

Part C – Decision Under Appeal

Under appeal is a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated October 25, 2023 (the “*Reconsideration Decision*”) denying the Appellant’s request for a year of retroactive disability assistance payments to when the disability began.

The *Reconsideration Decision* affirmed disability assistance payments were to begin the first day of the month following the Ministry’s decision designating the Appellant as a person with disabilities, in compliance with legislation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the “*Act*”):

Section 1(1) [*Interpretation*]

Section 2(2)

Employment and Assistance for Persons with Disabilities Regulation (the “*Regulation*”):

Section 23 [*Effective date of eligibility*]

(See attached Appendix for text of the above)

Part E – Summary of Facts

This matter relates to Ministry denial of the Appellant’s request for retroactive disability assistance payments prior to the date specified by legislation. The following is a summary of the key dates and information in chronological order.

- On 2022 June 21 the Appellant suffered a relapse of chronic depression and insomnia “severe enough to cause disability and preventing [the Appellant] to function enough for proper employment.” (As described in the “*Physician’s Letter*” below.)
- On 2022 December 20 the Appellant signed an application for income assistance.
- On 2023 January 31 the Ministry opened an Employment and Assistance case for the Appellant.
- On 2023 April 13 the Appellant provided the ministry with a signed Person with Disabilities application.
- On 2023 May 29 the Ministry designated the Appellant as a person with disabilities (“PWD”). The eligibility date was 2023 June 1.
- On July 12 2023 the Appellant requested that the PWD eligibility and benefits be backdated to the onset of the Appellant’s disability a year prior.
- On 2023 July 18 the ministry denied the Appellant’s request for backdating of PWD benefits. The Ministry cited that it was applying section 23 of the *Regulation*.
- On 2023 August 23 the Appellant requested further review of the matter.
- On 2023 September 8 the Appellant was again denied retroactive benefits and requested reconsideration.
- On 2023 September 20 the Appellant requested reconsideration.
- On 2023 October 25 the *Reconsideration Decision* was issued. The Ministry denied the Appellant’s request for retroactive disability assistance payments and cited the entitlement date specified by legislation.
- On 2023 November 17 the Appellant provided the tribunal with a letter from the Appellant’s physician (the “*Physician’s Letter*” of 2023 October 26).

Appellant Submissions

At the hearing the Appellant spoke from a written submission describing the basis for requesting an eligibility date of 2022 July 1 rather than 2023 June 1. The basis was described as “extenuating circumstances and facts which caused major delays that the

ministry has not taken into consideration when determining my eligibility date for PWD Benefits" as follows:

1) As supported by my doctor's note [*Physician's Letter*], the severity of my health issues ... as of June 21, 2022) prevented me from being able to apply until Dec 20, 2022.

...

2) The excessive time from December 2022 to May 2023 to process my claim from regular benefits to PWD Benefits was caused by several factors outside my control:

- Not able to just apply for PWD benefits on Dec 20, 2022 (only regular benefits, then eventually PWD benefits)
- Time waiting several weeks for the PWD package that was supposed to be mailed to me and never was (so I eventually called back and was told to go into a Ministry Office).
- Time to get in to see my doctor
- Time for my doctor to fill out the forms
- Time for the Ministry to process the PWD forms
- My health issues affecting my ability to complete all these tasks in a timely manner

...

The way that I interpret the [*Regulation*] 23(1) and 23(4) referenced by the ministry is that my PWD eligibility date "can be backdated up to 12 months" (to June 21, 2022) and that PWD payments would then start "the first day of the month after the month in which the minister designates the applicant as a person with disabilities" (July 1, 2022).

...

The Appellant described having requested application forms for PWD status but not receiving them until following up to get them in April 2023. The Appellant disputed receiving the form earlier via the online system established for communication on the file.

Ministry Submissions

The Ministry disputed that the Appellant had not received the PWD application forms in a timely manner. The Ministry stated that the online system (where the Ministry and Appellant communication about the file) shows that the Appellant was advised on 2023 January 31 of the ability to apply for PWD and the form made available. The system records that the Appellant opened that communication shortly after it was sent.

The Ministry reiterated the *Reconsideration Decision* and cited *Regulation* sections 23(1) and 23(4) describing that, while the Appellant believed that PWD eligibility and payment are from when disability occurs, the legislation specifies that eligibility and payment follows from PWD designation.

The Ministry stated that *Regulation* section 23(4) was not applicable to allow backdating in the manner suggested by the Appellant. The Ministry stated that it addresses situations where a person did not receive PWD payments after designation as a PWD. There, the payments may be made to cover that period between eligibility and receipt. The Appellant was not eligible until 2023 June 1 and there was no gap between then and receipt. The Ministry cited the *Reconsideration Decision* as stating:

... A review of your file confirms you received your full disability entitlement for June to November 2023.

Therefore, your request to receive retroactive disability assistance payments is denied as the legislation clearly indicates that eligibility does not become effective until the first day of the month following the month of the minister's decision. There are no exceptions under legislation or the ministry's policy.

Admissibility of New Evidence

The *Physician's Letter* and the statements from the Appellant and Ministry (representative) may be admitted as testimony.

Under section 22(4) of the *Act*, the panel admits the *Physician's Letter* and the testimony of the parties, as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Where a certain statement is relevant, and given weight that might affect findings, it is specifically mentioned in the panel's reasons. It is noted that the Ministry did not object to the admission of the *Physician's Letter*.

Part F – Reasons for Panel Decision

The purpose of the panel in appeals, such as this, is not to redo the challenged decision of the Ministry. It is to assess whether the *Reconsideration Decision* meets a standard of reasonableness on the law and the evidence. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances. Notably however, the evidence considered here is not just the evidence that was known at the *Reconsideration Decision*. It is to include any new evidence the panel may admit. That means this decision also considers new relevant evidence as if available for the *Reconsideration Decision* and which might have changed its outcome.

The crux of this matter is the differing interpretations of the legislation as set out in the submissions described above. The Appellant implied that backdating of the PWD designation was reasonable given the delay in being able to apply for PWD due to disability (the *Physician's Letter* claims a date of the onset of disability), and given the claimed failure of the Ministry to send application forms in a timely manner. Notwithstanding the latter claim, the panel accepts the Ministry's representation that the forms were sent electronically and that its records show proof of receipt and opening. Key to interpretation of the legislation here is the legislative scheme and the meaning of "designate" based upon the grammar and structure of the relevant phrases and the processes the legislation establishes.

Beginning with the legislative scheme, it is structured as a chronological process with filing of applications (part 1 and part 2), evaluation, designation that triggers an entitlement date, then payment beginning at the entitlement date. There is a provision (*Regulation* section 23(4)) that allows for corrective payments not made from that entitlement date. This finding is made based on the following discussion.

Under the *Act* section 2(2) "The minister may **designate** a person ... as a person with disabilities for the purposes of this Act" subject to various conditions.

Here "designate" is a verb applying to the grammatical "object", which is the "person". It does not apply to specification of a date.

Under *Regulation* section 4(2) "eligibility ... for disability assistance must be assessed on the basis of a 2-stage process" described as follows:

- Stage 1 at *Regulation* section 4.1 - "The first stage of the process for assessing the eligibility ... for disability assistance" that includes the applicant completing and submitting "an application for disability assistance (part 1) form".
- Stage 2 at *Regulation* section 4.2 - Requires informing applicants of rights and obligations, applicants to "complete and submit to the minister an application for

disability assistance (part 2) form” and then the subsequent processing “for assessing the eligibility”.

The above describes the chronological process leading to PWD designation.

Under *Regulation* section 23(1) the date of eligibility of a PWD is set out. It states that a potential recipient of 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 [recipient] becomes eligible ... [for certain shelter costs] unpaid on that date.

Here, the grammar within *Regulation* section 23(1) specifies that the eligibility condition is a prerequisite for determining the specific date, and this date is the "first day of the month" that comes after the month in which the designation occurred. The construction of the phrase inherently refers to a date rather than a month explicitly specified as if selectable by the Ministry. It does not allow the Ministry to specify a different month of designation or eligibility. Grammar aside, the phrases specify a chronological sequence of dates determined by actions and leading to the same conclusion.

Under *Regulation* section 23(4) a person “who has been designated as a” PWD but hasn’t received payments may receive back-payments from the shorter of the following periods:

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

Here this provision is in the past tense indicating that the designation is not backdated. Indeed, it specifically identifies the key date of eligibility which, as seen in *Regulation* section 23(1)(a), is the next month after designation.

Reviewing the legislation above, the grammar (including tense) and the specified sequences also reveal nothing to indicate that the Ministry has the option to approve PWD designation before an application has been made.

Conclusion

The panel’s obligation here is to determine whether the Ministry’s interpretation and application of the legislation is reasonable. An extended analysis has occurred here not only because of the Appellant’s advocated interpretation but also because of the panel’s ultimate finding. In keeping with the discussion above the panel finds that the Ministry’s interpretation and application of the applicable legislation was not only reasonable but that it is correct.

The evidence was not disputed and the application of the evidence was reasonable in the circumstances. No evidence was provided that it was unreasonably, or incorrectly, applied.

Decision/Order

The panel **confirms** the *Reconsideration Decision* having found that it is:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the *Reconsideration Decision*.

Appendix – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1) In this Act:

...

"person with disabilities" means a person designated under section 2 [*persons with disabilities*];

...

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

Part 2 — Eligibility for Disability Assistance

Division 1 — Applications and Applicant Requirements

...

Process for assessment of eligibility for disability assistance

- 4 (1) The eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.
- (2) Despite subsection (1), the eligibility of a family unit for disability assistance may, at the minister's discretion, be assessed on the basis of the process set out in section 4.21, if disability assistance or income assistance has been provided to or for a person in the family unit in at least one of the 6 calendar months immediately preceding the calendar month for which the eligibility of that family unit is being assessed.
- (3) Despite subsections (1) and (2), the eligibility of a family unit for disability assistance may be re-established in accordance with the process set out in section 4.4, if disability assistance has been provided to or for the family unit in a calendar year, but the family unit becomes ineligible under section 9 [limits on income] during that calendar year because the qualifying income of the family unit determined under section 3 of Schedule B equals or exceeds the amount of disability assistance determined under Schedule A that applies to a family unit matching that family unit.

Application for disability assistance — stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for disability assistance is fulfilling the requirements of subsection (2) of this section.

(2) The applicants for disability assistance in a family unit

(a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 6 (2) [*citizenship requirements*], and

(ii) the information, authorizations, verifications and declarations specified by the minister, as required in the application for disability assistance (part 1) form, and

(b) subject to subsections (4), (5) and (6), must

(i) complete searches for employment as directed by the minister for the 3 weeks immediately following the date of the application under paragraph (a), or

(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),

and in either case provide information about and verification of the searches for employment, in the form specified by the minister.

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act.

(4) Subsection (2) (b) does not apply to a person who

(a) is prohibited by law from working in Canada,

(b) has reached 65 years of age,

(c) is a member of a family unit that includes a person with disabilities,

(d) is not a person with disabilities, but has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or

(e) is fleeing an abusive spouse or relative.

(5) Subsection (2) (b) does not apply if any person in the family unit to which an application relates has an immediate need for food or shelter or needs urgent medical attention.

(6) Subsection (2) (b) does not apply to a sole applicant who

(a) has a dependent child, or

(b) provides care to a supported child

if the child has not reached 3 years of age.

Application for disability assistance — stage 2

4.2 (1) In this section, "**applicant orientation program**" means a program established by the minister to ensure that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of

(a) rules about eligibility for disability assistance or supplements,

(b) the process of applying for disability assistance,

(c) required employment search activities, community based job search resources and ministry and community programs,

(d) mutual obligations of the minister, applicants and recipients,

(e) employment plans,

(f) the minister's authority to collect and verify information, and

(g) the availability of alternate resources, such as, federal programs and other Provincial programs.

(2) The second stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for disability assistance is fulfilling the requirements of subsection (3) of this section.

(3) On completion of the first stage process provided for in section 4.1, the applicants for disability assistance in the family unit must complete and submit to the minister an application for disability assistance (part 2) form and must include as part of the application

(a) proof of the identity of the persons in the family unit and of their eligibility under the Act,

(b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and

- (c) the information, authorizations, declarations and verifications specified by the minister as required in the application for disability assistance (part 2) form.
- (4) Subsection (3) does not affect the minister's powers under section 10 of the Act.
- (5) Subsection (3) (b) does not apply to a person who
 - (a) has reached 65 years of age,
 - (b) is not described in section 6 (2) [*citizenship requirements*] and is in a family unit that satisfies the requirement under section 6 (1), or
 - (c) has a physical or mental condition that, in the minister's opinion, precludes the person from completing an applicant orientation program.

...

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, 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, 7 and 8 (2) (b) 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) 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.

APPEAL NUMBER 2023-0330

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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/11/22

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2023/11/22

Print Name

Joe Rodgers

Signature of Member

Date (Year

2023/11/22