

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated July 12, 2023 (the Decision), which found that the Appellant was not eligible for back-dated Disability Assistance for the period of October 2020 to March 2022.

While the Decision found that the Appellant was entitled to back-dated Disability Assistance and should have continued to receive Disability Assistance each month from November 2020 onward, the Ministry determined that it could not provide the Appellant with back-dated Disability Assistance for the period before April 2022 because the legislation says that a backdated payment can only be made for a maximum of twelve calendar months prior to the date payment is made.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act) – section 11(1)

Employment and Assistance for Persons with Disabilities Regulation (the Regulation) – sections 23(4) and 29

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below

Part E – Summary of Facts

According to the evidence provided by the Ministry, the Appellant was approved to receive income assistance on August 5, 2020. In addition, the Appellant's initial Persons with Disabilities (PWD) designation was approved on September 17, 2020, effective October 1, 2020.

The Ministry's Decision included the following history of events:

- The Appellant was issued income assistance benefits for the month of August 2020 by electronic deposit to the Appellant's bank account based on banking information the Appellant had provided;
- On September 23, (2020), the Appellant's October 2020 PWD Disability Assistance payment was directed to a Ministry office *"to be printed"*, because the Appellant did not submit a monthly report;
- On October 7, 2020, the Ministry cancelled the Appellant's October 2020 Disability Assistance cheque because it had gone unclaimed. In addition, on or about that date, the Ministry sent the Appellant a letter requesting that he contact the Ministry to let the Ministry know whether Disability Assistance was still required *"and to explain why this cheque had gone unclaimed"*;
- On November 4, 2020, the Ministry *"turned off cheque production on (the Appellant's) file"* because his November 2020 Disability Assistance cheque had not been claimed;
- On February 22, 2023, the Appellant reapplied for Disability Assistance benefits;
- On March 23, 2023, the Appellant asked for backdated Disability Assistance for the period from October 2020 through February 2023. The Appellant said he did not know he had to pick up his monthly payment cheques at the Ministry office back in 2020 because of the severity of his disabilities and his family circumstances at the time;
- On March 29, 2023, the Appellant was approved for Disability Assistance beginning with the March 2023 benefit month, and was issued the full Disability Assistance amount for March 2023 by electronic deposit; and,
- On April 5, 2023, the Ministry denied the Appellant's March 23, 2023 request for back-dated Disability Assistance for the period from October 2020 through February 2023. The Ministry noted *"that (the Appellant) had not submitted a monthly report as required to determine (his) eligibility for October 2020 benefits. The Ministry further cited three letters sent to (the Appellant) in 2020 (on September 3, September 17, and October 7) as proof that the Ministry had attempted to contact (him) to secure information that was needed to determine (his) eligibility, and ... (he) did not reply to these letters ..."*.

Other evidence the Ministry when it made the Decision included:

- A request for reconsideration of the April 5, 2023 Ministry decision to deny the Appellant's request for back-dated Disability Assistance;
- A one-page letter from the Ministry to the Appellant, dated September 17, 2020 (the September 17 Letter). The September 17 Letter tells the Appellant his PWD designation application had been approved, adding "*When you receive this letter and if you wish to receive disability assistance, you will need to contact your local ministry office to complete requirements **if you are not already in receipt of income assistance.***" (emphasis added); and,
- An undated two-page letter from a social services agency (the Advocate) on behalf of the Appellant (the Advocate's Letter). The Advocate's Letter says:
 - The Appellant didn't receive the September 17 Letter;
 - The Ministry had confirmed in the Decision that letters were the only method of communication from the Ministry about the Appellant's need to pick-up his monthly Disability Assistance in person, and "*as (the Appellant) had requested (he receive his Disability Assistance by direct deposit to his bank account in his application form) he had no reason to believe he would have to go in (to) the (Ministry) office and due to his disability was unaware he needed to follow up with the Ministry*";
 - The Appellant's father passed away during this time period, and the Appellant's uncle, who would otherwise have provided support for the Appellant, was sick and therefore unable to provide assistance; and,
 - The Ministry made no other attempt to contact the Appellant through the Ministry's online service portal or by any other means before turning off cheque production on his file, which "*does not meet the Ministry's legal duty to accommodate ... his disability in order to inform him of these requirements and maintain his eligibility ... (and that for these reasons) administrative fairness was not met*".

Additional Evidence After Reconsideration

In the Appellant's notice of appeal the Appellant says the Ministry has acknowledged that stopping his Disability Assistance benefits in October 2020 was their mistake, adding "*It is unfair and unreasonable to expect someone with (the Appellant's) level of disabilities to Notice and correct the Ministry's errors. The Ministry's decision to not provide all his benefits back to Oct 2020 is unfair and unjust*".

The Appellant made a submission dated August 24, 2023 (the Appellant Submission). In the Appellant Submission, the Appellant says he is writing to formally appeal the Decision, and provides information and arguments previously included in the Advocate's Letter.

Admissibility of Additional Evidence

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must consider if the new information is relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

There is no new evidence contained in the notice of appeal or the Appellant Submission.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision that the Appellant was not eligible for back-dated Disability Assistance for the period of October 2020 to March 2022 was reasonably supported by the evidence, or a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that the Ministry made a number of errors which resulted in his Disability Assistance benefits being cancelled, and because of this he did not receive benefits to which he was entitled.

Ministry's Position

The Ministry's position is that it acknowledges that the Ministry made several mistakes which resulted in the Appellant not receiving Disability Assistance to which he was entitled between October 2020 and March 2022, but that the legislation does not permit the Ministry to compensate him for that 18 month period.

Panel Decision

The Decision found that the Appellant was entitled to backdated Disability Assistance because he was not required to submit a monthly report for October 2020 and the Ministry had "*no legislative authority*" to cancel his October 2020 Disability Assistance payment. In addition, the Ministry determined that the Appellant should have continued to receive Disability Assistance each subsequent month from November 2020 onward. However, the Ministry said it could not provide the Appellant with back-dated Disability Assistance for the period before April 2022 because the legislation says that a backdated payment can only be made for a maximum of twelve calendar months before the date a backdated payment is made.

Section 29 of the Regulation says that Disability Assistance recipient must file monthly reports under certain conditions. Those conditions are:

- When there has been a change in the family unit's assets;
- When there has been a change in income received by the family unit and the source of that income;
- When there has been a change to the employment and educational circumstances of the recipient;
- When there has been a change in family unit membership or the marital status of the recipient;
- When the recipient has been issued any arrest warrants;

- When there has been a change in the amount of earned income received by the family unit in the calendar month and the source of that income; or
- When there has been a change in the amount of unearned income that is compensation paid by Worksafe BC as temporary total disability or temporary partial disability received by the family unit in the calendar month.

The Panel notes that there is no evidence to suggest that any of these events occurred between October 2020 and March 2023. Accordingly, the Panel finds that the Appellant was not required to file monthly reports with the Ministry at any time over this period, as the Ministry has acknowledged in the Decision.

The September 17 Letter tells the Appellant to contact the Ministry *“to complete requirements if you are not already in receipt of income assistance.”* The Panel notes that the Appellant *was* already receiving income assistance at that time, which he had elected to receive by direct deposit. So even if the Appellant had received the September 17 Letter, no further contact with the Ministry in response to the September 17 Letter was necessary. Nor would the Appellant have had to contact the Ministry for any other reason, unless he had had a change in circumstances, as set out in section 29 of the Regulation. In that case a monthly report would have been required.

Section 23(4) of the Regulation says that the Ministry may provide a back-dated payment of Disability Assistance but only for whichever results in a shorter payment period: the date the family unit became eligible for Disability Assistance, or twelve calendar months before the date of payment. The Panel notes that the date the Appellant became eligible for Disability Assistance was October 1, 2020. Because backdating to October 2020 would result in a longer payment period, the shorter twelve calendar month period is in effect.

In the Decision, the Ministry also says it considers the date of payment to be the date payment was made when the Ministry approved the Appellant’s request for backdated Disability Assistance, which is April 5, 2023. The Panel finds that the Ministry reasonably determined that twelve calendar months prior to this date is April 2022.

Conclusion

Having reviewed and considered all the available admissible evidence and relevant legislation, the Panel finds that the Ministry’s Decision was a reasonable application of the relevant legislation in the Appellant’s circumstances, and therefore confirms the decision. The Appellant’s appeal, therefore, is not successful.

* * * *

The Panel is very sympathetic towards the Appellant in these unfortunate circumstances. The Appellant was unable to manage his own affairs. The Appellant’s father, who passed

away around the same time the Appellant was first designated as a PWD in October 2020, was his primary caregiver. His uncle helped to manage his affairs after his father's passing.

In addition, the Ministry did not follow the Appellant's payment instructions. Despite having prior instructions to have his income assistance payments directly deposited to his bank account, the Ministry held printed Disability Assistance cheques at their office for him to claim. The Ministry mailed the Appellant letters telling him he must pick up the cheques. But due to the Appellant's significantly impaired mental and physical capabilities (he is unable to walk or speak and struggles with cognition and memory), he was unable to receive those letters.

The Ministry told the Appellant he must complete a monthly report to continue to receive Disability Assistance. He did not receive this letter, nor was he required to complete the report, as monthly reporting is only necessary under the legislation when there is a change of circumstances. In this case, there was no change in the Appellant's circumstances.

The Ministry made no attempts to phone the Appellant or post a message on the Ministry's online self-serve portal, despite the Appellant previously advising that he needed automatic deposit and could not deal with cheques left at the counter or mailed to him.

Due to the errors made by the Ministry and restrictions in the legislation about the length of time the backdating of payments can be made, the Appellant did not receive eighteen months of Disability Assistance to which he was clearly entitled. This is extremely unfortunate, but there are no provisions in the legislation that would permit the Appellant to be fully compensated under these circumstances.

Schedule of Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Reporting obligations

11(1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form specified by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Effective date of eligibility

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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:
 - (i) a change that is listed in paragraph (b) (i) to (v);
 - (ii) a family unit receives earned income as set out in paragraph (b) (vi);
 - (iii) a family unit receives unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act* as set out in paragraph (b) (vii), and
- (b) the information required is all of the following, as requested in the monthly report form specified by the minister:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act* received by the family unit in the calendar month.

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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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/09/13

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023/09/13

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2023/09/13