

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated March 18, 2023, in which the ministry found the appellant was not eligible for disability assistance for January and February 2023 under section 23 of the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) because he was 18 years old when he submitted the application. The ministry determined that unless the person applies when they are 17 years old, disability assistance begins the first day of the month after the month in which the minister designates the applicant as a Person with Disabilities (“PWD”).

**Part D – Relevant Legislation**

The ministry based the reconsideration decision on the following legislation:

*Employment and Assistance for Persons with Disabilities Act - section 2*

Employment and Assistance for Persons with Disabilities Regulation - sections 2.1 and 23

*The full text is available in the Schedule after the decision.*

**Part E – Summary of Facts**

The information the ministry had at the time of the reconsideration decision included:

**1.** The record of decision indicating that:

- on January 19, 2023, the appellant applied for PWD designation as an underage applicant under a prescribed class as described in section 2.1 of the Regulation. The ministry notes that the appellant was 18 years old at the date of application;
- on February, 14, 2023, the ministry determined the appellant was eligible under a prescribed class because he was receiving support services from Community Living BC (“CLBC”). In a letter to the appellant (dated February 14, 2023), the ministry explains the process for receiving disability assistance effective March 1, 2023;
- on February 24, 2023, the appellant requested a reconsideration, indicating that he thought disability assistance would be retroactive to January 19, 2023 (the date of the application);
- on March 18, 2023, the ministry completed the review of the request for reconsideration and found that the appellant was not eligible for disability assistance for January and February 2023.

**2.** A *Request for Reconsideration* signed by the appellant on March 2, 2023, which included a typed submission from a family member (“the advocate”). The advocate states that:

- it was their understanding that moving from youth to adult services would result in eligibility for disability assistance in January 2023. The advocate notes that the appellant turned 18 in December 2022;
- the appellant has had a documented disability since 2008;
- they began preparing for the PWD application in 2020 as it required updated assessments, new forms of identification (“ID”), and banking information. The procedures are often difficult for the appellant and take more time to complete;
- they were also delayed by long waits for appointments due to the Covid-19 pandemic;
- in November 2022, they began the online service request for ministry assistance but encountered errors and required assistance to register the appellant for a *My Self Serve* account;
- they were successful in completing the online service request in January 2023;
- they received help from social workers and call centre agents at the government 1-888 number. They were told that the appellant would be eligible for assistance beginning in January 2023 as his disability designation was not new, he was just moving from youth to adult services once he turned 18.

3. An *Application for Assistance (Part 2)*, signed by the appellant on January 19, 2023. The appellant's date of birth and age (18 years old) are indicated in the application.

4. A *Persons with Disabilities Designation Application – Prescribed Class*, signed by the advocate on January 4, 2023, as the appellant's legal representative.

### **Additional evidence - video conference hearing**

The appellant did not attend the hearing but was represented by the advocate who spoke on his behalf. In addition to argument, the advocate provided the following information:

- they had difficulty accessing the *My Self Serve* portal due to computer errors. To begin the service request, they had to open a bank account for the appellant and upload documents. They could not upload the required documents because they were locked out of the account. It looked like an account had been created but they had no access to it and needed a different process to verify the appellant's identity;
- it was difficult to upload documents because the connection was slow in their area and they were in the process of moving. The service request timed out and was cancelled; they could see on the screen that the request had been cancelled.
- it then took until January 2023 to verify the appellant's identity and create a new service request. They did not realize until then, that they could submit documents to the ministry office directly. They had missed the January disability payment as they were still waiting for one more document which was submitted to the office in February. The ministry office was a long distance from their residence, and no one from the ministry was assigned to the file to assist.
- they had assistance from a navigator [through a youth transition program] but the navigator assumed the appellant would start receiving disability assistance in January 2023, the month after he turned 18.

At the hearing, the ministry reviewed its file notes and provided additional information about the application process, including when the appellant's documents were received:

- if the applicant cannot access the *My Self Serve* portal, the application can be created over the phone and documents dropped off at the ministry office;
- the ministry system shows that the appellant initiated a service request on June 6, 2022. That request would have shown the status as "pending" while the applicant gathered documents and uploaded them to the portal. However, the request was not reviewed by the ministry because it was cancelled on July 7, 2022. The system automatically cancels an application after one month, when missing documents are not submitted.
- the ministry added that if they are aware of an applicant having technical

difficulties, they have the ability to go into the system to override. However, they did not receive further documents while the application was in the “pending” stage or before the service request was automatically cancelled. They did not receive the missing documents until after the appellant’s 18th birthday.

- the ministry system shows no activity from the appellant between July 7, 2022, and January 19, 2023, when a new service request was initiated. The second request reached the ministry’s initial review phase when documents were submitted to the ministry office. The last document for the new service request was submitted on February 6, 2023.
- the first notes on file are from January 19, 2023. The ministry took no action on the application prior to January 2023

*Admissibility of additional information*

The testimony from the advocate and the ministry provides additional information about the appellant’s previous attempt to open a service request, including specific details about the request being cancelled. The advocate elaborated on the difficulties they faced in accessing the ministry for assistance. The panel admits the testimony under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision that the appellant is not eligible for disability assistance for January and February 2023, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in determining that disability payments should begin in March 2023?

**Analysis**

Section 2.1 of the Regulation sets out alternate grounds for designation as a PWD. The appellant was eligible on alternate grounds because he was in the class of persons receiving CLBC supports.

Section 23 of the Regulation sets out the effective date for designation as a PWD and receipt of disability assistance. Under subsection 23(1)(a), a person is not eligible for assistance until the first day of the month after the month in which their PWD status is confirmed. This Regulation applies to applicants who are 18 years of age or older because under the Act, a person has to be at least 18 to get PWD designation.

*Arguments - Appellant*

The appellant's position is that he expected to receive disability assistance beginning in January 2023, the month after he turned 18. The appellant relied on information from social workers and other professionals who understood that he was transitioning from youth to adult services.

While he now understands that ministry policy states that disability assistance begins the month after the month in which he was designated as a PWD, he made every effort to apply before his 18th birthday. The advocate submits that they began preparing for the application as far back as 2020, when they knew that updated assessments would be required. The process of registering for *My Self Serve*, obtaining ID, opening a bank account, and getting new assessments during the pandemic was very stressful and time-consuming.

The advocate argues that the appellant was eligible for PWD designation when he turned 18 because it was not a new disability. Had they been able to complete the service request before the appellant turned 18 in December 2022, benefits would have begun in January 2023.

The appellant would greatly appreciate retroactive assistance back to January 2023 because he is in great need of financial aid after missing two months of benefits (approximately \$1,400 per month). The advocate argues that the transition to adult services is supposed to be a simplified process, but the appellant's difficulties with access to the online system and receiving incorrect information about the start date for payments, has caused a huge amount of hardship for someone who is already struggling with a disability.

The advocate said that they recognize the way the legislation is written and applied, but they would like some leniency on the submission dates. The advocate stresses that the appellant was found to have a disability since age 4, and not being able to complete the application until January 2023 was not due to a lack of effort.

#### *Arguments - Ministry*

The ministry's position is that the appellant is not eligible for assistance for January and February 2023 because the application was received on January 19, 2023, when the appellant was already 18 years old. The ministry argues that because the final paperwork was not received until February 6, 2023, with eligibility for PWD designation determined on February 14, assistance therefore begins the following month, in March 2023. The ministry argues that section 23(1.1) of the Regulation does not apply in the circumstances of the appellant because disability assistance can only begin on a person's 18th birthday if they apply before their 18th birthday.

At the hearing, the ministry empathized with the appellant's situation and acknowledged that the application is not a flawless process. The ministry said it recognizes access barriers and is striving to make the process better but is required to apply the legislation to make decisions equal and fair for every client.

#### ***Panel's decision***

The panel finds that the reconsideration decision is a reasonable application of the legislation. The appellant is not eligible for disability assistance for January and February 2023 under section 23(1) of the Regulation. The Regulation makes it clear that disability payments do not begin until the first day of the month after the month in which the minister designates the applicant as a person with disabilities. The appellant was designated as a PWD on February 14, 2023, as confirmed in the ministry's letter of that date. He is therefore eligible for disability assistance starting in March 2023.

The panel notes that section 23(1) of the EAPWDR permits exceptions to the effective date of eligibility for disability assistance. The exceptions are referenced as sections 23(1.1), (3.11), and (3.2):

- section 23(1.1) applies to applicants under the age of 18. A person may be eligible for disability assistance on their 18th birthday if they apply when they are 17 years of age and are designated as a PWD on their 18th birthday;
- sections 23(3.11) and 23(3.2) apply to a reconsideration or appeal of a refused PWD application.

These exceptions do not apply in the circumstances of the appellant. The ministry was reasonable to find that the exception for 17-year-old applicants does not apply to the appellant because the appellant's application was submitted on January 19, 2023, when he was 18 years old. The exceptions for a reconsideration or appeal of a refused PWD application also do not apply in the present case because the appellant was found eligible for PWD designation.

The panel acknowledges the procedural difficulties the advocate describes. The appellant made an effort to apply for disability before his 18th birthday, but faced barriers accessing the ministry portal, and gathering and submitting the required documents. The appellant was not aware until after the *My Self Serve* account was successfully created, that he could apply by telephone and submit documents to the ministry office in person.

The evidence is that an initial application was started, but no supporting documents were submitted between June 6, 2022, and when the program timed out on July 7. No new documentation was submitted until January 19, 2023. The appellant acknowledges that he did not submit a complete application until January, but says he was misinformed about the timelines; relied on incorrect information; and has endured a great deal of stress and hardship as a result. While the panel is sympathetic, it is clear that the appellant did not contact the ministry with additional information until after his 18th birthday.

The appellant is requesting some leniency on the submission dates so that he can receive backdated assistance for January and February 2023. However, no leniency is possible because the ministry is bound by the legislation. There is no discretion under the Act or Regulation to find the appellant eligible for assistance for January and February 2023. The ministry is not authorized to issue assistance that a person is ineligible for.

Furthermore, the only provision under section 23 of the Regulation that deals with backdating of disability assistance is subsection 23(4) which authorizes the minister to backdate the payment where a person has been designated as a PWD but does not

receive disability assistance from the date they became eligible for it. The appellant does not meet the criteria for backdated assistance because he started receiving payments in March 2023, his first month of eligibility.

### **Conclusion**

The panel has reviewed the record in its entirety and confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful with his appeal because under the Regulation, he is not eligible for disability assistance for January and February 2023.

### **Schedule – Relevant Legislation**

#### **EAPWDA**

#### **Persons with disabilities**

**2 (2)** The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that...

#### **EAPWDR**

### **Part 1.1 — Persons with Disabilities**

#### **Alternative grounds for designation under section 2 of Act**

**2.1** The following classes of persons are prescribed for the purposes of section 2

**(2)** [*persons with disabilities*] of the Act:

**(c)** a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;...

#### **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,...

**(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,...

**(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.

**(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.

**(3.11)** 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.

**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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2023/04/16

Print Name

Janet Ward

Signature of Member

Date (Year/Month/Day)

2023/04/16

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/04/16