

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated December 5, 2022, which determined that the Appellant is not eligible for a natal supplement for the months of December 2021, January 2022, and February 2022.

The Ministry determined the Appellant does not meet the criteria set out in Sections 23 and 68, and Schedule C, Section 8 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the Appellant is not eligible for a retroactive natal supplement.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) - Sections 23, 68 and Schedule C, Section 8

Part E – Summary of Facts

The Appellant was designated a Person with Disabilities (PWD) in December 2021, and receives assistance for themselves and their 4 children. The Appellant received a natal supplement for 7 months from March to September 2022.

Teleconference hearing:

The Appellant did not attend the first hearing, scheduled for December 29th, 2022. After waiting for the Appellant to join the teleconference, the Tribunal office was informed, and they made contact with the Appellant. The Appellant explained they were not able to attend as they were having health related issues. They were offered the option of having a written hearing instead of a teleconference, or rescheduling the current teleconference, and the option they chose was to reschedule the teleconference hearing to a later date. The Appellant noted that they would take the time to prepare thoughts in advance to allow them to participate fully and effectively. The new hearing was scheduled for January 20th at 1:30pm, and the Appellant did not join or participate in any way. Having confirmed that the Appellant was notified of the hearing, the panel proceeded with the hearing as per Section 86(b) of the Employment and Assistance Regulation which states: the panel may hear an appeal in the absence of a party if the party was notified of the hearing.

Summary of key dates:

- July 13, 2022, the Appellant requested natal supplements for December 2021, January, and February 2022.
- November 1, 2022, the Appellant was advised that they were not eligible for a natal supplement for the 3-month period between December 2021 and February 2022.
- November 18, 2022, the Appellant submitted a Request for Reconsideration.
- December 5, 2022, the Ministry completed the review of the Appellant's Request for Reconsideration, confirming the denial of the natal supplement.

Evidence before the Ministry at the time of reconsideration:

- Request for Reconsideration dated November 18, 2022, in which the Appellant stated in Section 3, Reason for Request for Reconsideration:
 - The Appellant was pregnant at the time the request for designation of PWD was submitted, and told this to the Ministry worker.
 - The Appellant was not aware that proof of pregnancy had to be provided.
 - The Appellant gave birth on March 14, 2022, and subsequently provided the baby's birth certificate to the Ministry, and after that was granted natal supplements for the 7-month period March 2022 to September 2022.
 - On a phone call with the Ministry worker the Appellant requested that the natal supplement be backdated to December 2021, and the Ministry worker responded "yes" to the request.
- The Ministry has no evidence that the Appellant ever stated that they were pregnant, and the Ministry became aware of that when the Appellant sent a copy of the child's birth certificate, who was born on March 14th, 2022.

At the hearing, the Ministry representative provided additional evidence:

- The Appellant applied for and was granted PWD designation in December 2021 and had been a Ministry client before being granted this designation.
- The Ministry representative confirmed having reviewed the files to see if there were any notes of verbal notification of the pregnancy recorded and found none. There was no indication of the pregnancy in the disability application.
- The Appellant did not attend the Ministry offices in person.

Admissibility of Additional Evidence:

The panel finds the additional evidence to be admissible under section 22(4) of the Employment and Assistance Act. The evidence provides additional information about the appellant's communications with the ministry about their pregnancy, and therefore is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's determination that the Appellant was not eligible for a natal supplement for a 3-month period was a reasonable application of the legislation in the Appellant's circumstances.

Although incorrectly citing Section 23 (5) of the EAPWDR—which refers to the services and costs section which would not apply to the appellant's situation—as opposed to Section 23 (2) – which refers to eligibility for a supplement—in its Reconsideration decision the Ministry determined that, as the Appellant did not advise of the pregnancy until March 2022, they did not meet the requirements of Sections 23 and 68 and Schedule C Section 8 of the EAPWDR. Accordingly, the Appellant was denied a natal supplement for the 3-month period before the birth of the child.

The Appellant did not attend the teleconference hearing, and the argument they provided was what was included with the notice of appeal. Those arguments are:

- The Ministry did not properly advise or counsel the Appellant on the details of the programs they qualified for.
- The Ministry agent who guided the Appellant through the PWD application process was aware of the pregnancy but did not discuss the procedure for getting a doctor's note or filling out an application.
- The Appellant was informed by an employee of the Ministry, in a recorded phone call, that they would be eligible for backpay on the natal supplement.

Panel Decision

Section 68(1) of the EAPWDR states that the Minister may provide a natal supplement of \$45 for a family unit in receipt of disability assistance, if they meet the following criteria:

- The Appellant submits confirmation of the pregnancy in writing by a specified medical practitioner (medical practitioner, nurse practitioner, or midwife), OR
- The family unit includes a dependent child under 7 months of age.

The Appellant did not provide written confirmation of the pregnancy from a medical practitioner, nurse practitioner or midwife as required by the legislation, and the Ministry became aware of it only after the child was born and their birth certificate was provided. The Panel finds that the Ministry was reasonable in determining that the pregnancy was not communicated to them until after the birth of the child. When the Appellant provided the required information to the Ministry and became eligible for the supplement, as they now had a dependent child under 7 months, the natal supplement was provided for the 7-month period March to September 2022.

Further, under section 23(2) of the EAPWDR, a family unit is not eligible for a supplement for a period before the minister determines they are eligible for it. Therefore, the panel finds the Ministry was reasonable in denying the Appellant a natal supplement for the months before the Ministry received confirmation of eligibility.

Conclusion

The panel finds the Ministry's reconsideration decision was reasonably supported by the evidence and confirms the Ministry's reconsideration decision. The Appellant is not successful in their appeal.

APPLICABLE LEGISLATION**EAPWD Act****Disability assistance and supplements**

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

EAPWD Regulation**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 8 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.

Natal supplement

68 (1) Subject to subsection (2), the minister may provide a natal supplement in accordance with section 8 [natal supplement] of Schedule C to or for a family unit in receipt of disability assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who is not described in section 8

- (1) [people receiving special care] of Schedule A.
- (2) A family unit is not eligible to receive a supplement under subsection (1) unless
 - (a) a person in the family unit is pregnant, as confirmed in writing by a medical practitioner, a nurse practitioner or a midwife, or
 - (b) the family unit includes a dependent child under 7 months of age.

Schedule C

Natal supplement

8 The amount of a natal supplement that may be provided under section 68 [natal supplement] of this regulation is

- (a) \$45 for each calendar month for a period set out in section 68 (2), or
- (b) \$90 for each calendar month for a period set out in section 68 (2) if the person
 - (i) is pregnant with more than one child, as confirmed in writing by a medical practitioner, a nurse practitioner or a midwife, or
 - (ii) gives birth to more than one child.

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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 for Persons with Disabilities Act – Section 5

Employment and Assistance for Persons with Disabilities Regulation - Section 23, Section 68, Schedule C Section 8

Part H – Signatures

Print Name

Carla Gail Tibbo

Signature of Chair

Date (Year/Month/Day)

2023/01/23

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2023/01/27

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2023/01/26