

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 17, 2023 which held that the appellant is not eligible for April, May and June disability assistance. The ministry found that the appellant was not eligible for disability assistance until July 2023, the month following the month he received the Persons with Disabilities (PWD) designation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), section 2

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), sections 2.1 and 23

The full text of the relevant legislation is set out at the end of the decision.

Part E – Summary of Facts

From the ministry file:

- On March 23, 2023, the appellant's Employment and Assistance case was opened.
- On April 12, 2023, the appellant provided the ministry with his signed PWD Prescribed Classes Application.
- On April 18, 2023, the ministry requested the appellant complete a PWD application, as the ministry could not confirm he was a prescribed class.
- On June 13, 2023, the ministry received the appellant's PWD application. He was approved for PWD designation on June 15, effective July 1, 2023.
- The ministry has a data match with Canada Pension Plan (CPP), confirming that the May 29, 2023, cheque [see Request for Reconsideration below] is for early retirement funds, not CPP disability.

In his Request for Reconsideration the appellant wrote:

- He was on disability assistance since his "chronic injury sustained in 2010".
- In June 2021 he was "put on disability" with the Quebec pension plan.
- In April 2023 the Province of Quebec cut him off from their disability pension program because his address was a post office box which did not qualify for their assistance.
- He did not get his disability assistance portion of \$400 per month for April, May and June.
- He had a very hard time functioning during these months and wants the ministry to reimburse him for these 3 months.

He submitted a copy of his Canada Pension Plan cheque dated May 29, 2023 for \$5.86

In his Notice of Appeal the appellant wrote: "The decision was confusing and not correct. A person with early retirement CPP pension should receive his benefits in full."

At the hearing the appellant said that he had new information and would read a statement. On June 27, 2021, he became an early pensioner. His permanent residency status card from Quebec expired on May 15, 2019, and he could not renew it until March 2022 due to Covid. The Province of Quebec said they could not help him, and he should use whatever identification he had until Covid ended. His medical status could not be established, and he could not see a qualified doctor because he had no valid residency card. He came to BC in February 2023 and has his permanent resident card now. His new card became active in March 2022 and is valid until March 2028. He also has his BC Driver's License and BC Services Card now. He could not access a clinic because of a

mix-up; someone who had the same name, but a different date of birth, was registered there.

The ministry repeated that there is no information from Canada Pension Plan that the appellant receives federal disability benefits. The ministry explained that each province of Canada has their own medical services plan. During the first 3 months of his stay in BC the appellant was still covered by the medical services plan of Quebec. A medical clinic will not refuse service but will ask for identification.

When the appellant was unsuccessful with his Prescribed Classes application on April 18, the ministry, on the same day, requested he complete a “regular” PWD application. To begin with, the appellant only submitted section 1 of this application [without any information from a medical professional]. When the ministry sent the appellant a letter explaining that the required medical information was missing, the appellant submitted medical information, but it was not signed by a registered medical professional. The ministry then sent the appellant another letter on May 16, after which, on June 14, the appellant provided the required medical information from a registered doctor. The appellant’s PWD designation was approved one day later, and as a result, the appellant became eligible for disability assistance on July 1, 2023.

When the appellant applied for income assistance his application was accepted without him having to show his permanent residency card, and he started to receive income assistance benefits right away until the end of June. Until the end of March the appellant also received disability benefits in the amount of \$1500 from Quebec. On July 1, 2023, the appellant started receiving disability benefits from the province of BC. The ministry had directed him to fill in the PWD Prescribed Class application because the appellant had told the ministry he received federal disability benefits (which later, because of a data match with CPP, was found to be incorrect). The \$5.86 on the CPP cheque is for CPP benefits, not for disability benefits.

Admissibility of new evidence

The panel finds that the evidence presented at the hearing is 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 April, May and June 2023 disability assistance is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Appellant Position

The appellant argues that the ministry should reimburse him for missed disability assistance because he was eligible for disability assistance right from the beginning of his application process but had to wait for 3 months to be approved. There were difficulties with his ID because he had no valid permanent residency card for some time, and he could not access medical services in BC for some time due to an identity mistake. He was in early retirement due to a disability before he received PWD designation and should not lose 3 months of disability benefits.

Ministry Position

As the decision to approve PWD designation was made in June 2023, eligibility for disability assistance is effective July 1, 2023. While the appellant submitted a Prescribed Class PWD application in April, the ministry was unable to confirm the appellant was in a prescribed class. The Ministry of Health confirmed the appellant did not have Plan P Palliative care coverage. The appellant is not in receipt of CPP – disability, but rather CPP – early retirement pension. There is no involvement with Community Living BC services. There does not seem to be any error or delay in ministry processes. The ministry adjudicated the appellant's PWD prescribed class application the same month it was received, and adjudicated his PWD application the same month it was received.

Panel Decision

Section 23(1) of the Regulation sets out that a person is not eligible for disability assistance until the month following their designation as PWD.

While the appellant argues that he was unfairly penalized due to no fault of his own and as a result missed 3 months of disability assistance, the panel finds that the ministry was reasonable in its determination that the appellant was not eligible for disability assistance for the months of April, May and June. The appellant was designated as a PWD in June 2023 and as set out in the legislation, became eligible for disability assistance on July 1, 2023.

The panel finds there is no evidence of any error or delay in ministry processes as the ministry considered both types of PWD applications in a timely manner. The ministry adjudicated the appellant's April PWD Prescribed Class application (section 2.1 of the Regulation) in the same month it was received, and adjudicated his June PWD application (section 2 of the Act) in the same month it was received.

The panel finds that the information does not show that the appellant was eligible for disability assistance prior to July 1, 2023. His April 2023 Prescribed Class PWD application was denied because, according to ministry records, the appellant was not in any of the prescribed classes set out in section 2.1 of the Regulation. The panel finds that this decision was reasonable because the information shows that:

- the appellant was not in receipt of CPP – disability, but rather CPP – early retirement pension. This was confirmed by a data match with CPP;
- the Ministry of Health confirmed the appellant did not have Plan P Palliative care coverage;
- there is no evidence of the appellant's involvement with Community Living BC.

The panel acknowledges that the appellant would have benefited from an earlier start date of his BC disability assistance. It must have been difficult for him to move to another province where legislation differed from what he was used to. However, based on the evidence and the applicable legislation, the panel finds that the ministry was reasonable when it determined that the appellant was not eligible for disability assistance until July 1, 2023. The ministry had no discretion in the matter.

Conclusion

The panel finds the ministry's decision was reasonably supported by the evidence and a reasonable application of the relevant legislation. The ministry's decision is confirmed and the appellant is not successful on appeal.

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation

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:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (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*;
- (d) a person whose family 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* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

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.

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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) and 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)

2023/08/18

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2023/08/21

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2023/08/21