

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 28, 2023, which held that the appellant is not eligible for backdated disability assistance for the period from August 1, 2022 to December 2022.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, sections 1 and 5
Employment and Assistance for Persons with Disabilities Regulation, section 23

Part E – Summary of Facts

From the ministry file:

- The appellant is a sole recipient of disability assistance.
- The ministry received the appellant's Persons with Disabilities (PWD) application on December 13, 2022.
- On December 13, 2022, the ministry determined the appellant was eligible for PWD designation effective January 1, 2023.
- The appellant was a recipient of income assistance and was not required to complete an application for disability assistance.
- On December 15, 2022, the appellant requested the ministry to backdate his PWD designation because he had mailed his PWD application in July 2022 by registered mail and someone signed for it.
- In section 2 of the Request for Reconsideration Form, the ministry summarizes the Decision to be Reconsidered and writes: "You indicated that: You submitted all your PWD application and paperwork via registered mail on July 26th, 2022."

In a letter dated March 22, 2023, the appellant's advocate provided argument which is reflected in Part F of the decision (Reasons for Panel Decision).

In his Notice of Appeal the appellant wrote: "I disagree with the reconsideration decision and that not all of his facts had been considered by the Minister and/or wherever the discretion lays [sic] to approve this."

On May 1 the appellant's advocate provided another submission which contained further argument and is reflected in Part F of the decision (Reasons for Panel Decision).

The advocate attached the following documents:

- A Registered Domestic Customer Receipt by Canada Post of registered mail to the ministry's P.O Box. The receipt shows a registration number.
- A Receipt of Payment for the above registered mail, dated July 26, 2022, displaying the same registration number.
- A tracking print-out of the above registered letter, showing a delivery date of July 28, 2022.
- A note from Canada Post stating: "Please find below the scanned delivery date and signature of the recipient of the item identified below". The note displays the

registration number, the delivery date (July 28, 2022), and a signatory name. The signature is not visible.

The panel notes that these documents had been submitted previously, but this time they were entirely legible.

Admissibility of new evidence

The panel finds that the re-submitted documents are reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as they contribute to the panel's understanding of the circumstances surrounding the appellant's request for backdated disability 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 in this appeal is whether the ministry determination that the appellant is not eligible for backdated disability assistance for the period of August 1, 2022 to December 31, 2022 is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Appellant Position

The appellant's advocate argues that the appellant should be eligible for backdated disability assistance because the appellant had submitted his PWD application to the ministry via registered mail and his application was received on July 28, 2022. As a result, he should have received disability assistance starting in August. The advocate blames the ministry for not processing this application and for delaying the receipt of disability assistance for 5 months. The advocate states that "it is procedurally unfair that a person who lost out on several months of extra benefits ... ought to suffer that loss due to a clerical or other type of error on the part of the Ministry."

The advocate argues that in its initial decision, "the ministry concedes that all PWD paperwork was submitted by registered mail on July 26, 2022". [The panel notes the advocate quoted this information incorrectly. It was the appellant, not the ministry who indicated that [they] submitted all [their] PWD application and paperwork via registered mail on July 26th, 2022.]

The advocate argues further that the ministry should have applied section 23(4) "which speaks directly to this unusual situation where the ministry apparently either lost or simply failed to adjudicate an application for PWD designation that was submitted to it." Any ambiguity in the Act and Regulation should be resolved in favor of the appellant, there should be liberal interpretation of the legislation.

Ministry Position

The ministry argues that they did not receive the appellant's PWD application until December 13, 2022, and as such could not adjudicate his application and determine his eligibility for PWD designation until that time. Section 23 of the Regulation speaks to the effective date of eligibility and when the person has been determined eligible for PWD designation. It does not indicate that the effective date of eligibility is when the ministry has received the application for Persons with Disabilities designation.

Section 23(4) of the EAPWD Regulation does not apply in the appellant's circumstance because he was not considered an applicant at the time he submitted his PWD application. "Applicant" is defined in Section 1 of the EAPWD Act as a person who is applying for disability assistance or hardship assistance or a supplement. The appellant was a recipient of income assistance and not required to complete an application for disability assistance. He was applying for Persons with Disabilities designation and completed a Persons with Disabilities Designation Application.

Regardless of when the application for PWD designation is received by the ministry, Section 23(1) states an applicant for designation of persons with disabilities is not eligible for disability assistance until the first day of the month after the month in which the ministry designates the applicant as a person with disabilities. As the appellant was found eligible for Persons with Disabilities designation on December 13, 2022, he was eligible for disability assistance effective January 1, 2023.

Panel Decision

Section 23 of the Regulation concerns effective dates of eligibility.

Section 23(1) sets out that an applicant "for designation as a person with disabilities or for both that designation and disability assistance" 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.

Section 23(4) sets out that, if a family unit includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit becomes eligible for it, the ministry may backdate payment to the shorter of:

- a) The date the family became eligible for disability assistance; or
- b) 12 calendar months before the date of payment.

While the appellant and his advocate argue that the appellant was unfairly penalized due to no fault of his own, section 23(1) affirms that an applicant for designation as a Person with Disabilities or for both that designation and disability assistance is not eligible for disability assistance until the first day of the month after the month in which the ministry designates the applicant as a Person with Disabilities. The appellant was designated as a Person with Disabilities in December 2023 and consequently became eligible to receive disability assistance on January 1, 2023. The panel finds that the ministry was reasonable

when it applied section 23(1) of the Regulation and determined that the appellant was not eligible for disability assistance until January 1, 2023.

The panel notes that section 24(4) does not apply in the appellant's circumstances. This section addresses a situation where a person who has been designated as a Person with Disabilities does not receive disability assistance from the date they are eligible. The appellant was designated as a Person with Disabilities in December 2022 and received disability assistance from the date he became eligible, which was January 1, 2023.

The panel acknowledges that the appellant would certainly have benefited from an earlier start date of his disability assistance. The panel empathizes with his unfortunate situation and notes that there is evidence that shows he mailed his application to the ministry via registered mail on July 26 which was delivered on July 28, 2022. However, the legislation is clear, there is no ambiguity, and the panel does not have discretion in the matter.

Conclusion

The panel finds the ministry's decision was a reasonable application of the legislation in the appellant's circumstances. The ministry's decision is confirmed and the appellant is not successful on appeal.

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1)In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance ...

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*] ...

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.

Employment and Assistance for Persons with Disabilities 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.

...

(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.

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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)

2023/05/24

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2023/05/24

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/05/24