, section 23(4) would not apply in any event.

Conclusion:

The panel finds that the ministry decision to deny the appellant's request for backdated disability assistance was a reasonable application of the legislation in the appellant's circumstances, because no additional disability assistance was payable between March 2020 and July 2021. The appellant is not successful in the appeal.

Legislation

Employment and Assistance for Persons with Disabilities Act

Interpretation

Section 1(1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability 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;

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

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

Employment and Assistance for Persons with Disabilities Regulation

Section 23(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.

Schedule A

Disability Assistance Rates

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

7	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities	\$1 953.50
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(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding month,

(ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and

(iii) the total amount of the supplements, if any, provided to or for the family unit under section 59 [supplement for delayed, suspended or cancelled family bonus] or 59.1 [supplement for delayed, suspended or cancelled Canada child benefit] of this regulation for the current calendar month.

(2.1) If the amount calculated under subsection (2) is less than zero, it is deemed to be zero for the purposes of this section.

(3) In calculating the adjustment under subsection (2), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus or the Canada child benefit must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

(a) apply for the family bonus or the Canada child benefit for the preceding calendar month, or

(b) accept the family bonus or the Canada child benefit for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada).

Monthly shelter allowance

Section 4(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$665
4	4 persons	\$715
5	5 persons	\$765
6	6 persons	\$815
7	7 persons	\$865
8	8 persons	\$915
9	9 persons	\$965
10	10 persons	\$1 015

APPEAL NUMBER 2022-0026

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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/03/21

Print Name

Trevor Morley

Signature of Member

Date (Year/Month/Day)

2022/03/21

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2022/03/19